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WHITE PAPER

Review of FMCSA's

*Attitude of Truck Drivers and Carriers on the Use
of Electronic Logging Devices and Driver
Harassment*

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Introduction

On April 5, 2010, the Federal Motor Carriers Safety Administration (FMCSA) published a final rule that called for mandatory installation of electronic on-board recorders, which are now called electronic logging devices (ELDs), in commercial motor vehicles (CMVs) operated by motor carriers found to have serious hours-of-service (HOS) non-compliance issues. However, the rule was challenged in court and on August 26, 2011, the Seventh Circuit vacated the entire 2010 rule because, contrary to a statutory requirement, FMCSA failed to address the issue of driver harassment.

In April 2014, the FMCSA released a supplemental notice of proposed rulemaking (SNPRM) to mandate ELDs in all CMVs that are required to prepare HOS records of duty status (RODS). The SNPRM proposed to establish: (1) minimum performance and design standards for HOS electronic logging devices ELDs; (2) requirements for the mandatory use of these devices by drivers currently required to prepare HOS RODS; (3) requirements concerning HOS supporting documents; and (4) measures to address concerns about harassment resulting from the mandatory use of ELDs.¹

Nonetheless, the SNPRM itself did not include a required study to address the concerns of driver harassment. Thus, seven months after the Agency released the SNPRM, FMCSA published a study entitled, "Attitudes of Truck Drivers and Carriers on the Use of Electronic Logging Devices and Driver Harassment," which stated, "The evidence in this survey research does not support concluding that harassment occurs due to being in a situation where HOS are logged using electronic logging devices."²

However, a detailed review of the above mentioned study demonstrates that FMCSA's statement is not valid, and in fact, the evidence presented in the research itself runs contrary to the study's conclusion. Therefore, the Owner-Operator Independent Drivers Association Foundation (OOFI), which is the research and educational arm of OOIDA, the largest non-for profit national trade association that represents the interests of over 150,000 small business trucking professionals and professional truck drivers, has presented the following data.

Illogicalities

In the foreword of FMCSA's study, which was conducted by MaineWay Services, the Agency stated that the purpose of the research was to investigate issues associated with truck driver harassment by carriers. "The research uncovers **rare instances** of harassment (as reported by the drivers) but does not reveal a pattern where drivers who use ELDs are subject to **greater** harassment than those who use paper (**emphasis added**)"³. The research team claimed in its interpretation of the data, that instances of harassment were rare. Nevertheless, the data from the study demonstrated that the instances of harassment were far from rare, as noted in the Table 1.

¹ "Electronic Logging Devices and Hours of Service Supporting Documents," FMCSA (2014), pg. 1.

² Frank Lynch et al., *Attitudes of Truck Drivers and Carriers on the Use of Electronic Logging Devices and Driver Harassment*, FMCSA (Nov 2014), pg. 3.

³ Ibid.

It is important to note that there were 628 drivers that participated in the survey, along with 865 motor carriers. Further, the research team asked both the drivers and the carriers to detail their experiences with harassment. In order to accomplish this task, the research team posed the following fourteen (14) different interactions to the drivers and the carriers (*emphasis added*):

1. Interrupt your off-duty time with a message at an inappropriate time.
2. **Contact you promptly about a new job task so you didn't have to wait without pay.**
3. Require you to wait for customer delays for more than 2 hours without pay.
4. Require you to wait between loads for more than 2 hours without pay.
5. **Arrange your loads so you had little delay time between loads.**
6. **Pay you for customer delays when picking up or delivering freight.**
7. Ask you to meet a customer load schedule you view as unrealistic.
8. **Ask a customer to adjust a load schedule so it was realistic for you.**
9. Ask you to operate when you judged you were fatigued.
10. **Ask that you shut down if you felt fatigued.**
11. Ask you to log your hours inaccurately to get more work time or delay a break.
12. **Ask you to log your hours accurately when you could have had more work time or delayed a break by being inaccurate.**
13. Change your log record after it was made to give you more work time or delay a break.
14. **Ask you to take sufficient time off duty to recover from fatigue.**

The drivers that participated in the study did not consider the seven emphasized interactions above to constitute harassment, as fewer than 10 percent indicated that these interactions were harassment. Therefore, these seven interactions have been removed from the data in order to clarify the results. In addition, it is important to note that the research indicated that both the drivers that use paper logs and the drivers that use ELDs experienced harassment, which further demonstrated that harassment for either method of HOS recordkeeping is far too prevalent.

