



Summary of FMCSA's Supplemental Notice of Proposed Rulemaking To Mandate Electronic Logging Devices



March 2014

Introduction: March 13, 2014, FMCSA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) to require the adoption and use of electronic logging devices (ELDs) by all drivers currently required to complete paper records of duty status (logs). The agency had issued a *proposed* rule to mandate ELD adoption in February 2011, but subsequently identified a number of issues that needed to be addressed in an SNPRM. Specifically, FMCSA needed to better ensure it could meet a statutory requirement requiring the agency to consider how the devices could be used to “harass”¹ drivers. Further, FMCSA needed to address a number of technical considerations including how data from the devices would be transferred to law enforcement personnel during roadside inspections. In the July 2012 highway reauthorization law known as MAP-21, Congress required that FMCSA mandate the use of ELDs. The following is a summary of the SNPRM’s main points.

Device Adoption Deadline Date: The proposal would require fleets to adopt and use compliant devices within two years of publication of a *final* rule (note: this is merely a *proposed* rule). The soonest FMCSA is likely to issue a final rule is spring of 2015, meaning a final adoption deadline would be in the spring of 2017 at the very soonest.

Grandfathering of existing equipment: FMCSA proposed to allow fleets using “ELD-like” devices meeting the current standards for Automatic On-Board Recording Devices (see 49 CFR 395.15) until two years after the final deadline for adoption of ELDs required by a forthcoming final rule. FMCSA also anticipates that many devices in use today, particularly those sold in the last few years, can be modified to comply with the new standards with a relatively simple and inexpensive software upgrade.

Location Monitoring: ELDs would be required to record vehicle location at every change of duty status and at a minimum of 60 minute intervals. To ensure against harassment and protect driver privacy, the devices would record location during on-duty time at a precision of approximately one mile, and during off-duty time of within 10 miles (i.e., would not record exact location but generally where the vehicle is located). Note: Fleets may employ devices that report location more precisely; FMCSA has proposed minimum standards and has stipulated the location precision that must be reported to enforcement officials when electronic logs are being verified.

Supporting Documents: Because ELDs effectively negate the need for supporting documents to verify driving time, FMCSA has proposed new document retention requirements to verify on-duty, not driving time. The agency suggests that fleets should maintain a maximum of ten documents from several categories (trip records, payroll) per driver for each 24 hour period. Drivers would be required to submit such documents within eight days of receipt and produce those in their possession to law enforcement upon request. Fleets would be required to maintain them in a manner which would facilitate their being easily matched to the logs.

¹ The term “harass” is used in this context to imply that employers would overly scrutinize driver working, driving and rest time or otherwise require employees to drive when ill or tired, or in excess of the hourly limits.

Data Transfer: ELDs must be capable of either printing a paper record of the driver's log or transferring it to a law enforcement officer electronically. The proposal sets forth the primary and back-up electronic transfer methods (e.g., email, Bluetooth) that would be considered acceptable.

Certification: Manufacturers would be required to test and certify to FMCSA that their devices meet the new standards. FMCSA would create a public (i.e. Internet) registry of compliant devices and conduct tests to verify manufacturers' claims.

Harassment: FMCSA has proposed a number of protections to help ensure that the rules meet the statutory requirement with respect to harassment. Specifically, FMCSA suggests limited location precision (see above) and a prohibition on use of ELDs by employers to pressure drivers to violate the regulations. Also, FMCSA suggests that devices be capable of being muted to eliminate the possibility that a driver's rest period in the sleeper berth could be interrupted.

ELD Malfunctions: In the event that an ELD malfunctions, the driver would be required to immediately begin completing a paper log and to reconstruct logs for each of the past 7 days, unless hard copies are available by other means (e.g., back office system). ELDs must be repaired within 8 days, subject to an FMCSA-approved extension.

Short Haul Drivers: Drivers who are not required to complete logs because they meet one of the short haul exemptions in section 395.1 (e) of the Federal Motor Carrier Safety Regulations would not be required to use ELDs. FMCSA recognizes that these drivers occasionally don't meet the conditions of these exemptions. In those instances, drivers would be required to keep a paper log. Drivers who find themselves in these circumstances more than 8 days in any 30 day period would be required to use ELDs.

Personal Conveyance and Yard Moves: Authorized use of a commercial motor vehicle (CMV) for personal conveyance would not be recorded as driving, but rather off-duty time. Similarly, authorized use of a CMV in a closed facility with restricted access (e.g., a yard) would be recorded as on-duty not driving time.

Driver edits: Drivers would be able to make edits and annotations to their electronic logs, however the edits would not overwrite or erase the original record, which would be retained. Employers would be able to request edits or annotations, but those must be approved by the driver.

Interoperability of devices and systems: FMCSA proposes that all ELDs be capable of exporting data in a standard file format to facilitate importing by other systems. However, devices and systems would not be required to be capable of importing these records.

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