



# California Construction Trucking Association

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Federal Motor Carrier Safety Administration  
Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue SE. West Building  
Ground Floor, Room W12-140  
Washington, D.C. 20590-0001

**Re: Docket No. FMCSA-2010-0167**

## **Electronic Logging Devices and Hours of Service Supporting Documents**

The California Construction Trucking Association (“CCTA”) submits these comments in response to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) publication of a Supplemental Notice of Proposed Rulemaking (“SNPRM”) published in the Federal Register on March 28, 2014 (79 FR 17656), Docket No. FMCSA-2010-0167 proposing to amend the Federal Motor Carrier Safety Regulations (“FMCSR’s”) to mandate electronic logging devices (“ELD’s”) for drivers currently required to prepare hours-of-service (“HOS”) records of duty status.

The California Construction Trucking Association (CCTA) is a 501(c)(6) trade association incorporated in 1941 and headquartered in Upland, California. The CCTA is constituted of four conferences, each designed to represent and provide for the distinctive needs of a particular segment of the trucking industry. While our members still predominantly operate dump trucks made up of every style and configuration, our collective membership operates virtually every type of commercial motor vehicle (“CMV”) imaginable. We actively maintain transportation conferences for oversized (permitted) lowbed loads, water trucks, concrete boom and trailer pumps, and most recently interstate motor carriers under the conference name- Western Trucking Alliance. Collectively, our members and affiliates operate nearly 20,000 commercial motor vehicles. Approximately 20 percent of our membership operate CMV’s in interstate commerce and will be directly affected by this mandate. A lesser percentage occasionally operates in interstate commerce primarily in support of federally aided highway projects in neighboring states.

The CCTA believes that motor carrier management and owner-operators should be free to choose how to implement safety management practices suited to their particular operations. While some of our members may choose to utilize ELD’s as a preferred safety management tool to monitor HOS compliance, many others view mandating ELD’s as a prime example of government overreach under the very questionable guise of reducing fatigued driving and improving highway safety.

### **Discussion:**

Former FMCSA Administrator John Hill previously stated that FMCSA could never economically justify a “universal” mandate for ELD’s. We believe that is still true and seriously question FMCSA’s cost-benefit analysis as well as the estimates of CMV’s and drivers that will ultimately be impacted by this rule. It is truly an example of “junk science.” As an association we firmly believe that all government agencies should ascribe to the highest and most transparent standards in their research methods and supportive studies/analysis when using them as a basis of regulation. To do otherwise seriously erodes public confidence (in this case, fleet owners, owner-operators, and drivers) in government. While congress mandated this rulemaking in MAP-21, it did not mandate that the Agency base its conclusions on flawed

data in order to minimally achieve an extremely questionable safety benefit premised on disputable cost-benefit calculations.

FMCSA has calculated tens of millions of hours in savings attributable to drivers no longer needing to complete paper record-of-duty-status (“RODS”) as part of its calculations to justify this regulation. While we won’t deny that some calculated time savings “may” be present – especially on the fleet management side of the equation, assigning a dollar value to the time drivers spend completing paperwork is a prime example of government manipulating data to justify a regulation. The vast majority of drivers are not paid by the hour but instead either by the mile, percentage of gross, or even per ton hauled. Not even the State of California which aggressively enforces “prevailing wage” laws on all public works projects has dared to attempt and assign an appropriate “prevailing wage” for owner-operators.

FMCSA is well aware that the majority of drivers in the industry are not compensated for on-duty, not driving time, even the President’s own draft Highway Bill suggests to mandate that motor carriers be required and pay drivers at least minimum wage for on-duty, not driving time. In spite of this contrary industry fact, FMCSA makes financial assumptions about driver pay completely at odds with real world practices – only hourly employees are paid to complete paperwork.

