

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
AND THE  
OFFICE OF MANAGEMENT AND BUDGET**

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**COMMENTS OF THE  
OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

**IN RESPONSE TO THE NOTICE  
AND REQUEST FOR PUBLIC COMMENT  
AGENCY INFORMATION COLLECTION ACTIVITIES;  
NEW INFORMATION COLLECTION REQUEST:  
ELECTRIC LOGGING DEVICE (ELD) VENDOR REGISTRATION**

**Docket No. FMCSA-2014-0377**

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**December 29, 2014**

## **I. INTRODUCTION**

### **A. Statement of Interest**

These comments are submitted on behalf of Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the Notice and Request for Comment published by the Federal Motor Carrier Safety Administration, (“FMCSA” or “Agency”), Docket No. FMCSA-2014-0377, 79 Fed. Reg. 64248 (October 28, 2014). (the “Notice”). The Notice requests comments on an Information Collection Request (“ICR”) entitled “Electronic Logging Device Vendor Registration.” This ICR describes the information ELD manufacturers must submit as a condition for being able to sell equipment that motor carriers may use instead of paper logs to record driver changes of duty status under the Hours of Service rules.

OOIDA, is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers, and professional drivers. The 151,000 members of OOIDA are professional drivers and small-business men and women located in all 50 states and Canada who collectively own and operate more than 200,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the total of active motor carriers operated in the United States. The mailing address of the Association is:

Owner-Operator Independent Drivers Association, Inc.  
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The Association actively promotes the views of professional drivers and small-business truckers through its interaction with state and federal government agencies, legislatures, courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of professional drivers and small-business truckers in numerous committees and various forums on the local, state, national, and international levels. In sum, OOIDA's mission includes the promotion and protection of the interests of independent truckers on any issue which might touch on their economic well-being, their working conditions, or the safe operation of their motor vehicles on the nation's highways. OOIDA files these comments because the form identified in the Notice, Form MCSA-5893, has not been included in the docket; the description of the form, a self-certification of compliance with all of the technical specifications of the rule, is too vague; and the final technical specifications have not even been finalized in a Final Rule.

**B. COMMENTS**

OOIDA believes that the information required of ELD manufacturers who wish to be on FMCSA's approved list of vendors must be more substantive than a general self-certification of compliance with the technical specifications of the rule. Such a certification has little meaning unless the manufacturers provide specific information – including citations to their manual – that demonstrate compliance with the rules. And certification with such specific information should be updated as the rule and FMCSA interpretations of it evolve. Otherwise a simple, general certification of compliance would suffice to keep a manufacturer on an approved list without additional verification of continued compliance.

The proposed ELD rule was published in a Supplemental Notice of Proposed Rulemaking in March 28, 2014. At that time, FMCSA had not resolved several fundamental technical specifications required by statute and otherwise identified in comments that would need to be addressed for the rule to meet its intended purpose. It is difficult for the public to submit substantive comments to this ICR, and for FMCSA to make any useful decisions related to an ICR, before resolving these ELD technical specifications.

Until those specifications are resolved and a FORM MCSA-5893 has been created to require the provision of substantive information demonstrating compliance, then this ICR proceeding is premature.

The following are issues related to technical specifications that have not yet been resolved:

- FMCSA has not proposed an ELD that would “automatically” record a driver’s duty status and HOS compliance as required under 49 U.S.C. §31137(f)(1). The proposed ELD still requires driver input to record their non-driving duty status and is therefore neither automatic nor tamper-proof.
- The NMPRM was published before FMCSA began to study the issue of driver harassment. FMCSA has since contracted a study that showed significant motor carrier use of existing AOBRDs to harass drivers, including asking them to violate the safety rules. Technical redesign of the proposed ELDs is necessary and would be useful in addressing such harassment and coercion.
- Comments made to FMCSA and the FMCSA study revealed that under current AOBRD rules, some motor carriers can make remote changes to the records contained in AOBRDs to change a driver’s duty status history so that it shows that a driver had more time to work and drive than would have been allowed under an accurate record of HOS compliance. OOIDA assumes that this defect is near the top of the list of FMCSA’s review of the technical specifications to fix in the final rule. Mere prohibition of such behavior has been inadequate to prevent such action. As an element of certification, ELD manufacturers should be required to demonstrate how their device stops such behavior.
- As comments submitted to FMCSA describe, sometimes a smaller carrier may need to take equipment out of service for repairs and then temporarily rent new equipment to keep their driver busy and to maintain their business levels. Unless the ELD rule

requires technical interoperability or some other solution, then it is unclear under the SNPRM how a motor carrier and driver would comply with the rules in such circumstances. Similarly, although less complicated, circumstances are presented by motor carriers moving drivers around to different pieces of equipment it owns. Such interoperability capability needs to be written into the rule so that only manufacturers who can provide solutions are allowed to certify their equipment. If FMCSA does not mandate such interoperability, then it must raise its estimate for the cost of the rule to account for business lost and driver down-time when equipment is being repaired.

### C. CONCLUSION

The proposed ELD rule raises significant technical issues that FMCSA must resolve before it can begin to contemplate how a manufacturer might appropriately certify that it can provide compliant equipment. OOIDA does not believe that mere self-certification of compliance with the technical standards of the yet-to-be-established Final Rule will be sufficient to ensure compliance with the rule. Manufacturers should be required to provide more substantive information, and FMCSA should verify and test that information and equipment before motor carriers may use it to keep track of their compliance with the HOS rules.

Respectfully submitted,

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