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Congress of the United States
House of Representatives
Washington, DC 20515-4336

November 9, 2017

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President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President,

Millions of hard working American truckers, farmers and small businesses need you to take immediate and decisive action to protect them from a massive new regulation that is scheduled to go into effect just 39 days from today. I am writing on their behalf with a plan to help you do just that.

This December 18th, the U.S. Department of Transportation (DOT) is scheduled to begin implementation and enforcement of the Electronic Logging Device (ELD) mandate¹, a \$2 billion regulation written and set in motion by the Obama Administration back in 2015.

In consultation with the Congressional Research Service (CRS), I have identified a course of legal, appropriate action that you can take with Transportation Secretary Elaine Chao to delay this rule and provide much-needed relief to the millions of Americans who will be impacted.

Accordingly, I respectfully request that you issue an Executive Order as soon as possible, instructing the Secretary of Transportation to provide an immediate waiver for all trucking sectors and operations subject to this mandate, until such time as it can be certified that implementation will not cause economic or other harm to the millions who are subject to it.

Provision 49 U.S.C. 31133(a)(10) stipulates that the Secretary of Transportation may "*perform other acts the Secretary considers appropriate*" with respect to regulating commercial motor vehicles². Combined with the DOT and Federal Motor Carrier Safety Administration's (FMCSA) authority to issue waivers and exemptions from the ELD mandate³, which they have already exercised for certain package delivery⁴ and rental truck operations⁵, I believe the Secretary, the DOT and the FMCSA not only have the authority but the obligation to extend that same relief to all Americans.

¹ FMCSA ELD Final Rule - 12.16.15

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-16/pdf/2015-31336.pdf>

² 49 U.S. Code § 31133 - General powers of the Secretary of Transportation

<https://www.law.cornell.edu/uscode/text/49/31133>

³ 49 CFR Part 381 - FMCSA Regulations; Waivers, Exemptions, and Pilot Programs - 8.20.04

<https://www.gpo.gov/fdsys/pkg/FR-2004-08-20/pdf/04-19155.pdf>

⁴ FMCSA-2017-0054 - Hours of Service; United Parcel Service Inc. Application for an Exemption From Certain ELD Requirements - 10.20.17

<https://www.gpo.gov/fdsys/pkg/FR-2017-10-20/pdf/2017-22833.pdf>

⁵ FMCSA-2016-0428 - Hours of Service of Drivers: Application for Exemption; Truck Renting and Leasing Association (TRALA)- 10.11.17

<https://www.gpo.gov/fdsys/pkg/FR-2017-10-11/pdf/2017-21892.pdf>

My preference would be to delay the rule for as long as it takes, but at a bare minimum, I would encourage an initial waiver for all sectors until April 1, 2018. First, a three month delay eliminates the very predictable havoc of trying to implement this massive, complicated regulation just a week before Christmas – perhaps the busiest time for the consumer freight network of the year. Second, this is the same date that the Commercial Vehicle Safety Alliance (CVSA) recently announced they would begin to fully enforce this mandate (with partial enforcement starting December 18th)⁶, their well-intentioned but nevertheless ambiguous path forward for public safety officials to gradually begin enforcing this new requirement. Third, an additional three months will provide FMCSA with the time to continue processing applications for waivers and exemptions that are currently under consideration. And finally, this would set a relatively close new deadline for this issue to be revisited, keeping the pressure on both government and industry to answer the questions and solve the challenges that this mandate clearly presents.

As you may know, I am the lead sponsor of H.R. 3282, the *ELD Extension Act of 2017*, which would implement, by law, an additional two-year delay of this mandate. Since introducing that bill back in July, I have had the privilege and honor to meet hundreds of hard working independent truck drivers and others with deep concerns about this mandate from all over the country. Based on the stories and information they have shared with me, here are just some of the concerns that I believe must be addressed by the new leadership you have installed at DOT before this mandate, which, again, was written by the Obama Administration, goes into effect:

- **COST**

The Obama Administration itself estimated that this regulation will impose \$2 billion a year⁷ in compliance costs, with a disproportionate impact on small businesses. With Republicans in control of Congress and the White House, the last thing the American People expect us to do is mandate that every hardworking truck driver in America spend thousands of dollars on the purchase, installation and monthly service fee for a government-approved tracking device.