### **Affected Vehicle Population:**

Another way to manipulate and achieve the appropriate cost-benefit to support this rulemaking is to reduce/underestimate the total number of vehicles and drivers that will be impacted. Throughout the rulemaking and even in the Regulatory Impact Analysis (“RIA”), FMCSA’s analysis appears to give little thought to the totality of CMV’s operated beyond primarily freight hauling operations – the agency even reduced its own estimates of total affected CMV operators. Since so much of the data in the RIA is based on making assumptions from a wide variety of data sources, we find it incredible that the Agency lowered the affected population when it has publicly acknowledged the limitations on data contained within its own data systems – even pick-up trucks classified as CMV’s would necessarily need to have ELD’s installed under this proposal yet we see no acknowledgment of this fact.

### **8 days in 30-day exemption:**

FMCSA asks a number of questions within the SNPRM about a proposed provision allowing drivers who currently use time cards and could essentially be exempted from the ELD requirement as long as they were not required to use ROD’s more than 8 days in a 30 day period. For the construction trucking industry, this is a step in the right direction and would be of benefit for some of our members who do in fact travel into adjacent states based on available contracting opportunities.

Construction trucking is dramatically different from general freight trucking in that the drivers most typically operate under the short-haul exemption on job sites and spend their off-duty time not in the cab of a truck but in a nearby motel when away from their home.

Another consideration for the Agency does involve construction trucking operations, such as in California that operate under the states less restrictive HOS rules – and utilize paper ROD’s instead of a timecard. We think the proposed language is too restrictive and should recognize that someone operating mostly under “intrastate” HOS regulations and using paper ROD’s to comply with a state regulation instead of federal HOS, should not be precluded from having the same flexibility as someone using a “timecard” under this proposed provision.

### **Integral synchronization of the ELD with engine ECM**

Within the SNPRM FMCSA seeks information on the “complexity of compliance with a CMV manufactured on or before 2000.” While this may not seem like a problem for large national freight operations that have vehicle turn-over cycles typically between 4 and 5 years, this will be a significant issue for many owner-operators and small-business truck owners, especially those who don’t consider

themselves “truckers” in the typical sense, but happen to own a CMV in the furtherance of another business enterprise. These are the entities that operate pre-2000 CMV’s.

We conducted our own survey of truck shops and ELD manufacturers seeking information on the cost of retrofitting older equipment to meet the proposed technology specifications in the rulemaking. We found that ELD manufacturers appeared to underestimate the cost (likely because that benefits them in their zeal to have this rulemaking implemented because of the financial windfall that awaits them) while truck shops when explained what would be entailed from a technology standpoint were mostly clueless – but certainly willing to try anything as long as they receive their hourly shop rates.

Retrofitting an older truck/mechanical engine to be able to integrate an ELD is possible, but costly. Sensors need to be installed and wired into the cab with parts costing a few hundred dollars but shop labor rates widely variable based on geographic location (OEM shop rates in California range between \$110 and \$155 per hour). Our own “non-scientific” investigation makes us believe the cost to retrofit a truck to comply with this regulation would be in the neighborhood of \$1,000 per truck, including labor – a number not contemplated by FMCSA in this SNPRM (or the population of affected CMV’s).

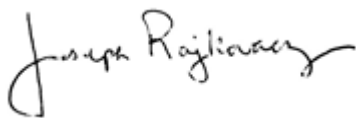
**Conclusion:**

The CCTA and its members have always been a safety focused, however we cannot agree that mandating ELD’s will achieve either the safety benefits calculated by the Agency nor reap the hypothesized financial benefits for all motor carriers switching from paper ROD’s.

While large truckload motor carriers and their associations have been very adept at getting their way inside Washington, D.C., as exemplified by not only this rulemaking but language in MAP-21, like so much other legislation and regulation coming from Washington, the only true beneficiaries are those intent on chasing from the market their competitors all under the guise of “safety.”

A less sweeping regulation that targets truly “bad actors” as previously proposed by FMCSA is still the most cost-effective and viable pathway to achieve the Agency’s safety goals.

Respectfully submitted,



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