

attained the 2010 SO<sub>2</sub> NAAQS through a CDD. If finalized, this proposed CDD would suspend the obligation to submit certain attainment planning requirements for the nonattainment area for as long as the area continues to attain the 2010 SO<sub>2</sub> NAAQS. Second, the EPA proposed to approve certain elements of the attainment plan contained in Maryland's SIP revision for the Anne Arundel County and Baltimore County SO<sub>2</sub> nonattainment area, submitted to EPA on January 31, 2020. The requirement to submit the elements that EPA is proposing to approve would not be suspended under this proposed CDD, as set forth in EPA's Clean Data Policy, because EPA considers them to be independent of attaining the NAAQS under the CAA. Finally, EPA is approving as SIP strengthening measures certain emission limit requirements on large SO<sub>2</sub> emission sources that were submitted as part of Maryland's attainment plan for the nonattainment area. This determination of attainment and approval of certain elements and emissions limitations into the SIP does not redesignate the Area to attainment or constitute a full approval of the submitted attainment plan or of a maintenance plan.

The NPRM was published on August 19, 2022, and specified that the comment period would end on September 19, 2022. However, the supporting materials were not made available in the docket until August 29, 2022 (ten days after publication).

To ensure the public and interested parties have sufficient time to review the associated docket materials and submit comment on the NPRM, the EPA is extending the comment period an additional 10 days to September 29, 2022 to account for the delay in posting the supporting and related materials.

**Adam Ortiz,**

*Regional Administrator, Region III.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 385, 386, 390, and 395

[Docket No. FMCSA-2022-0078]

RIN 2126-AC50

#### Electronic Logging Device Revisions

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** FMCSA solicits public comment on ways to improve the clarity of current regulations on the use of electronic logging devices (ELD) and address certain concerns about the technical specifications raised by industry stakeholders. The Agency seeks comment in five specific areas in which the Agency is considering changes: applicability to pre-2000 engines; addressing ELD malfunctions; the process for removing ELD products from FMCSA's list of certified devices; technical specifications; and ELD certification.

**DATES:** Comments on this notice must be received on or before November 15, 2022.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2022-0078 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov/docket/FMCSA-2022-0078/document>. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations, 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:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew Christopher, Office of Enforcement and Compliance, (785) 230-1376; [Andrew.Christopher@dot.gov](mailto:Andrew.Christopher@dot.gov). Office hours are from 7:30 a.m. to 3:30 p.m., CT, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

This advance notice of proposed rulemaking (ANPRM) is organized as follows:

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy
- II. Abbreviations
- III. Legal Basis for the Rulemaking
- IV. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
- V. Background
- VI. Request for Comments

#### I. Public Participation and Request for Comments

##### A. Submitting Comments

If you submit a comment, please include the docket number for this ANPRM, indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0078/document>, click on this ANPRM, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

#### Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the ANPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the ANPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as

confidential under the Freedom of Information Act, and they will not be placed in the public docket of the ANPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

### B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0078/document> and choose the document to review. To view comments, click this ANPRM, then click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### C. Privacy

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL 14—Federal Docket Management System), which can be reviewed at <https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

## II. Abbreviations

ANPRM Advance Notice of Proposed Rulemaking  
 CBI Confidential Business Information  
 CFR Code of Federal Regulations  
 CMV Commercial Motor Vehicle  
 DOT Department of Transportation  
 ECM Engine Control Module  
 ELD Electronic Logging Device  
 E.O. Executive Order  
 FMCSA Federal Motor Carrier Safety Administration  
 FMCSRs Federal Motor Carrier Safety Regulations  
 FR Federal Register  
 HMTAA Hazardous Materials Transportation Authorization Act of 1994  
 HOS Hours of Service  
 MAP-21 Moving Ahead for Progress in the 21st Century Act  
 NPRM Notice of Proposed Rulemaking  
 OMB The Office of Management and Budget  
 RODS Records of Duty Status

The Secretary Secretary of Transportation  
 SNPRM Supplemental Notice of Proposed Rulemaking  
 U.S.C. United States Code

## III. Legal Basis for the Rulemaking

FMCSA's authority for this rulemaking is derived from several statutes, which are discussed below.

Under 49 U.S.C. 31502(b) (originally enacted as part of the Motor Carrier Act of 1935 (Pub. L. 74-255, 49 Stat. 543, Aug. 9, 1935), "[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation". The rule requiring the use of electronic logging devices (ELDs) increases compliance with the hours of service (HOS) regulations and addresses the "safety of operation" of motor carriers subject to this statute.