- **SAFETY**

Claims that these devices will make our roads and drivers dramatically safer are dubious at best, based on research authorized and gathered by the Obama Administration. In fact, some of the large trucking companies with the worst safety records on the road have already been fully utilizing ELD's in their fleet for years. At a minimum, the reports that the Obama Administration used to justify this rule warrant another review by the team you have put in place at DOT.

⁶ CVSA Prepares for December 2017 ELD Implementation; Announces April 1, 2018, Effective Date for Out-of-Service Criteria Related to ELD Rule <http://cvsa.org/news-entry/2017-eld-implementation/>

⁷ Report accompanying bill making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2018. (Page 41) <https://appropriations.house.gov/uploadedfiles/23928.pdf>

- **CYBERSECURITY**

The ELD device required by the regulation doesn't just sit in the cab of a truck and monitor motion. It connects directly to the engine and onboard computer of the vehicle itself. The implications of this are particularly profound. There is simply no assurance at this time that these ELD's, which are being manufactured with components from around the world and sold by numerous companies across America, are safe from a cyberattack that could cause these trucks, many of which carry hazardous materials, to inflict terror on Americans. The National Motor Freight Traffic Association recently commissioned a study by leading security experts laying out this troubling issue, and I have enclosed a summary of it with this letter.

Mr. President, rolling back the regulatory overreach of the previous administration has been one of our proudest achievements since you took office. Together, we have now used the Congressional Review Act (CRA) to block 15 separate new burdensome regulations from going into effect, and the economy and stock market have responded in kind. **A few powerful interests will tell you that this mandate is good for trucking, and our country, but millions of hardworking people across our country who came together exactly one year ago to elect you president profoundly disagree. I ask that you listen to those millions of voices, and give everyone at least another three months to get this right.**

In conclusion, I respectfully ask that you respond to this letter or otherwise indicate your intentions on this matter no later than December 1st of this year. While I am hopeful you will undertake this course of action, it is also critically important for these truck drivers to have a clear understanding before the scheduled deadline.

Thank you for your consideration of this important matter.

Sincerely,



Brian Babin, D.D.S.
U.S. Representative (TX-36)

cc: Vice President Michael R. Pence

Secretary Elaine L. Chao, U.S. Department of Transportation

Chairman Bill Shuster, U.S. House Committee on Transportation and Infrastructure

Chairman John Thune, U.S. Senate Committee on Commerce, Science and Transportation

Mr. Raymond Martinez, Nominee for Administrator of FMCSA

SUPPORTERS OF ELD DELAY

Agricultural Retailers Association
American Farm Bureau Federation
American Pyrotechnics Association
American Road & Transportation Builders Association
Associated Equipment Distributors
Livestock Exporters Association of the USA
Lucas Oil Products
Mid-West Truckers Association
National Association of Chemical Distributors
National Association of Small Trucking Companies
National Aquaculture Association
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Electric Contractors Association
National Federation of Independent Business
National Grain and Feed Association
National Ground Water Association
National Hay Association
National Motorists Association
National Precast Concrete Association
National Ready Mixed Concrete Association
New England Fuel Institute
North American Wood Pole Council
Owner-Operator Independent Drivers Association
Petroleum Marketers Association of America
Precast/Prestressed Concrete Institute
SikhsPAC
Southern Pressure Treaters' Association
Towing and Recovery Association of America



Heavy Vehicle Cyber Security Update

National Motor Freight Traffic Association, Inc.
1001 North Fairfax Street, Suite 600
Alexandria, VA 22314
(703) 838-1810

SUBJECT: Electronic Logging Device (ELD) Cybersecurity and Maintenance Issues

As most people in the industry are aware, the FMCSA's ELD mandate becomes mandatory for most carriers as of December 18, 2017. In general, NMFTA does not take an adverse position on the ELD mandate itself but NMFTA has identified some concerns regarding the implementation of the ELD mandate.

Contrary to some reporting in news media, as far as NMFTA has been able ascertain the current ELD rule, as written and implemented, requires both two way CAN bus connectivity and internet connectivity. This creates some genuine concern regarding the cyber security posture of the ELD devices themselves as they create a bridge between the internet and the CAN bus network of the vehicle. If the ELD devices could be exploited to send malicious traffic to the vehicle CAN bus, it could have serious consequences to the safe operation of the vehicle. While existing and proven device manufacturers hold the majority of the ELD market, the new mandate has brought a number of new entrants into the market hoping to capitalize on the opportunity. NMFTA's concerns focus mostly on these entry level device manufacturers whose solutions at times are to simply connect a consumer cell phone directly to the J1939 diagnostic port or to use a very basic hardware solution with built-in cellular capabilities.

