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Randi Hutchinson, Chief Counsel
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Ms. Hutchinson:

I write to propose an immediate delay in the implementation of new requirements currently set to take effect December 18, 2017, regarding the use of Electronic Logging Devices (ELDs) by commercial drivers (not including those in certain exempt categories).

To immediately begin requiring drivers to use ELDs exclusively (except, as the new rule allows, for those with on-board recording devices installed before December 18, 2017) would place undue burdens on drivers and operators.

Of the nation's 3.5 million truckers, nearly 200,000 are estimated to reside here in Indiana. Approximately one in 14 jobs in our state is related to the trucking industry. On behalf of all our citizens, I urge you to take time to consider ways to improve the new policies before implementing them.

With manufacturers of ELDs currently responsible for "self-certifying" their compliance with government standards -- with no effective procedures seemingly yet developed to provide oversight over such "self-certifying" -- drivers and operators are left without any way of ascertaining which brands and models of devices ultimately will pass muster. They must "fly blindly" into investing in products they are being required to purchase.

The issues that may result from the current proscribed manner of certification and registration are numerous and include but are not limited to the following:

- Certain steps outlined in the Plan and Procedures Manual are "not required to be completed" because they cannot be completed. The actual data transfer has not and cannot be trialed with a safety official -- and the Web Services Portal as of this writing is not fully operational. Manufacturers are left with a statement that data transfer via email, USB and Bluetooth can still be tested in the manufacturers' testing environments and if the required output file can be generated per the technical specifications in that manner and environment that it "will work in FMCSA Web Services."

- Further, manufacturers are to rely on the most recent version of the manual published to the website; yet the most recent version, Version 2.0, remains incomplete, including but not limited to, suggested testing schedules and quality assurance programs. FMCSA's website continues to maintain that the email and web services testing environments are "coming soon." This is particularly concerning considering the number of registered devices on the list currently who have yet to utilize these tools and the pressing compliance date of December 18, 2017.
- Even if a particular ELD appears on the list of registered ELDs, it is still possible for the device to not ultimately be compliant or conform to the required technical specifications of the ELD Rule -- which could result in significant harm to the consumer as the device would likely already be deployed at the time non-compliance would be discovered and countless resources wasted.
- Additionally, while a driver will be permitted to use paper logs temporarily if a device is found to be non-compliant, it has been reported that the motor carrier will only have eight (8) days from notification to replace the noncompliant device with a compliant one. If the problem is widespread throughout a large fleet, the FMCSA has suggested it would be "flexible" but has provided no further guidance. This could have a detrimental effect on smaller carrier companies should the device they select run afoul of guidelines. In fact, the costs associated with such an occurrence have the potential to put some carriers out of business and negatively impact competition and interstate commerce.
- Compliance with the ELD Rule will only be determined by individual enforcement personnel's interpretation of the data after it has successfully transferred through FMCSA's systems. It remains unclear whether any guidelines or regulations have been developed and/or implemented for said interpretation and whether or not a particular device will even be able to transmit the data successfully. This will inevitably lead to a great deal of ambiguity and differing interpretations. FMCSA has stated that some but not all enforcement agencies will be utilizing Electronic Record of Duty Status Systems (ERODS) to determine compliance with federal regulations. FMCSA is ultimately not providing the manufacturers with access to that platform to test their devices to date. It has been reported in the industry that some larger manufacturers believe the only way to truly test compliance would be through use of ERODS or through the use of further technical resources and information – none of which are yet available or promised.
- The technical specifications as laid out in the ELD final rule are extremely complex and can be interpreted differently by individual manufacturers, who are the entities certifying compliance, yet the testing procedures laid out by FMCSA are not binding on said entities. Further, there is no set manner of testing that must be conducted, much less passed, before deployment of a particular device to consumers.
- Consumers may assume that if a device is certified and registered that it bears the approval of FMCSA and is in fact compliant with the ELD Rule. They may purchase a particular device on that premise. However, there is no guarantee or way to verify that the

device is actually compliant with the required technical specifications until said compliance is called into question.

- A checklist for consumers attempting to choose an ELD is available at <https://www.fmcsa.dot.gov/hours-service/elds/choosing-electronic-logging-device-checklist> -- but in light of the complexities of the technical requirements and the lack of standards for transmittal and review of the data, this checklist is woefully insufficient and likely to create a false sense of security in consumers who purchase a device by simply checking off the list. Further, when a consumer uses information from the FMCSA website to purchase a certified and registered ELD that later proves to be non-compliant, there appears to be no established means by which the consumer may lodge a complaint against the manufacturer or take any recourse through the ELD homepage. Similarly, there is no ELD-related information contained on the “consumer resources” tab or “resources for carriers” tab of the FMCSA website.

No one questions the motivations behind efforts to strengthen logging practices. As the FMCSA website notes, such regulatory efforts are “intended to help create a safer work environment for drivers, and make it easier and faster to accurately track, manage, and share records of duty status (RODS) data. An ELD synchronizes with a vehicle engine to automatically record driving time, for easier, more accurate hours of service (HOS) recording.”

However, at present, too many questions surround the mandates with which drivers and operators will be expected to comply. As the deadline for compliance quickly nears, even a cursory perusal of industry trade publications provides clear evidence that many drivers and operators are completely unprepared for the proposed changes.

I urge your agency to put on hold the new requirements until you are able to develop guidelines that offer greater clarity to the individuals you expect to follow them.

Finally, I recognize that as of this moment the nomination of Raymond Martinez to assume leadership of your agency is pending before the U.S. Senate. Fully anticipating his confirmation, I ask that you please share my concerns with Mr. Martinez once he begins his new duties.

Thank you very much for your consideration. I look forward to receiving your response to my concerns.

Very truly yours,



Curtis T. Hill, Jr.
Attorney General

