



# Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

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November 14, 2022

Dockets Operations  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
West Building, Ground Floor  
Room W12-140  
Washington, DC 20590-0001

**RE: Docket Number: FMCSA-2022-0078**

***Electronic Logging Device Revisions: Advance Notice of Proposed Rulemaking; Request for Comments***

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) request for comments on its advance notice of proposed rulemaking (ANPRM) regarding revisions to the regulations associated with electronic logging devices (ELDs).

CVSA is a nonprofit organization comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to prevent commercial motor vehicle crashes, injuries and fatalities and believes that collaboration between government and industry improves road safety and saves lives. Our mission is to improve commercial motor vehicle safety and enforcement by providing guidance, education and advocacy for enforcement and industry across North America.

CVSA commends FMCSA for seeking public comment on potential changes to the ELD regulations. Below, please find specific comments related to the questions included in the Sept. 16, 2022, ANPRM.

## **FMCSA Questions:**

### 1. Applicability to Pre-2000 Engines

- a. *Many vehicles with pre-2000 engines and most vehicles with rebuilt pre-2000 engines have engine control modules (ECMs) installed that could accommodate an ELD. Should FMCSA re-evaluate or modify the applicability of the current ELD regulation for re-built or re-manufactured CMV engines or glider kits?*

CVSA does not support expanding the regulation to include commercial motor vehicles with re-built or re-manufactured CMV engines and/or glider kits. CVSA was and continues to be a strong supporter of the ELD requirement. While expanding the ELD requirement to include these types of vehicles would bring more vehicles under the ELD requirement and help improve hours-of-service compliance and roadway safety for those vehicles, this change would be difficult to enforce, eroding any intended safety benefit. It is very difficult to verify roadside whether or not a vehicle is subject to the ELD regulations based on the engine manufacture date. Expanding the ELD requirements to include these vehicles will result in confusion and inconsistencies in enforcement of the regulations.

- b. *Please provide data regarding the size of the glider kit population utilizing pre-2000 engines?*

CVSA does not have access to this information.

2. Addressing ELD Malfunctions

*Currently, § 395.34(a) requires a driver documenting his or her RODS to switch to paper logs when an ELD malfunctions. Section 395.34(c) requires a driver to follow the motor carrier and ELD provider recommendations when a data diagnostic event is logged. Whenever an ELD fails to record a driver's hours, enforcement personnel must be able to review the driver's paper logs. By contrast, when an ELD malfunctions but continues to record the driver's hours accurately, the driver should not switch to paper logs.*

*Should FMCSA amend carrier and driver responsibilities in § 395.34 to clarify when a driver must switch to paper logs?*

Yes, amending § 395.34 to clarify when a driver must switch to paper logs is necessary. It is critical that motor carriers, drivers and enforcement have a clear understanding of which ELD malfunctions require the driver to switch to paper logs and which do not. Some malfunctions may still allow the device to accurately document the record of duty status while not recording other data points. Other malfunctions result in inaccurate documentation of the driver's record of duty status. FMCSA should clarify if all malfunctions require the driver to switch to paper logs, or if the driver can continue to use their ELD if the malfunction does not impact the automatic recording of the record of duty status and manually enter the missing data.

3. Removal Process

- a. *If an ELD provider goes out of business and fails to self-revoke, should FMCSA be able to immediately remove the device from the registered ELD list?*

Yes, however, impacted motor carriers need to be given a reasonable amount of time to change their provider. Those motor carriers should be required to use paper logs during that period of time.

- b. *The ELD rule requires ELD providers to keep their information current. However, the rule does not include a time restriction. Should FMCSA require ELD providers to update their listing within 30 calendar days of any change to their registration information found in section 5.1.1? Additionally, should ELD providers be required to confirm their information on an annual basis? Should an ELD provider's ELD be removed from the FMCSA list if it fails to confirm or update its listing on an annual basis?*

Yes, FMCSA should require ELD providers to update their listing within 30 calendar days of any change to their registration information found in section 5.1.1. In addition, ELD providers should be required to confirm their information on an annual basis. Finally, CVSA agrees that ELD providers who fail to confirm or update their listing on an annual basis should be removed from the list by FMCSA. However, FMCSA should ensure that the provider receives adequate notice and is given time to respond before the removal takes place.

- c. *Under Section 5.4 Removal of Listed Certification, providers must respond to the Agency’s written notice of required corrective action within 30 days to remain on the list. Additionally, the provider is given 60 days after the Agency provides a written modification to the notice of proposed removal or notice to affirm the proposed removal under Section 5.4.4. Should FMCSA consider decreasing the 60-day period to 30 days, in order to more timely remove an ELD listing found with non-compliance issues that could adversely impact highway safety?*

Yes, 30 days is adequate time for the provider to respond. At that point, the vendor should be aware of any issues and working to resolve them.

- d. *Should FMCSA consider any other factors related to a carrier’s continued use of a device that has been removed from the FMCSA list due to a provider’s status (out of business or failure to file an annual registration update)?*

CVSA could not identify any additional factors that should be considered.

