

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**Electronic Logging Devices and Hours of Service
Supporting Documents;
Supplemental Notice of Proposed Rulemaking**

**Docket No. FMCSA–2010–0167
RIN 2126–AB20**

COMMENTS OF THE TRUCK RENTING AND LEASING ASSOCIATION, INC.

The Truck Renting and Leasing Association (“TRALA”), submits these comments to the Federal Motor Carrier Safety Administration (“FMCSA”) on the agency’s supplemental notice of proposed rulemaking regarding Electronic Logging Devices (“ELDs”) for commercial motor vehicles. 79 *Fed. Reg.* 17656 (March 28, 2014). TRALA, headquartered in Alexandria, Virginia, is a voluntary, non-profit national trade association founded in 1978 to serve as a unified and focused voice for the truck renting and leasing industry. TRALA's mission is to foster a positive legislative and regulatory climate within which companies engaged in leasing and renting vehicles and trailers, as well as related businesses, can compete without discrimination in the North American marketplace.

TRALA members provide trucks, trailers and other equipment, without drivers, to their customers through commercial truck renting and leasing,¹ vehicle finance leasing, and consumer

¹ The term “renting” is a term of art in the vehicle leasing industry, generally meaning a transaction granting the exclusive use of a vehicle for 30 days or fewer, whereas a lease generally means a transaction granting the exclusive use of a vehicle for more than 30 days.

truck rental. The membership encompasses the full spectrum of the industry, including major national independent firms such as Ryder System, Penske Truck Leasing, U-Haul, Budget and Enterprise Commercial Trucks, as well as small and medium-size businesses that generally participate as members of five group systems: Idealease, Mack Leasing, Volvo Truck Leasing, NationalLease and PacLease. In total, these 500-plus companies operate more than 4,000 commercial lease and rental locations and more than 18,000 consumer rental locations throughout North America.

The TRALA membership also includes more than 100 supplier member companies providing equipment, products and services to TRALA members. These products include truck, trailer, engine, tire and vehicle components. These companies also offer such services as communications, technology, finance, legal and graphics.

The truck renting and leasing industry involves a vast network of truck transportation, logistics and related services for a wide variety of customers. According to data derived by TRALA from state and federal motor vehicle registration statistics, in 2003 there were 4,734,964 commercial trucks in classes 3 through 8² registered in the United States. Of that total, some 896,155, or approximately 19 percent, were operated pursuant to some form of lease or rental agreement. Moreover, TRALA members account for upwards of 40 percent of all of the new commercial motor vehicles in classes 3 through 8 purchased each year in the United States.

Supplemental NPRM

The supplemental notice of proposed rulemaking would mandate the use of ELDs for driver hours of service compliance. The mandate would become effective two years after the

² Classes 3 through 8 include commercial trucks over 10,000 pounds Gross Vehicle Weight (“GVW”) to 80,000 pounds GVW and above. Commercial trucks over 10,000 pounds GVW are generally subject to the Federal Motor Carrier Safety Regulations and comparable state regulations. *See* 49 C.F.R. Part 390.

effective date of a final rule. But the FMCSA would allow continued use of Automatic On-Board Recording Devices, installed under 49 CFR § 395.15 before the compliance date, for an additional two years beyond the compliance date of a final rule.

The proposed rule would mandate that interstate motor carriers install ELDs in all CMVs operated by drivers who are now required to prepare paper Records of Duty Status (“RODS,” “driver logs” or “paper logs”), subject to a limited exception for drivers who are rarely required to keep RODS.

Under the proposed rule, if a driver is required to use an ELD, the motor carrier must not require or allow the driver to operate a CMV in interstate commerce without using the device. Drivers in operations not requiring RODS may use ELDs to document their compliance with the HOS rules, but are not required to do so. Furthermore, under the proposal, drivers currently allowed to use timecards to document HOS compliance could continue that practice.

Drivers who need to use RODS infrequently or intermittently would be allowed to continue using paper RODS, provided they are not required to use RODS more than 8 days in any 30-day period. For example, a driver who is exempt from completing a paper log because he does not operate beyond the 100 air-mile limit and returns to the normal work reporting location within 12 hours would still be exempt from the ELD requirement and would complete a paper log for each day that he goes beyond the 100 air-mile limit or is on duty for more than 12 hours, as long as he did not exceed the exemption limits more than 8 days in any rolling 30 day period.

The proposed rule would prohibit carriers from using the information provided in ELDs to harass drivers, including drivers being pressured to exceed HOS limitations and inappropriate communications that affect drivers’ rest periods. But the FMCSA said that carriers may use the devices “to improve productivity or for other appropriate business practices.”

Manufacturers of ELDs would have to certify that their devices meet FMCSA technical requirements, and register certified devices with the agency. The FMCSA would publish a list of certified devices on its website, and carriers would only be able to use certified ELDs listed on the FMCSA website.

In addition, the proposal would limit the supporting documents that a motor carrier must maintain by specifying the number, category, and required elements for a supporting document and, subject to a limited exception, would not require supporting documents that reflect driving time. Carriers would still need to retain documents to certify a driver's on-duty, not driving periods, however.

For every 24-hour period a driver is on duty, the motor carrier would be required to maintain not more than 10 supporting documents from the following five categories:

- Bills of lading, itineraries, schedules, or equivalent documents that indicate the origin and destination of each trip;
- Dispatch records, trip records, or equivalent documents;
- Expense receipts;
- Electronic mobile communication records, reflecting communications transmitted through an FMS for the driver's 24-hour duty day; and,
- Payroll records for the driver's 24-hour duty day, settlement sheets, or equivalent documents that indicate what and how a driver was paid.