The SNPRM called for the mandatory utilization of ELDs for all CMV drivers, which equates to 2.3 million drivers that would be affected by the proposed regulation. Thus, to help further clarify the results, only the data of those drivers that were harassed by ELDs have been included as part of this analysis, as this would possibly be the overall effect of the SNPRM if the rule is promulgated.

Table 1: Frequency that drivers experienced specific interactions with management

Specific Interactions That Drivers Experience on a Monthly Basis	2+ Times Per Month Among Those Who Use ELDs	Number of Drivers Effected by Harassment	1+ Times Per Month Among Those Who Use ELDs	Number of Drivers that would be Effected by Harassment
Paid and Unpaid Time				

Require you to wait between loads for more than 2 hours without pay.	25%	575,000	41%	943,000
Require you to wait for customer delays for more than 2 hours without pay.	20%	460,000	39%	897,000
Fatigue				
Ask you to operate when you judged you were fatigued.	6%	138,000	12%	276,000
Logging and Breaks				
Ask you to log your hours inaccurately to get more work time or delay a break.	3%	69,000	9%	207,000
Change your log record after it was made to give you more work time or delay a break.	4%	92,000	10%	230,000
Communications				
Interrupt your off-duty time with a message at an inappropriate time.	22%	506,000	37%	851,000
Schedules				
Ask you to meet a customer load schedule you viewed as unrealistic	16%	368,000	40%	920,000

Table 2: Other events experienced by drivers at their current employer

Other Events That Surveyed Drivers Experienced While Employed at Their Current Company	Among Those Who Use ELDs	Number of Drivers that would be Effected by Harassment
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Any in list (net)	39%	897,000
Contacted by your carrier, to find out why your truck wasn't moving	23%	206,310
Told to record your loading/unloading hours as off duty	12%	107,640
Told to log your duty status as fixed number of minutes on duty, and the rest of the time as off duty while loading or unloading	11%	98,670
Your carrier changed your duty status in your logs	11%	98,670

The Motor Carriers

The information presented in the tables above, which demonstrated the prevalence of driver harassment that might occur if the SNPRM is promulgated, focused exclusively on the perspective of the CMV driver. However, the study also interviewed motor carriers in order to gauge whether ELDs led to driver harassment, 865 individuals completed the carrier survey.

As the research team conducted the interview process for drivers, they discovered that a small percentage of the drivers were required by their carriers to record their HOS on both paper logs and ELDs for the purpose of redundancy. For the analysis, the research team grouped all those drivers who used both methods into the ELD group.⁴ Nevertheless, when the team discovered the same issue with the carriers they decided to create a third category. For further purpose of this analysis, OOFI has removed the third category and simply grouped it with the carriers that utilize ELDs, similar to what the research team did for the drivers. The categories as presented in FMCSA's analysis are as follows:

Drivers

- Those who use paper logs
- Those who use ELDs

Carriers

- Those who use paper logs
- Those who use ELDs
- Those who utilize both paper logs and ELDs

In addition, in order to clarify the number of motor carriers that instituted a particular practice, OOFI used as a baseline 518,000 motor carriers, which was extrapolated from FMCSA's data as the number of trucking companies affected by the SPNRM.

⁴ Ibid, pg. 7.

Table 3: Interactions that a typical driver at a company experiences

Specific Interactions That Drivers Experience on a Monthly Basis According to Carrier Respondents	2+ Times Per Month Among Those Who Use ELDs	Number of Carriers that Practice Harassment	1+ Times Per Month Among Those Who Use ELDs	Number of Carriers that Practice Harassment
Paid and Unpaid Time				
Require you to wait between loads for more than 2 hours without pay.	24%	124,320	35%	181,300
Require you to wait for customer delays for more than 2 hours without pay.	17%	88,060	28%	145,040
Fatigue				
Ask you to operate when you judged you were fatigued.	3%	15,540	5%	25,900
Logging and Breaks				
Ask you to log your hours inaccurately to get more work time or delay a break.	2%	10,360	3%	15,540
Change your log record after it was made to give you more work time or delay a break.	1%	5,180	5%	25,900
Communications				
Interrupt your off-duty time with a message at an inappropriate time.	9%	46,620	29%	150,220
Schedules				
Ask you to meet a customer load schedule you viewed as unrealistic	5%	25,900	18%	93,240

According to the study, drivers were asked a series of questions in order to gauge their reactions to company requests for them to work more than permitted by the regulations or when they felt ill or fatigued.⁵ However, the research stated, “Based on driver responses, this **is not a very common** occurrence: only 4 percent of paper-logging drivers and 3 percent of ELD-logging drivers said this had happened to them, which was an insignificant difference according to HOS logging method (**emphasis added**).⁶”