Under 49 U.S.C. 31136(a) (originally enacted as part of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, Oct. 30, 1984)), the Secretary of Transportation (Secretary) is authorized to regulate drivers, motor carriers, and vehicle equipment. The statute requires the Secretary to prescribe minimum safety standards for commercial motor vehicles (CMVs) to ensure that—(1) CMVs are maintained, equipped, loaded, and operated safely; (2) responsibilities imposed on CMV drivers do not impair their ability to operate the vehicles safely; (3) drivers' physical condition is adequate to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on drivers' physical condition; and (5) CMV drivers are not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of regulations promulgated under 49 U.S.C. 31136 or under chapter 51 or chapter 313 of 49 U.S.C.. Under 49 U.S.C. 31133(a)(8) and (10), the Secretary has broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate". The HOS regulations, and the ELDs used to track compliance with them, ensure that driving time—one of the principal "responsibilities imposed on the operators of commercial motor vehicles"—does "not impair their ability to operate the vehicles safely" (49 U.S.C. 31136(a)(2)). Driver and

motor carrier compliance with the HOS rules, as tracked by ELDs, also helps to ensure that drivers are provided time to obtain restorative rest and thus that "the physical condition of [CMV drivers] is adequate to enable them to operate the vehicles safely" (49 U.S.C. 31136(a)(3)).

FMCSA's regulations requiring the use of ELDs must ensure that ELDs are not used to "harass a vehicle operator" (49 U.S.C. 31137(a)(2)). This requirement to ensure that electronic driver-monitoring devices are not used to harass drivers was enacted originally by section 9104 of the Truck and Bus Safety and Regulatory Reform Act (Pub. L. 100-690, 102 Stat. 4181, 4529, Nov. 18, 1988) and was reiterated and amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21). This provision is implemented by 49 CFR part 395, subpart B.

Section 113 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311, 108 Stat. 1673, 16776-16777, Aug. 26, 1994) requires the Secretary to prescribe regulations to improve compliance by CMV drivers and motor carriers with HOS requirements and the efficiency of Federal and State authorized safety officials reviewing such compliance. Specifically, the Act addresses requirements for supporting documents. These mandates are implemented by 49 CFR part 395, subpart B.

Under 49 U.S.C. 31137(a) (section 32301(b) of the Commercial Motor Vehicle Safety Enhancement Act, originally enacted as part of MAP-21 (Pub. L. 112-141, 126 Stat. 405, 786-788, July 6, 2012)), the Secretary is mandated to adopt regulations requiring that CMVs involved in interstate commerce, operated by drivers who are required to keep records of duty status (RODS), be equipped with ELDs. This statute was implemented by 49 CFR part 395, subpart B.

## IV. E.O. 12866 (Regulatory Planning and Review) and E.O. 13563 (Improving Regulation and Regulatory Review)

The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this ANPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under these orders.

Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, the Agency has asked commenters to answer a

variety of questions to elicit practical information about alternative approaches, including the associated costs and benefits of those approaches, and relevant scientific, technical, and economic data.

## V. Background

### *Need for Additional Consideration*

The ELD final rule (80 FR 78291, Dec. 16, 2015), established minimum performance and design standards for HOS ELDs; requirements for the mandatory use of these devices by drivers who were currently required to prepare HOS RODS; requirements concerning HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs. The 2015 final rule is summarized below.

FMCSA believes that the lessons learned by Agency staff, State enforcement personnel, ELD providers, and industry over the last few years can be used to streamline and improve the clarity of the regulatory text and ELD technical specifications and resolve questions that have arisen. In addition, technical specifications could be updated to address concerns raised by affected parties and improve the functionality of ELDs.

### *Current HOS and ELD Regulations*

The current HOS regulations in 49 CFR part 395 limit the number of hours a CMV driver may drive. The regulations also limit, during each 7- or 8-day period, the maximum on-duty time before driving is prohibited. Such rules are needed to ensure drivers stay awake and alert. Sufficient rest, including sleep and breaks, are necessary to ensure that a driver is alert behind the wheel and able to respond appropriately to changes in the driving environment. With certain exceptions, motor carriers and drivers are required by § 395.8 to keep RODS to track driving, on-duty, and off-duty time. FMCSA and State agencies use these records to review and ensure compliance with the HOS rules. The current ELD regulations are found in subpart B of 49 CFR part 395, including the ELD Technical Specifications in Appendix A to subpart B of 49 CFR part 395.

