

# What the new FMCSA electronic-logging device rule means for motor carriers and truck drivers



**The ELD rule became effective on February 16, 2016, and the compliance date of the rule was December 18, 2017.**

Most of the trucking industry is aware of the new Federal Motor Carrier Safety Administration (FMCSA) mandate for electronic logging devices (ELDs). Companies and drivers should understand the rule and be aware of the many nuances to it. This article will answer a few questions regarding this new mandate:

- What's an ELD?
- Why is the FMCSA requiring these devices?
- When does the new rule go into effect and when are companies and drivers required to comply?
- Who must comply with the new rule?
- What other requirements were included in the rule?

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## What's an electronic logging device?

An electronic logging device captures movement of a commercial motor vehicle. Any time a truck is moving, the ELD will measure the number of miles the truck moves and will periodically provide location updates. The FMCSA rule requires that the device must capture the location of the truck at each change-of-duty status or at least once every hour. The device must also capture the location each time the engine is turned on or off.

While these devices are required to automatically capture drive time, all other duty statuses will require some input or intervention from the driver. For example,

let's say a driver drives for 100 miles and then stops. If the driver does nothing, the device will start an internal clock the moment the truck stops. After five minutes, the device is required to move the driver to on-duty/not-driving status. The device is also required to display a warning to the driver that the status is changing. If the driver does nothing, the device will keep the driver's status as on-duty/not-driving. If the driver wishes to go off-duty, the driver must manually enter the new duty status into the device.

Of course, there are other nuances to the rule. As mentioned, these devices are really only intended to

automatically capture movement of the truck and record it as drive time. Neither the driver nor the carrier can remove drive time, but all active truck time (i.e., any time the truck is in motion) must be captured in the system and assigned to a driver.

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## Why is the FMCSA requiring these devices?

The U.S. Congress required the FMCSA to publish a rule requiring these devices in commercial motor vehicles. Additionally, Congress required the agency to apply this rule to motor carriers and their drivers within two years of publishing it. The FMCSA estimates the rule will help avoid 1,844 crashes and 562 injuries, and save 26 lives annually.

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## When does the new rule go into effect and when are companies and drivers required to comply?

The ELD rule became effective on February 16, 2016, and the compliance date of the rule was December 18, 2017. Drivers and motor carriers that currently have automatic on-board recording devices (AOBRDs) as allowed in Part 395.15 don't have to replace those AOBRD devices until December 16, 2019.

After December 18, 2017, AOBDR providers can no longer offer or install AOBDR technology. Only ELDs may be installed.

Motor carriers should carefully consider any equipment they install from this point forward. Motor carriers should communicate with their electronic log providers to ensure hardware they're installing will comply with this new rule. If for some reason the older AOBDR equipment does not comply, it all must be replaced by December 16, 2019, with new ELD equipment.

### Who must comply with the new rule?

All interstate truck drivers who are currently required to fill out records of duty status (RODS) or logbooks are required to have an ELD. However, there are a few categories of drivers that aren't required to have these devices:

- Drivers who use paper RODS for no more than eight days during any 30-day period. (This group is primarily made up of short-haul drivers who use timecards instead of logbooks. However, if a short-haul driver uses paper RODS more than eight days in any 30-day rolling period, the driver must have an ELD installed in their truck.)
- Drivers who conduct driveaway/towaway operations, where the vehicle being driven is the commodity being delivered.
- Drivers of vehicles manufactured before model year 2000.

Even though drivers mentioned here don't have to have an ELD, they must still comply with the hours-of-service (HOS) rules and keep required documents as detailed in the current rules. Additionally, motor carriers that employ ELD-exempt drivers still need to have a system in place to ensure their drivers fully comply with HOS rules.

Many states automatically adopt federal rules for intrastate operations. If you live in a state that automatically adopts the federal rules, it's likely the federal ELD requirement will also apply to all of your intrastate operations. Carriers that switch between

intra- and interstate operations must follow the older guidelines and comply with the federal regulations in the seven days prior to making an interstate trip. If you're a carrier that frequently switches between intra- and interstate operations, it may make more sense to install an ELD and comply with federal HOS regulations.

Each motor carrier should check with its state trucking association or state enforcement agency to find out if the state will adopt the federal ELD requirement and the timing of that adoption.

### What other requirements were included in the rule?

In addition to mandating ELDs, the rule also spells out what type of supporting documents must now be kept by motor carriers. Maintaining supporting documents in addition to the ELD helps carriers identify all work time that should be logged as on-duty/not-driving. A motor carrier must retain up to eight supporting documents.

### These documents should have the following elements:

**Driver's name or carrier-assigned identification number\***

**31** Date

**Location**

**Time**

\*This can also be a truck number, if that truck number can be linked to a driver.



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If a carrier doesn't have eight documents that contain all of the elements above, it should keep any document that contains some of the elements above (with the exception of time) because these are still considered supporting documents. There are five categories of supporting documents you can retain:

- Bills of lading, itineraries, schedules or equivalent documents that indicate the origin and destination of each trip
- Dispatch records, trip sheets/records or equivalent documents
- Expense receipts
- Electronic mobile communication records (such as those maintained in a fleet management system)
- Payroll records, settlement sheets or equivalent documents regarding payment to a driver

Only drivers still on paper RODS will be required to keep toll receipts in the future.

Drivers aren't required to keep all supporting documents in their possession for roadside enforcement. However, if they have them available in the cab of their truck, they must provide them to roadside enforcement personnel if requested. A driver only has to provide the document in the form they have available to them at the time of the request.

