



Canadian Trucking Alliance  
Alliance Canadienne du Camionnage

## **Summary – Federal Motor Carrier Safety Administration (FMCSA) Electronic Logging Device (ELD) Final Rule**

*Canadian Trucking Alliance (CTA)*

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The following summary of FMCSA's final rule for the use of Electronic Logging Devices has been compiled by staff members of the Canadian Trucking Alliance (CTA) for the benefit of its membership. The summary is based on excerpts from FMCSA's final rule and highlights areas of the rulemaking that may be of interest to CTA member fleets and industry suppliers.

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Compliance Date (must comply) – December 18, 2017

Effective Date (optional to start complying) - February 17, 2016

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Specifically, this rule:

- Requires new technical specifications for ELDs that address statutory requirements;
- Mandates Electronic Logging Devices (ELD's) for drivers currently using RODS (record-of-duty status) with some exceptions (e.g. short haul);
- Clarifies supporting document requirements so that motor carriers and drivers can comply efficiently with hours-of-service (HOS) regulations; and
- Adopts both procedural and technical provisions aimed at ensuring that ELDs are not used to harass commercial motor vehicle (CMV) operators.

The Final rule makes changes from the former supplementary notice of proposed rulemaking (SNPRM). The key changes are:

1. Documents Requirements—The maximum number of supporting documents that must be retained has been lowered from 10 in the SNPRM to 8 in the Final rule. In addition, the timeframe in which a driver must submit RODS and supporting documents to a motor carrier has been extended from 8 to 13 days.
2. Technical Specifications—Two of the options for the required electronic data transfer included in the SNPRM (Quick Response (QR) codes and TransferJet) have been removed. Electronic data transfer must be made by either (1) wireless Web services and email or (2) 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. Exemptions—Two optional exceptions are added from the required use of ELDs: (1) Driveaway-towaway operations are not required to use an ELD, provided the vehicle driven is part of the shipment; and (2) ELDs are not required on CMVs older than model year 2000.
4. ELD Certification— To ensure that ELD providers have the opportunity for due process in the event that there are compliance issues with their product, procedures are added that FMCSA would employ if it identified problems with an ELD model before it would remove the model from the Agency's list of certified products.

## Application and Exceptions

The Final rule mandates ELD use for HOS compliance. It applies to most motor carriers and drivers who are currently required to prepare and retain paper RODS to comply with HOS regulations under part 395. The Final rule allows limited exceptions to the ELD mandate. As indicated in §395.1(e)(short haul operations), drivers who operate using the timecard exception are not required to keep RODS and will not be required to use ELDs. The following drivers are excepted in § 395.8(a)(1)(iii) from installing and using ELDs and may continue to use “paper” RODS:

- Drivers who use paper RODS for not more than 8 days during any 30 day period.
- Drivers who conduct driveaway-towaway operations, where the vehicle being driven is the commodity being delivered.
- Drivers of vehicles manufactured before model year 2000.

This exception is limited to the ELD requirement only; these drivers are still bound by the RODS requirements in 49 CFR part 395 and must prepare paper logs when required unless they voluntarily elect to use an ELD.

### **Short Haul Operations** (excerpts from 595.1 (e) specific to property carrying vehicles)

A driver is exempt from the requirements of § 395.8 if:

- (i) The driver operates within a 100 air-mile radius of the normal work reporting location;
- (ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;
- (iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty;
- (iv)(A) A property-carrying commercial motor vehicle driver does not exceed the maximum driving time specified in § 395.3(a)(3) following 10 consecutive hours off duty; and
- (v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:
  - (A) The time the driver reports for duty each day;
  - (B) The total number of hours the driver is on duty each day;
  - (C) The time the driver is released from duty each day; and
  - (D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

## Supporting Documents

In this rule, the Agency (FMCSA) clarifies its supporting document requirements, recognizing that ELD records serve as the most robust form of documentation for on-duty driving periods. FMCSA neither increases nor decreases the burden associated with supporting documents. These changes are expected to improve the quality and usefulness of the supporting documents retained, and consequently increase the

effectiveness and efficiency of the Agency's review of motor carriers' HOS records during on-site compliance reviews and its ability to detect HOS rules violations.

The Final rule further elaborates that motor carriers must retain up to 8 supporting documents for every 24-hour period a driver who uses ELDs is on duty. Section 395.8(k) continues to require that motor carriers retain RODS and supporting documents for 6 months. New § 395.11(b) specifies that drivers must submit supporting documents to the motor carrier no later than 13 days after receiving them. While ELDs are highly effective at monitoring compliance with HOS rules during driving periods, supporting documents are still needed to verify on-duty not driving time (ODND).

Supporting documents consist of the following five categories, described in

§ 395.11(c):

- Bills of lading, itineraries, schedules, or equivalent documents that indicate the origin and destination of each trip;
- Dispatch records, trip records, or equivalent documents;
- Expense receipts;
- Electronic mobile communication records, reflecting communications transmitted through a fleet management system (FMS); and
- Payroll records, settlement sheets, or equivalent documents that indicates payment to a driver.

Full details on Supporting Document information and qualifying documents is spelled out in 395.2 and 395.11 (c) & (c)(2).

The Final rule does not require the driver to keep any supporting documents in the vehicle. However, FMCSA notes that any supporting documents that are in a vehicle during a roadside inspection must be shown to an authorized safety official on request.

The supporting document provisions of the Final rule also take effect as of the rule's compliance date.