### *ELD Rulemakings/Proposals*

In a March 28, 2014, supplemental notice of proposed rulemaking (SNPRM) which included a discussion of prior rulemakings regarding recording devices, FMCSA proposed amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) to establish

minimum performance and design standards for HOS ELDs, requirements for the mandatory use of these devices by drivers currently required to prepare HOS RODS, requirements concerning HOS supporting documents, and measures to address concerns about harassment resulting from the mandatory use of ELDs (79 FR 17656). The SNPRM also proposed new ELD technical specifications and addressed the issue of ELDs being used by motor carriers to harass drivers. The SNPRM proposed the following four options: (1) mandate ELDs for all CMV operations subject to 49 CFR part 395; (2) mandate ELDs for all CMV operations where the driver is required to complete RODS under § 395.8; (3) mandate ELDs for all CMV operations subject to 49 CFR part 395, with the ELD required to include or be able to be connected to a printer and print RODS; and (4) mandate ELDs for all CMV operations where the driver is required to complete RODS under § 395.8, with the ELD required to include or be able to be connected to a printer and print RODS.

The Agency published a final rule in the **Federal Register** (80 FR 78292) on December 16, 2015, which amended the FMCSRs in the following ways: (1) it established one technical specification for all ELDs that addressed statutory requirements; (2) it mandated ELDs for drivers currently using RODS; (3) it clarified supporting document requirements to allow motor carriers and drivers to comply efficiently with HOS regulations; and (4) it adopted both procedural and technical provisions aimed at ensuring that ELDs are not used to harass CMV operators. The effective date of the final rule was February 16, 2016, and the principal compliance date was December 18, 2017.

The final rule included: (1) Supporting Documents Requirements—The maximum number of supporting documents that must be retained was 8. In addition, the timeframe in which a driver must submit RODS and supporting documents to a motor carrier was 13 days; (2) Technical Specifications for ELD—The rule required that electronic data transfer must be made by either: (a) wireless web services and email or (b) Bluetooth® and USB 2.0. Furthermore, to facilitate roadside inspections, and ensure authorized safety officials are always able to access this data, including cases of limited connectivity, an ELD must provide either a display or printout; (3) Exceptions—Two optional ELD exceptions were added: (a) Driveaway-towaway operations are not required to use an ELD, provided the vehicle driven

is part of the shipment or is a motor home or a recreation vehicle trailer; and (b) Drivers are not required to use ELDs when operating CMVs older than model year 2000; and (4) ELD Certification—To ensure that ELD providers are afforded due process in case of ELD compliance issues, FMCSA created a procedure to remove ELD devices from the Agency's list of certified products.

The Agency clarified its supporting document requirements, recognizing that ELD records serve as the most robust form of documentation for on-duty driving periods. The rule also contained provisions calculated to prevent the use of ELDs to harass drivers. The compliance dates of the 2015 rule were either December 18, 2017, for most motor carriers, or December 17, 2019, for carriers that had voluntarily installed a recording device before the effective date of the final rule (80 FR 78292).

## VI. Request for Comments

The Agency seeks comments and data from the public in response to this ANPRM. We request that commenters specifically address the issues listed below, and number their comments to correspond to each issue. FMCSA anticipates that some of the information and data submitted may include CBI. Those comments should be filed in accordance with the requirements of § 389.9, "Treatment of confidential business information submitted under confidential class determinations," and the instructions in the CBI subheading under "Public Participation and Request for Comments" above.

### *1. Applicability to Pre-2000 Engines*

a. Many vehicles with pre-2000 engines and most vehicles with rebuilt pre-2000 engines have engine control modules (ECMs) installed that could accommodate an ELD. Should FMCSA re-evaluate or modify the applicability of the current ELD regulation for re-built or re-manufactured CMV engines or glider kits? <sup>1</sup>

<sup>1</sup> 40 CFR 1037.801 defines *Glider kit* as either of the following:

- (1) A new vehicle that is incomplete because it lacks an engine, transmission, and/or axle(s).
- (2) Any other new equipment that is substantially similar to a complete motor vehicle and is intended to become a complete motor vehicle with a previously used engine (including a rebuilt or remanufactured engine). For example, incomplete heavy-duty tractor assemblies that are made available to secondary vehicle manufacturers to complete assembly by installing used/remanufactured engines, transmissions and axles are glider kits. See [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1037#p-1037.801\(Glider%20kit\)](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-U/part-1037#p-1037.801(Glider%20kit)).

b. Please provide data regarding the size of the glider kit population utilizing pre-2000 engines.

## 2. Addressing ELD Malfunctions

Currently, § 395.34(a) requires a driver documenting his or her RODS to switch to paper logs when an ELD malfunctions. Section 395.34(c) requires a driver to follow the motor carrier and ELD provider recommendations when a data diagnostic event is logged. Whenever an ELD fails to record a driver's hours, enforcement personnel must be able to review the driver's paper logs. By contrast, when an ELD malfunctions but continues to record the driver's hours accurately, the driver should not switch to paper logs.

