



U.S. Department of Transportation  
**Federal Motor Carrier Safety Administration**

# Role of Research in the Electronic Logging Devices Rulemaking

2015 Transportation Research Board 94<sup>th</sup> Annual Meeting  
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Analysis, Research, and Technology Forum  
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Office of Research and Information Technology



# RESEARCH TO SUPPORT RULEMAKING

# Rulemaking and Analysis

- Rulemakings rely on analysis and data.
- All FMCSA rulemakings have analysis of at least 13 types of impact.
- Extensive analysis is always done on economic, privacy, paperwork, and environmental impacts.
- Office of Management and Budget (OMB) guidance, in particular Circular A-4 (2011), and internal Department of Transportation (DOT) guidance lead the Agency in analysis methodology.

# Rulemaking and Analysis, continued

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- Public has the opportunity to comment on the analysis behind the rulemaking.
- Public has the opportunity to comment on any reports or research the Agency used in developing rulemaking analysis.
- Agency addresses public comments concerning its analysis.

# Statutorily-Driven Research

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Congress can require an Agency to:

- Investigate a certain topic.
- Undertake a rulemaking.
- Avoid certain actions.

# Court Decision-Driven Research

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- Public can petition Agency to reconsider final rules.
- Public can only go to Court over final rules.
- Courts have the authority to vacate a final rule, partially vacate a final rule, or uphold a final rule.
- Courts can also recommend that the Agency take an action, such as research or a study, before promulgating a new rule.

# **ELECTRONIC LOGGING DEVICES (ELDS) RULEMAKING**

# Rulemakings Related to ELDs

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- Automated Onboard Recording Devices (AOBRDs):
  - Final rule issued in 1988.
- Electronic Onboard Recorders (EOBRs) 1:
  - Final rule issued in 2010.
  - Final rule vacated in 2011.

# Rulemaking Actions

## Timeline of Recent Events

- **April 2010:** EOBR 1 final rule issued.
- **June 2010:** Owner Operator Independent Drivers Association (OOIDA) files lawsuit against EOBR 1.
- **February 2011:** ELD Notice of Proposed Rulemaking (NPRM) published.
- **February 2011:** U.S. Court of Appeals hears oral arguments on EOBR 1 final rule.
- **August 2011:** U.S. Court of Appeals decides to vacate EOBR 1 final rule.

# Rulemaking Actions

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## Timeline of Recent Events

- **October 2011:** Motor Carrier Safety Advisory Committee (MCSAC) meets on Task 11-04.
- **February 2012:** MCSAC meets on Task 12-01.
- **March 2012:** Public Listening Session held on ELD NPRM.
- **April 2012:** Public Listening Sessions held on ELD NPRM.

# Rulemaking Actions

## Timeline of Recent Events

- **March 2014:** ELD Supplemental Notice of Proposed Rulemaking (SNPRM) published.
- **May 2014:** Safety Study results published and put into the docket for rulemaking.
- **November 2014:** Harassment Survey results published and put into the docket for rulemaking; docket re-opened.

# ELD Rulemaking Milestones

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- NPRM:
  - Issued February 1, 2011.
- SNPRM:
  - Issued March 28, 2014.
- Final Rule:
  - Projected to be issued before the end of 2015.

# Input Sought

- NPRM public comment period.
- Extension of NPRM public comment period, expansion to include harassment.
- Two public listening sessions.
- Interactive “Regulation Room” comments sought during NPRM.
- Motor Carrier Safety Advisory Committee (MCSAC) recommendations.
- SNPRM public comment period.
- Survey of drivers and carriers concerning ELD use and harassment, Safety Study of carriers and drivers using ELDs.

# ELD-RELATED LEGISLATION AND IMPACT

# Moving Ahead for Progress in the 21st Century Act (MAP-21)

(a) USE OF ELECTRONIC LOGGING DEVICES.-Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the Secretary of Transportation shall prescribe regulations-

(1) requiring a commercial motor vehicle involved in interstate commerce and operated by a driver subject to the hours of service and the record of duty status requirements under part 395 of title 49, Code of Federal Regulations, be equipped with an electronic logging device to improve compliance by an operator of a vehicle with hours of service regulations prescribed by the Secretary; and

[...]

## MAP-21, continued

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(a) USE OF ELECTRONIC LOGGING DEVICES.-Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the Secretary of Transportation shall prescribe regulations-

[...]

(2) ensuring that an electronic logging device is not used to harass a vehicle operator.

# **EOBR 1 COURT DECISION AND IMPACT ON ELD RULE**

# U.S. Court of Appeals for the Seventh Circuit: Decision

- “...an adequate explanation that addresses the distinction between productivity and harassment must also describe what precisely it is that will prevent harassment from occurring.”
- “A study of these problems with EOBRs already in use, and a comparison with carriers that do not use these devices, might be one obvious way to measure any effect that requiring EOBRs might have on driver harassment.”

# Impact of Seventh Circuit Decision

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- Required Agency to vacate 2010 final rule.
- 2011 NPRM had relied upon the 2010 final rule technical specifications.
- Suggested that Agency address the topic of harassment.
- Agency has followed the court's suggestions in how it approached this matter.

# SAFETY STUDY AND HARASSMENT SURVEY

# Safety Study and Harassment Survey

- Questions and methodology were made available to public upon request.
- Results of the study and survey were available as a part of the rulemaking docket for public comment.
- FMCSA is considering these reports and comments to the reports as it begins to draft the ELD final rule.
- Agency responses to comments on this research as they relate to the rulemaking will be part of the final rule.

# Contact Information

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