At Blackhat USA 2017 and DEF CON 25, IOActive released a summary of their findings while analyzing three entry-level Electronic Logging Device (ELD) providers that were listed as self-certified from the Federal Motor Carrier Safety Administration (FMCSA) website. Their general conclusion was that all three devices did very little to nothing at all to follow cybersecurity best practices and were open to compromise. They noted the following specific shortcomings in their report:

- Devices shipped with debug enabled
- Firmware easily accessible for analysis
 - Development strings present
 - Use of banned functions
- Lack of secure boot
- Lack of encryption for communications
- Basically a general failure to follow cybersecurity best practices

It was also noted by IOActive that the FMCSA ELD Test Plan and Procedures document contains "Insert the Quality Assurance program here." in the content of section "1.11 Quality Assurance". This document is described by FMCSA as "FMCSA provided these specifications to confirm compliance of an ELD with independent testing and validation".

NMFTA has been unable to find any recommendations or guidance for cyber security for the actual ELD devices in this document with the exception of sections 4.10.1.1 and 4.10.1.3 which refer to encryption when communicating with FMCSA servers or sending data via email. No specific requirements for device cyber security were discovered during our investigation.

We would therefore strongly recommend that, before you deploy any type of ELD device, you contact the manufacturer/supplier of the device and obtain specific and detailed information regarding the cyber security posture of the device. Specifically, ask about the technical standards or best practices followed (if any) as well as if adversarial testing or 3rd party security evaluations were performed as part of their product development lifecycle. Awareness of the issue is a critical first step in protecting your fleet and/or equipment.

Given the security/quality issues described by IOActive in their report, NMFTA also feels that there is a risk that malfunctioning or poorly designed and implemented ELD devices could create an increase in vehicle maintenance issues due to faulty or erroneous CAN network data transmissions. The types of issues that could arise could be difficult to diagnose and reproduce and maintenance departments and OEMs should prepare themselves as need to handle the potential for these types of problems.

NMFTA will continue to monitor the cyber security issues surrounding the ELD mandate and work to identify risks and as much as possible work with industry and government to mitigate and reduce the risks.



The Truth about ELDs

On December 16, 2015, the Federal Motor Carrier Safety Administration (FMCSA) published a Final Rule to establish minimum performance and design standards for electronic logging devices (ELDs); requirements for the mandatory use of ELDs by drivers who are required to prepare HOS records of duty status; requirements concerning HOS supporting documents; and address concerns about harassment resulting from the mandatory use of ELDs.¹ The premise behind the Final Rule is that ELD's will increase compliance with the HOS regulations and thereby will reduce the risk of fatigue-related crashes. FMCSA's own study however, *Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders Final Report*, found a different conclusion. The study separated eleven motor carriers into two different cohorts, one that equipped their trucks with electronic hours-of-service recorders (EHSRs), or in other words ELDs, and one that did not. According to the study, "No differences were found between the EHSR cohort and the non-EHSR cohort for USDOT-recordable and fatigue related crash rates."²

While fatigue is often haphazardly linked to HOS compliance, the Agency's database demonstrates that between 1.4 and 1.8 percent of large truck fatal crashes were related to fatigue between 2011 and 2014, which is the most recent data. These data suggest that relatively few, if any, crashes will actually be reduced due to the mandatory utilization of ELDs. Regardless, FMCSA continues to seek to mandate a rule which brings no positive safety benefits and which will cost approximately \$3.5 to \$10.7 billion dollars by industry estimates for the first year depending on which type of device carriers choose, either an ELD that is compatible with a phone or an actual ELD device that plugs into dash.

Table 1: Cost Estimate of an ELD Device for the first year of operation

	Purchase	Installation	Monthly Subscription	Monthly Data plan	Monthly Maintenance	Total Monthly Cost	Total Annual Cost
ELD with smartphone	\$600-800	\$20‡	\$33-35†	\$15-80†	0-\$21†	\$48-136	\$1,244-2,588
ELD with device	\$1,000-2,000†	\$84‡	\$33-35†	\$15-80†	0-\$21†	\$48-136	\$1,708-3,832

†Source: ATRI's *Electronic On-Board Recorder Adopting in the Trucking Industry: Issues and Opportunities*

‡Source: FMCSA's *Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule*

¹ *Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21)*, FMCSA (2015).

² Jeffrey S. Hickman et al., *Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders Final Report*, FMCSA (April 2014), pg. 39.

OOIDA

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