Should FMCSA amend carrier and driver responsibilities in § 395.34 to clarify when a driver must switch to paper logs?

## 3. Removal Process

a. If an ELD provider goes out of business and fails to self-revoke, should FMCSA be able to immediately remove the device from the registered ELD list?

b. The ELD rule requires ELD providers to keep their information current. However, the rule does not include a time restriction. Should FMCSA require ELD providers to update their listing within 30 calendar days of any change to their registration information found in section 5.1.1? Additionally, should ELD providers be required to confirm their information on an annual basis? Should an ELD provider's ELD be removed from the FMCSA list if it fails to confirm or update its listing on an annual basis?

c. Under Section 5.4 *Removal of Listed Certification*, providers must respond to the Agency's written notice of required corrective action within 30 days to remain on the list. Additionally, the provider is given 60 days after the Agency provides a written modification to the notice of proposed removal or notice to affirm the proposed removal under Section 5.4.4. Should FMCSA consider decreasing the 60-day period to 30 days, in order to more timely remove an ELD listing found with non-compliance issues that could adversely impact highway safety?

d. Should FMCSA consider any other factors related to a carrier's continued use of a device that has been removed from the FMCSA list due to a provider's status (out of business or failure to file an annual registration update)?

## 4. Technical Specifications

a. Would ELD providers be able to include, in the output file and registration, the version numbers of the individual components of the ELD (e.g., the software version number running on the graphical user interface/tablet, the firmware running on the gateway/black box, and the software version number of the back-office software), if any of these components were required to comply with the ELD regulations?

b. FMCSA requests information on the impact of including the following data elements to every event. FMCSA believes recording this information would allow the technical specifications to be modified to eliminate the requirements of providing power up and shut down events from vehicles a driver has previously operated that are not associated with the requested driver's data/RODS:

1. Actual odometer
2. Actual engine hours
3. Location description
4. Geo-location
5. VIN
6. Power unit
7. Shipping document number
8. Trailer number
9. Driver
10. Co-driver if there was one
11. Which driver was driving at the time, if there was a co-driver

c. To more efficiently monitor a vehicle over the course of its operation, should more frequent intermediate recordings (including the same data elements listed in 4b.) be required on the quarter hour, half hour, three-quarter hour, and hour? If not, what would be a reasonable frequency to require intermediate recordings?

d. FMCSA granted a temporary exception (82 FR 48883, Oct. 20, 2017) that allowed all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. Additionally, the ELD would switch to a "driving" duty status under § 395.24 if (1) the driver inputs "driving," (2) the vehicle exceeds 20 mph, or (3) the vehicle exits the geofenced yard. Should FMCSA consider adding this temporary exception to the regulation? Are there other factors related to this temporary exception that should be considered?

e. In the preamble to the 2015 final rule, FMCSA stated that the driver was expected to enter a new duty status before powering off the ELD and turning the vehicle off. However, drivers often fail to enter a new duty status prior to powering off the ELD, resulting in the

driver remaining in driving status. To eliminate the issue, should the ELD automatically record an on-duty not-driving event following the recording of an engine shutdown? Are there other options that should be considered?

f. The industry has reported that the current 5 second requirement is not enough time for an ELD to obtain the information it has requested from the ECM, as required by section 4.6.1.2 in the Appendix to subpart B of part 395. What would be a reasonable amount of time? Is this an issue only at power up?

g. Should FMCSA consider allowing a driver, rather than the motor carrier, to change his or her ELD configuration to an exempt status to help reduce the administrative burden noted by the industry? Should FMCSA consider expanding the list of special driving categories in § 395.28(a) to include driving performed under an exemption? If so, what data should be recorded to specifically identify who made the change, why the change was made, and where the change took place, to achieve an equivalent level of safety to prevent falsification?

h. Would the technical specification changes discussed in this section necessitate a change in ELD hardware? Or could these changes be pushed to existing ELD devices via a software update? If such updates are feasible, what would the cost implications be?

i. Should other technical specifications, not addressed in this list, be considered for revision to improve ELD data recording, data transfer, cross-border commerce or information security and compliance? Please provide data to support your suggestion.

j. What action(s) do you recommend FMCSA take to ensure that ELD specifications remain current with advances in technology?

## 5. ELD Certification

a. Should FMCSA establish a certification process for ELDs? If so, what should a certification process consist of?

b. Based on your answer to the above questions, what would be the costs and benefits of that approach?

c. If a certification process is established, how should existing devices be treated?

Issued under authority delegated in 49 CFR 1.87.

**Robin Hutcheson,**  
Deputy Administrator.

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