Despite the insignificant difference between HOS logging methods, the statement above demonstrated that practice of asking a driver to break the HOS regulations or to operate when they felt ill or fatigued is far from just a rare occurrence. Regardless of HOS logging method, this practice overall would affect 161,000 drivers, including 69,000 drivers that use ELDs. According to FMCSA's Preliminary Regulatory Impact Analysis, “FMCSA **believes** that increasing the use of ELDs would improve compliance with the HOS rules and improve safety by **decreasing the risk of fatigue-related** crashes attributable to violations of the applicable HOS regulations (**emphasis added**).⁷”

However, more than perhaps anything, MaineWay's study has demonstrated that thousands of drivers are experiencing harassment that might contribute to fatigue, and a part of that harassment is instituted by carriers that utilize ELDs. Thus, the research has validated that ELDs do not increase HOS compliance, and in fact, contribute to the overall problem of fatigue. Furthermore, the study also validated that ELDs can be cheated, and do not always record HOS as accurately as the Agency has suggested.

Moreover, two-thirds, or 67 percent, of the carriers that request their drivers to exceed the HOS limits stated that their drivers sometimes reject those requests. In response, 5 percent of the carriers admitted to threatening the drivers afterwards.

Table 4: Carrier history with extended hours requests

Responses from Carrier Representatives	Total	Log with Paper	Number of Carriers that Practice Harassment	Log with ELDs	Number of Carriers that Practice Harassment
Company ever asked a driver to work more hours than the regulations allowed:	13%	12%	62,160	18%	93,240
Carrier asked once in the past year:	15%	14%	8,702	18%	16,783
Carrier asked twice in the past year:	10%	11%	6,838	7%	6,527

⁵ Ibid, pg. 48.

⁶ Ibid.

⁷ Preliminary Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Supplemental Notice of Proposed Rulemaking: Regulatory Impact Analysis, FMCSA (2014), pg. i.

Carrier asked three to five times in the past year:	35%	35%	21,756	36%	33,566
Carrier asked 6–10 times in the past year:	19%	16%	9,946	22%	20,513
Carrier asked more than 10 times in the past year.	21%	25%	15,540	9%	8,392
Following Requests to Work More Than the Regulations Allow	Total	Log with Paper	Number of Carriers that Practice Harassment	Log with ELDs	Number of Carriers that Practice Harassment
Drivers sometimes reject those requests	67%	69%	42,890	62%	57,809
Company has threatened drivers rejecting requests	5%	6%	2,573	3%	1,734
Company has not threatened drivers rejecting requests	62%	61%	26,163	59%	34,107
Drivers do not reject those requests:	33%	31%	19,270	38%	35,431

Conclusion

According to the study published by FMCSA, “The evidence in this survey research does not support concluding that harassment occurs due to being in a situation where HOS are logged using electronic logging devices...The research uncovers *rare instances* of harassment (as reported by the drivers) but does not reveal a pattern where drivers who use ELDs are subject to *greater* harassment than those who use paper (*emphasis added*)⁸.” However, as demonstrated in the tables throughout the analysis, the Agency’s own study contradicted their conclusion. It is a common practice to use statistical formulas to test and analyze data to see if there is a statistical relevance at a 95% confidence level. Formulas are also often used to validate data and claim validity without looking at the actual real world consequences. While the P values and the Rao-Chi-square results indicated that there is no statistical evidence to support the harassment claims, the real numbers indicate the opposite. When 90,000+ drivers would be asked to take on a load that was unrealistic, that is strong evidence that harassment is not rare but is actually widespread throughout the trucking industry.

In addition, the study’s own research validated that not only is harassment possible by using an ELD, but that it is also instituted by carriers that utilize ELDs, and that ELDs can in fact be cheated. Therefore, it is evident that ELDs do not increase HOS compliance, but can contribute to the overall problem of fatigue.

⁸ *Attitudes of Truck Drivers and Carriers*, pg. 3 and Foreword.

Hence, FMCSA's premise for the mandatory use of ELDs for all CMV drivers is not supported by their own research.

Bibliography

Electronic Logging Devices and Hours of Service Supporting Documents. (2014). FMCSA.

Lynch, F., Kolenikov, S., Bergoffen, G., Burks, S. V., Kearns, K., Lutemer, M., et al. (2014). *Attitudes of Truck Drivers and Carriers on the Use of Electronic Logging Devices and Driver Harassment*. FMCSA.

Preslopsky, B., McGonegal, S., Seymour, B., Blackman, K., Relihan, K., Simon, D., et al. (2014). *Preliminary Regulatory Evaluation of Electronic Onboard Recorders and Hours of Service Supporting Documents Supplemental Notice of Proposed Rulemaking*. FMCSA.