If the carrier does not create at least 10 supporting documents during a 24-hour period for a driver, the carrier would not be required to create additional supporting documents. In addition, motor carriers whose drivers use paper logs would also need to maintain toll receipts.

Finally, the proposed rule would also eliminate the former proposals that each motor carrier maintain an HOS Management System and that a motor carrier certify as to the lack of supporting documents showing required elements.

Application of SNPRM to Rental Vehicles

The FMCSA has drafted this proposed rule aimed at the motor carrier and driver operating a commercial motor vehicle. But the proposal fails to consider the effects on truck renting and leasing companies, and in particular those companies engaged in the short-term rental of CMVs to a variety of commercial and consumer customers.

TRALA members are unique in the motor carrier industry; unlike for-hire or private motor carriers that usually assign a single driver to a tractor or straight truck for an extended period of time, our member companies typically have fleets of vehicles over 10,000 pounds GVW available for short-term rental. These rentals may be for a period of a month, a week, a day, or even a few hours. As a result, in a one or two day period, one vehicle may be operated by different drivers from separate companies with varying technologies and obligations to log hours which TRALA feels is not adequately addressed in the rule. Many of those customers are consumer renters, and thus are not subject to the hours of service requirements in 49 CFR Part 395. In addition, many of the commercial rental customers are companies with local distribution operations, and their drivers would not be subject to the ELD requirements under the proposed rule as they operate within either the 100-mile radius exemption in 49 CFR § 395.1(e)(1) or the 150-mile radius exemption in 49 CFR § 395.1(e)(2).

But for those few rental customers who are commercial entities and have drivers who are subject to the driver logs and ELD requirements, TRALA members would be required to provide rental vehicles that have ELDs that meet the technical specifications of the proposed rule. This customer mix changes on a weekly and sometimes daily basis; TRALA members will not know from one day or week to the next whether the rental customers will require an ELD on any

particular rental vehicle in the fleet. Under the proposal, TRALA members would have to purchase and offer CMVs outfitted with ELDs, as either original equipment or as a retrofit, to all customers at all times in order to comply in those few instances when the commercial rental customers' drivers are subject to the ELD rule.

The proposal does appear to provide for portable ELDs. "An ELD is not necessarily a physical device; it is a technology platform, and may be portable or implemented within a device not permanently installed on a CMV." *See 79 Fed. Reg.* at 17666. Additionally, proposed 49 CFR 395.22(g) states, "If a driver uses a portable ELD, the motor carrier shall ensure that the ELD is mounted in a fixed position during the operation of the commercial motor vehicle and visible to the driver when the driver is seated in the normal driving position." *79 Fed. Reg.* at 17690.

Yet there are other provisions of the proposal that appear to contradict the assertion that the devices will be truly portable. For example, proposed 49 CFR § 395.26(h) would require that, when the vehicle's engine is powered up or powered down, the ELD would automatically record the data elements set out in 395.26(b)(1) through (8). But if a device is actually portable there is a possibility that it would not be in the vehicle, or not attached to the vehicle engine, when the vehicle is powered up. The proposal does not seem to contemplate this scenario.

Moreover, the proposal appears to require that ELDs capture "personal miles" operated in a CMV. Proposed 49 CFR § 395.26(d)(2) indicates that when a driver indicates "authorized personal use" of a commercial motor vehicle, the data elements in paragraphs (b)(4) and (b)(5) of this section (engine hours and vehicle miles) will be left blank, and the geographic location in (b)(3) will be indicated in a modified fashion, but the other data elements will still be recorded.

TRALA members question how the recording of personal miles by a regulated motor

carrier employee will be reconciled with the personal use of rental vehicles by unregulated consumer customers or motor carrier drivers who are not subject to the ELD requirements because they are under one of the short-haul exemptions in 49 CFR § 395.1(e). At the very least, there is some confusion as to whether all miles must be recorded, including personal miles and yard miles (which until now were not subject to the hours of service requirements, or at least not recorded as on duty driving time), as well as over-the-road miles for CMV drivers who are required to use ELDs for hours of service compliance.

Because of the unique nature of short-term rental operations, and the wide variety of users who will be in a rental vehicle over the course of a year, TRALA members need assurance and clarification that the technical specifications in the final rule do not preclude the ability to transfer an ELD to and from CMVs on a daily, weekly or monthly basis as customer requirements dictate. In particular, the agency should ensure that the requirement that the ELD be “integrally connected” to the CMV’s engine does not jeopardize the portability or transferability of ELDs among vehicles and/or customers. Additionally, rental customers who are not subject to the ELD requirements, either because they are using the CMV for non-commercial purposes, or are exempt short-haul operators, should not be required to record any of their trip data elements electronically or to have that information available for FMCSA or state inspection.

Transferability allows TRALA members to use ELDs on vehicles where it is required, and to avoid the cost of employing that technology where it is not. But in addition to the cost issues, TRALA wants to ensure that its member companies do not force their unregulated customer drivers to disclose their geographic whereabouts as a mandatory ELD data element, or violate the proprietary nature of the hours of service data recorded and stored on the ELDs by

and on behalf of their regulated customers, the motor carriers. With multiple users of a single vehicle, TRALA companies could be liable for unlawful disclosure or access to such data. Allowing portable devices that have unique logins for each drivers and strict protocols for device accessibility and information capture will alleviate that concern.

We appreciate the opportunity to present these comments to the FMCSA.

Respectfully submitted,

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