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ANNOUNCES PROPOSED RULE FOR ELECTRONIC LOGGING DEVICES

By: [Patrick E. Foppe, J.D.](#)

On March 12, 2014, the Federal Motor Carrier Safety Administration (FMCSA) announced its proposed amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) regarding Electronic Logging Devices (ELDs), formally known as Electronic Onboard Recorders (EOBRs). The American Trucking Association has announced its general support for FMCSA's proposed mandate for the use of ELDs. The proposed rule purports to address issues raised by the U.S. Court of Appeals for the Seventh Circuit in its 2011 decision vacating the FMCSA's April 5, 2010 final rule concerning ELDs (*see [Owner-Operator Indep. Drivers Ass'n v. FMCSA](#), 656 F.3d 580 (7th Cir. 2011)*) as well as subsequent statutory developments.

The proposed rule would amend the FMCSRs to establish: (1) minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs); (2) requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS); (3) requirements concerning HOS supporting documents; and (4) measures to address concerns about harassment resulting from the mandatory use of ELDs. Specifically, the proposed rule includes provisions designed to:

- Respect driver privacy by ensuring that ELD records continue to reside with the motor carriers and drivers. Electronic logs will continue to only be made available to FMCSA personnel or law enforcement during roadside inspections, compliance reviews and post-crash investigations.
- Protect drivers from harassment through an explicit prohibition on harassment by a motor carrier owner towards a driver using information from an ELD. It will also establish a procedure for filing a harassment complaint and creates a maximum civil penalty of up to \$11,000 for a motor carrier that engages in harassment of a driver that leads to an hours-of-service violation or the driver operating a vehicle when they are so fatigued or ill it compromises safety. The proposal will also ensure that drivers continue to have access to their own records and require ELDs to include a mute function to protect against disruptions during sleeper berth periods.
- Increase efficiency for law enforcement personnel and inspectors who review driver logbooks by making it more difficult for a driver to cheat when submitting their records of duty status and ensuring the electronic logs can be displayed and reviewed electronically, or printed, with potential violations flagged.



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Details regarding the proposed rule can be found at: http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule_making_details.aspx?ruleid=475.

Comments to the proposed rule should reference “Docket Number FMCSA-2010-0167” and be sent by one of following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments;
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001;
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or Fax: 202-493-2251.

For more information, please contact your Lashly & Baer attorney, or Patrick Foppe at 314-621-2939, or at pfoppe@lashlybaer.com.