

## ELD: Assumptions versus Facts

On December 16, 2015, the Federal Motor Carrier Safety Administration (FMCSA) published a Final Rule to establish minimum performance and design standards for electronic logging devices (ELDs); requirements for the mandatory use of ELDs by drivers who are required to prepare HOS records of duty status; requirements concerning HOS supporting documents; and address concerns about harassment resulting from the mandatory use of ELDs.<sup>1</sup> As part of the Final Rule, FMCSA was required to conduct a regulatory impact analysis to calculate the benefits and costs associated with an ELD mandate. In order to understand FMCSA's RIA however, the industry must accept the *assumptions* under which the cost and benefits were founded even though many are not based on sound science.

The following are just a few of the assumptions that must be accepted in order to justify FMCSA's conclusions. Each assumption is followed with facts that seemingly contraindicate the Agency's beliefs.

**Assumption and Belief:** The Agency has recognized that although MAP-21 requires that an ELD "accurately record commercial driver [HOS]," there is no current technology that can automatically record on-duty not driving (ODND), off-duty, or sleep-berth times without manual input from the driver.<sup>2</sup> FMCSA however *believes* that they have fulfilled the "*intent*" of the MAP-21 mandate.

**Fact:** ELDs, as proposed, can only record when the truck is in operation, all other duty statuses have to be inputted manually.

**Assumption and Belief:** "Use of ELD technology is intended to significantly reduce or eliminate false or erroneous driving time records, and reduce false and erroneous on-duty, off-duty, and sleeper-berth entries. The ELD final rule is intended to improve CMV safety and reduce the paperwork burden by increasing the use of ELDs within the motor carrier industry, which FMCSA *believes* will improve HOS compliance, and thereby reduce the number of crashes related to CMV driver fatigue associated with violations of the HOS rules (*emphasis added*).<sup>3</sup>"

**Fact:** FMCSA recognized that only one of the four duty statuses can truly be recorded automatically as required by MAP-21 without input from the driver.

**Assumption and Belief:** Perhaps the most egregious assumption is FMCSA's utilization of "driver wages" as a cost benefit for the Final Rule. FMCSA is well aware that a vast majority of drivers affected by the ELD mandate are not paid hourly wages, nor do they receive or qualify for fringe benefits. Instead, a large percentage of the trucking industry is compensated on a per mile basis. The Agency has primarily justified the cost of the rulemaking by inflating the cost benefits that motor carriers will supposedly receive by not having to pay drivers for filling out a paper logbook.

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<sup>1</sup> *Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21)*, FMCSA (2015).

<sup>2</sup> *Electronic Logging Devices and Hours of Service Supporting Documents Supplemental Notice of Proposed Rulemaking*, FMCSA (2014), pg. 38.

<sup>3</sup> Brian Preslopsky et al., *Regulatory Evaluation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule*, FMCSA (2015), pg. 3-4.

The RIA also included fringe benefits, which consists of health insurance, Medicare, unemployment insurance, overtime pay, worker compensation, etc., as part of the drivers' hourly wages. The final savings was therefore valued at \$31 per hour for every driver. While FMCSA does admit that a majority of drivers are not paid for time spent filling out or forwarding paper RODS, they *believe* that the driver's time is valuable and that they *should* receive compensation for their time.

**Fact:** FMCSA's assumption is laudable, but it does not alter the fact that in the real-world, drivers are not paid for completing paper logs. Nonetheless, because the Agency *believes* a driver *should* be paid they included this labor cost savings in the RIA, resulting in \$2,438 million per year (annualized using a 7% discount rate) that drivers should be paid, thus saving motor carriers' from expenses that they do not actually incur.

It is important to understand again that most carriers do not pay hourly wages, so the savings that they will receive is \$0.00. Additionally, fringe benefits are not offered for approximately 96 percent of the trucking industry as most companies have fewer than 50 employees and will not pay for medical insurance. Owner-operators in particular will not receive fringe benefits because they do not fall under overtime pay, workers compensation, etc., therefore affecting the supposed labor cost savings. Ultimately, the cost benefit for time saved spent filling out a paper log is zero and fails the cost-benefit analysis. The Agency was only able to "justify" the Final Rule by exaggerating the benefits and including higher than average hourly wages.

**Assumption and Belief:** Rather than using a representative sampling of motor carriers who currently use ELDs in order to assess the effectiveness of the devices, FMCSA constructed their effectiveness measure by using data from two carriers that had voluntarily installed AOBDRs because of their poor HOS ratings and three carriers that agreed through settlement agreements to install AOBDRs in lieu of paying civil penalties for their habitual HOS compliance violations. FMCSA formulated their baseline on the effectiveness of ELDs for the entire trucking industry based upon data from just three of these five carriers.

**Fact:** The Agency recognized that these carriers were not representative of the industry, as they all have higher than average HOS violation rates, but nonetheless, FMCSA still utilized their data as being reflective of the overall effectiveness of ELDs. There is no mention of any changes that occurred in the actual crash rate of these carriers. In fact, FMCSA notes that crashes are rare events, which sets up their assumption of statistical probability. "The Agency was not able to construct statistically significant measures of safety improvement for carriers that installed ELDs by directly examining the crash data of these carriers because crash is a rare occurrence for an average CMV."

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