#### 4. Technical Specifications

In addition to the specific responses to the questions posed by FMCSA related to ELD technical specifications, CVSA encourages FMCSA to take into consideration opportunities to harmonize with the Canadian ELD regulations when possible. This will improve operations and compliance for motor carriers who have cross border operations. In addition, all changes to the technical specifications should be reasonably achievable by the vendors and should have a demonstrable safety benefit that justifies the costs associated with making the changes.

- a. *Would ELD providers be able to include, in the output file and registration, the version numbers of the individual components of the ELD (e.g., the software version number running on the graphical user interface/tablet, the firmware running on the gateway/black box, and the software version number of the back-office software), if any of these components were required to comply with the ELD regulations?*

CVSA’s ELD vendors indicate that this is possible. However, they note that FMCSA would need to update the registration documentation in order to allow for this information to be included. Given that ELD vendors have indicated this change is possible, CVSA supports FMCSA making this information a requirement, as having access to this information would be helpful when a device needs to be verified roadside.

- b. *FMCSA requests information on the impact of including the following data elements to every event. FMCSA believes recording this information would allow the technical specifications to be modified to eliminate the requirements of providing power up and shut down events from vehicles a driver has previously operated that are not associated with the requested driver’s data/RODS:*

1. *Actual odometer*
2. *Actual engine hours*
3. *Location description*
4. *Geo-location*
5. *VIN*
6. *Power unit*
7. *Shipping document number*
8. *Trailer number*
9. *Driver*
10. *Co-driver if there was one*

11. *Which driver was driving at the time, if there was a co-driver*

Having access to this information would be beneficial for enforcement. However, requiring each of these data points would create data transfer challenges, as the data set would be significantly larger. The benefits of the additional information may not outweigh the challenges created by the larger data set that would be required.

- c. *To more efficiently monitor a vehicle over the course of its operation, should more frequent intermediate recordings (including the same data elements listed in 4b.) be required on the quarter hour, half hour, three quarter hour, and hour? If not, what would be a reasonable frequency to require intermediate recordings?*

Similar to the question above, requiring recording at more frequent intervals would create a larger data set that would have to be exchanged. CVSA believes the current frequency is adequate for enforcement purpose and does not support changing this requirement.

- d. *FMCSA granted a temporary exception (82 FR 48883, Oct. 20, 2017) that allowed all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. Additionally, the ELD would switch to a “driving” duty status under § 395.24 if (1) the driver inputs “driving,” (2) the vehicle exceeds 20 mph, or (3) the vehicle exits the geo-fenced yard. Should FMCSA consider adding the temporary yard move exception to the regulation? Are there other factors related to this temporary exception that should be considered?*

Yes, the yard moves exception has improved the accuracy of HOS documentation. The regulations should be updated to include this allowance and the exemption should be sunset. In addition, CVSA recommends that FMCSA update the definition of ‘yard move’ to include deliveries on private property.

Finally, CVSA recommends that FMCSA address the issues raised in CVSA’s Dec. 4, 2019, petition regarding the definition of the term ‘yard move.’ In the petition, CVSA asks FMCSA to provide additional clarity as to what time qualifies as a ‘yard move’ by further defining the terms “yard” and “yard move” in § 395.2. Specifically, CVSA asked FMCSA to consider the following areas to ensure that the definitions are clear and enforceable.

- The definitions should clearly state whether a “yard move” is considered driving or on-duty time.
- It should be made clear what qualifies as a “yard move” so that once the issue of how the time should be assigned is clarified, what is considered a “yard move” is defined.
- Instances where a motor carrier’s property is divided by a public road, requiring a driver to cross a public road to move from one part of the property to another, should be addressed.
- The definition needs to outline what qualifies as a “yard.” For example, if a “yard” must have restricted access like a fence or a gate or if a “yard” must be located with a terminal.

The petition notes that in Canada’s regulations, a “yard move” is assigned as on-duty time if the commercial motor vehicle is within a terminal, depot or port that is not on a public road. FMCSA should look to harmonize with the Canadian definition where possible.

- e. *In the preamble to the 2015 final rule, FMCSA stated that the driver was expected to enter a new duty status before powering off the ELD and turning the vehicle off. However, drivers often fail to enter a new duty status prior to powering off the ELD, resulting in the driver remaining in driving status. To eliminate*

*this issue, should the ELD automatically record an on-duty not driving event following the recording of an engine shutdown? Are there other options that should be considered?*

Yes, this change would reduce errors and improve record of duty status accuracy. It would also reduce the administrative burden on carriers associated with having to correct a driver's status when this mistake is identified. ELD vendors indicate that this would be a simple change to make, and CVSA strongly supports FMCSA making this change.

- f. *The industry has reported that the current 5 second requirement is not enough time for an ELD to obtain the information it has requested from the ECM, as required by section 4.6.1.2 in the Appendix to subpart B of part 395. What would be a reasonable amount of time? Is this an issue only at power up?*

CVSA agrees with reports from industry that the current five second requirement is not enough time for an ELD to obtain the information it has requested from the ECM. Extending the amount of time would help reduce the number of data diagnostics and malfunctions that occur unnecessarily. CVSA recommends harmonizing with the Canadian standard of 60 seconds. Canadian regulators selected 60 seconds as the appropriate time based on input from ELD providers regarding how many data diagnostics were occurring due to the five second requirement. Based on this feedback, Canadian regulators determined that 60 seconds would result in significantly fewer unnecessary data diagnostics and malfunctions.