Motor carriers are, however, required to keep these supporting documents for six months—the same period as the electronic or paper logs.

**Additional questions carriers and drivers must consider**

**How does a driver provide their logs to roadside enforcement officers?**

The ELD rule requires certain transfer capabilities for all devices. An ELD provider must decide which type of transfer capability it will have. There are two types:

**Peer-to-peer transfer (local transfer)** – This requires the ELD manufacturer to have both Bluetooth® and USB 2.0 available.



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**Telematics transfer (electronic transfer)** – This requires the ELD manufacturer to have both web services and Simple Mail Transfer Protocol (SMTP) email available.

These two transfer methods let roadside enforcement officials download the driver’s logs. If for some reason the transfer methods don’t work, the device must allow the roadside officer to see the display without entering the truck. The new rule requires additional data to be on the display, including things like the driver’s CDL number, beginning and ending odometer reading, and ELD malfunctions, to name a few.

**What is harassment and why does it matter?**

Harassment can be an issue with ELDs. The new rules state that motor carriers must not use the devices to harass their drivers, meaning motor carriers can’t do anything that would result in a driver violating the new rule. The FMCSA clearly defines harassment as: “An action by a motor carrier toward a driver employed by the motor carrier (including an independent contractor while in the course of operating a CMV on behalf of the motor carrier) involving the use of the information

available to the motor carrier through an ELD... or through other technology used in combination with and not separable from the ELD the motor carrier knew or should have known, would result in the driver violating 392.3 or part 395.” (49 CFR Part 390.36)

The new ELD rule provides a number of safeguards to prevent harassment and ensure driver privacy:

- The device should have a mute function to prevent noise while the driver is in the sleeper berth.
- When a driver is in personal conveyance, the GPS location captured is for a larger area than when the vehicle is being operated in commerce (a 10-mile radius instead of one mile).
- A driver must certify any edits made by motor carrier management.
- A driver has access to all of their logs.

The FMCSA has a process for drivers to report harassment or coercion to break a rule. The agency also finalized another rule on coercion, which reaches to a broader group that includes shippers and brokers. Both the harassment portion of the ELD rule and the Prohibition of Coercion rule are designed to ensure these devices are not used to harass drivers and cause them to violate the rules. The penalty for coercion is \$16,000 per offense.



**Maintaining supporting documents in addition to the ELD helps carriers identify all work time that should be logged as on-duty/not-driving.**

**What happens if a company or driver does not comply?**

The FMCSA considers noncompliance by motor carriers and drivers the same as all other noncompliance. Penalties are assessed based upon the culpability and history of prior offenses. By statute, the agency must consider these factors in assessing a civil penalty.

If a driver or motor carrier disables, deactivates or otherwise tampers with an ELD, the FMCSA will consider this an acute violation. Additionally, if the motor carrier fails to retain ELD information, this also will be considered an acute violation. All other types of violations using an ELD would be considered critical.

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**How do I pick an ELD vendor?**

The ELD rule requires any ELD vendor to self-certify its devices. In addition to self-certification, the vendor must register the device with the FMCSA and send in certain required documentation. The FMCSA will maintain this list of self-certified vendors. Motor carriers and drivers will be able to review the list to ensure a vendor they wish to use is properly registered.

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The FMCSA will also supply testing protocols to all vendors, but a vendor isn't required to use FMCSA testing information. The FMCSA will also remove a vendor from the registered list if the agency discovers a device is not compliant. The rule outlines the process whereby the FMCSA may remove a vendor from the registered list. This gives motor carriers visibility into vendors that are compliant with the ELD certification and registration process.

Motor carriers are strongly encouraged to conduct appropriate due diligence on any vendor they select to ensure the device and system meet the carrier's needs.

**More information**

The FMCSA has plenty of additional information on its website. Both drivers and motor carriers should familiarize themselves with all the requirements of this new rule.



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Additional information can be found at:  
[www.fmcsa.dot.gov/hours-service/elds/electronic-logging-devices](http://www.fmcsa.dot.gov/hours-service/elds/electronic-logging-devices)

In summary, the new FMCSA ELD rule will change how drivers and motor carriers track hours of service. These devices are intended to ensure all drivers comply with the rules and don't exceed the maximum allowable drive time. They will also serve as a tool for the motor carrier and the driver to better manage their loads and time. The bottom line is that these devices save time, money and lives.

**About the author: Annette Sandberg, Esq.**

Annette Sandberg is the CEO of TransSafe Consulting, LLC, and Of Counsel with the law firm Scopelitis, Garvin, Light, Hanson and Feary. Ms. Sandberg is a member of the board of directors of Quality Distribution, Inc., headquartered in Tampa, Florida (2013), and the American Transportation Research Institute (ATRI) board of directors (May 2014). In November of 2002, Secretary of Transportation Norman Y. Mineta appointed Ms. Sandberg as deputy administrator of the Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation. The agency is dedicated to improving truck and bus safety on the nation's highways. Prior to her appointment as FMCSA deputy administrator, Ms. Sandberg served as deputy administrator of the National Highway Traffic Safety Administration (NHTSA), which is responsible for reducing deaths, injuries and economic losses resulting from motor vehicle crashes. A nationally recognized expert in law enforcement and public safety, she led the Washington State Patrol as chief for six years. When appointed to the position in 1995, she was the first woman in the country to lead a state police agency. An attorney by training, Ms. Sandberg received her law degree from the University of Puget Sound School of Law in 1993.