- g. *Should FMCSA consider allowing a driver, rather than the motor carrier, to change his or her ELD configuration to an exempt status to help reduce the administrative burden noted by the industry? Should FMCSA consider expanding the list of special driving categories in § 395.28(a) to include driving performed under an exemption? If so, what data should be recorded to specifically identify who made the change, why the change was made, and where the change took place, to achieve an equivalent level of safety to prevent falsification?*

CVSA recommends making this an option controlled by the motor carrier, similar to the use of the yard move and personal conveyance designations. The motor carriers who choose to allow their drivers to change their ELD configuration to an exempt status would be responsible for ensuring accuracy and compliance and ensuring that falsification does not occur. In addition, CVSA supports expanding the list of special driving categories in § 395.28(a) to include driving performed under an exemption, provided the change is possible from a vendor perspective. Allowing drivers to select from a preset list rather than having to input a comment would streamline the process. However, it would also likely create additional administrative oversight for carriers.

- h. *Would the technical specification changes discussed in this section necessitate a change in ELD hardware? Or could these changes be pushed to existing ELD devices via a software update? If such updates are feasible, what would the cost implications be?*

ELD vendors are best suited to respond to this question. However, CVSA notes that any changes that require hardware updates would have a significant impact on vendors and motor carriers and the cost/benefit should be closely considered before any changes that impact the hardware are finalized.

- i. *Should other technical specifications, not addressed in this list, be considered for revision to improve ELD data recording, data transfer, cross-border commerce or information security and compliance? Please provide data to support your suggestion.*

CVSA recommends that FMCSA consider adding Canadian and Mexican geolocations to the ERODS system, as well as providing a mechanism to note when the border was crossed, and systems were switched. This

will facilitate more effective enforcement on motor carriers and drivers who have cross-border operations.

- j. *What action(s) do you recommend FMCSA take to ensure that ELD specifications remain current with advances in technology?*

CVSA recommends that FMCSA conduct reviews of the ELD technical specifications every other year to ensure that the regulation continue to reflect the state of the industry. Specifically, FMCSA should note that as technology moves forward untethered systems will grow and the regulations will need to keep pace with that. In addition, FMCSA should consider the impact electric vehicles will have on the regulations and what changes will be necessary to accommodate that technology. For example, what constitutes an engine hour in an electric vehicle. This regular review can also be coupled with an open comment period for stakeholders to provide feedback to improve the specifications.

#### 5. ELD Certification

- a. *Should FMCSA establish a certification process for ELDs? If so, what should a certification process consist of?*

Creating a new certification is unnecessary at this point and would create additional work and process for all parties involved, including FMCSA. Instead, CVSA recommends that the agency focus on enforcing under the current model.

- b. *Based on your answer to the above questions, what would be the costs and benefits of that approach?*

CVSA does not believe the benefits of establishing a new certification model would outweigh the associated costs and challenges that would be created.

- c. *If a certification process is established, how should existing devices be treated?*

If the agency decides to pursue creating a new certification process, vendors who have already self-certified under the current model should not be subject to the new certification approach unless there are enforcement issues identified that justify reviewing the devices. Further, any devices that have been certified by a third party in Canada should not be subject to the new certification process.

#### General Comment

Finally, in addition to the changes discussed above, CVSA strongly encourages FMCSA to reconsider its denial of CVSA's petition for the agency to amend § 395.2 by adding a definition of the term "personal conveyance." To adequately clarify what the agency means by "personal conveyance," the term needs to be defined with the maximum distance and/or time a driver may operate for personal conveyance. As noted in our petition, under the current guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of personal conveyance. This presents the opportunity for increased driver fatigue and risk on our roadways, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. Without a maximum daily distance and/or time limit, the guidance presents a legal way for drivers to significantly extend their driving time by aligning personal use of a commercial motor vehicle with the furtherance of their load. The hours-of-service limits exist to mitigate the impacts of fatigue on highway safety. Allowing significant extension of driving time with the use of personal conveyance undermines the goals of the hours-of-service regulations. By establishing a maximum allowed distance or time for personal conveyance, FMCSA will not only eliminate confusion and inconsistent enforcement among inspectors on this issue but will also ensure safer roads as commercial motor vehicle drivers and motor carriers are on notice that personal

conveyance time cannot be used as a safe harbor for driving hundreds of miles after exhausting their hours of service.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the opportunity to comment on this proposal and the agency's commitment to safety and stakeholder involvement. If you have further questions or comments, please do not hesitate to contact me by phone at 202-998-1008 or by email at [collin.mooney@cvsa.org](mailto:collin.mooney@cvsa.org).

Respectfully,

A handwritten signature in black ink, appearing to read 'Collin B. Mooney'.

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Commercial Vehicle Safety Alliance