### **Driver Harassment**

The Final rule contains provisions calculated to prevent the use of ELDs to harass drivers. FMCSA explicitly prohibits a motor carrier from harassing a driver, and provides that a driver may file a written complaint under § 386.12(b) if the driver was subject to harassment. Technical ELD provisions that address harassment include a mute function to ensure that a driver is not interrupted in the sleeper berth. Further, the design of the ELD allows only limited edits of an ELD record by both the driver and the motor carrier's agents and in either case the original record generated by the device cannot be changed, which will protect the driver's RODS from manipulation.

The rule further elaborates a definition of "harassment," which covers an action by a motor carrier toward one of its drivers that the motor carrier knew, or should have known, would result in the driver violating § 392.3, which prohibits an ill or fatigued driver from operating a CMV, or part 395, the HOS rules. Harassment must involve information available to the motor carrier through an ELD or other technology used in combination with and not separable from an ELD. In § 390.36(b), FMCSA explicitly prohibits a motor carrier from harassing a driver.

The Final rule adopts a regulatory prohibition on harassment, as defined, subject to a civil penalty in addition to the penalty for the underlying violation. The rule also has other provisions intended to ensure that ELDs are not used to harass drivers. Some of these are technical provisions intended to guard against harassment. Others are procedural, to give drivers recourse when they are harassed.

Among the technical solutions addressing harassment is a required mute function for Fleet Management Systems (FMS) with ELD functionality that would be used to comply with this rule. The mute function ensures that a driver is not interrupted by an FMS that includes an ELD function when the driver is in the sleeper berth. FMCSA emphasizes that a minimally compliant ELD is not required to have voice or text message communication capabilities or to produce audible alerts or alarms. For ELDs that have the ability to generate audible signals, however, The Final rule requires that the devices have volume control. This control must either automatically engage, or allow the driver to turn off or mute the ELD's

The Final rule includes a new process for driver complaints related to harassment involving ELDs. As part of the process, violations must be found in order for a harassment penalty to be assessed.

### **Location and Monitoring Requirements**

Section § 395.26 describes ELD data records, including location data, when the driver changes duty status, when a driver indicates personal use or yard moves, when the CMV engine powers up and shuts down, and at 60-minute intervals when the vehicle is in motion. Integral synchronization interfacing with the CMV engine ECM, to automatically capture engine power status, vehicle motion status, miles driven, engine hours is a requirement. FMCSA emphasizes that it does not require real-time tracking of CMVs or the recording of precise location information in the Final rule.

For the purposes of HOS enforcement, FMCSA requires all ELDs to record location in a way that provides an accuracy of approximately a 1-mile radius during on-duty driving periods. However, when a CMV is operated for authorized personal use, the position reporting accuracy, as required by section 4.3.1.6(f), is reduced to an approximate 10-mile radius, to further protect the driver's privacy. While a motor carrier could employ technology that provides more accurate location information internally, when the ELD transmits data to authorized safety officials, the location data will be limited to the reduced proximities.

All ELDs must meet standard requirements which include recording certain information related to a driver's HOS status, but they are not required to track a CMV or driver in real time. ELDs are not required to include a capability to communicate between the driver and the motor carrier. All ELDs, however, must capture and transfer identical data regarding a driver's HOS status to authorized safety officials. Although an ELD may be part of an FMS (fleet management system), the ELD functions required by this rule are limited to automatically recording all driving time, and intermittently recording certain other information.

Section 395.26 provides that the ELD automatically record the following data elements at certain intervals: date; time; location information; engine hours; vehicle miles; and

identification information for the driver, the authenticated user, the vehicle, and the motor carrier. Unless the driver has indicated authorized personal use of the vehicle, those data elements are automatically recorded when the driver indicates a change of duty status or a change to a special driving category. When the driver logs into

or out of the ELD, or there is a malfunction or data diagnostic event, the ELD records all the data elements except geographic location. When the engine is powered up or down, the ELD records all the data elements required by §395.26.

### **Certification**

FMCSA will provide a list of provider-certified ELDs on its Web site (when available). The Final rule requires interstate motor carriers to use only an ELD that appears on that list of registered ELDs. ELD providers must register through a FMCSA Web site, and certify through the Web site that their products meet the technical specifications in The Final rule. If the Agency believes an ELD model does not meet the required standards, new section 5.4 of the technical specifications prescribes a process of remedying the problem. The Agency will make its compliance test available and its Web site available for ELD providers to register and certify ELDs on or shortly following the effective date of the Final rule.

### **Data Transfer and Roadside Enforcement**

To meet roadside electronic data reporting requirements, under section 4.9.1 of the technical specifications, an ELD must support one of two options for different types of electronic data transfer. The first option is a telematics-type ELD. At a minimum, it must electronically transfer data to an authorized safety official on demand via wireless Web services and email. The second option is a local transfer method-type ELD. At a minimum, it must electronically transfer data to an authorized safety official on demand via USB2.0 and Bluetooth. Additionally, both types of ELDs must be capable of displaying a standardized ELD data set in the format specified in this rule to an authorized safety official on demand. To ensure that authorized safety officials are always able to receive the HOS data during a roadside inspection, a driver must be able to provide either the display or a printout when an authorized safety official requests a physical display of the information. Display and printouts will each contain the same standardized data set identified in section 4.8.1.3 of the technical specifications. Motor carriers will be able to select an ELD that works for their business needs since both types of ELDs will transfer identical data sets to law enforcement.

Authorized safety officials who conduct roadside enforcement activities (i.e., traffic enforcement and inspections) or compliance safety investigations will be able to select a minimum of one method of electronic data transfer from each type of ELD. States will have the option of choosing a minimum of one “telematics” electronic data transfer method (wireless Web services or email) and one “local” electronic data transfer method (USB 2.0 or Bluetooth) for the electronic transfer of ELD data.

### **Transition Period to New Rule and Grandfathering Provisions for Existing AOBRD's**

A motor carrier may then elect to voluntarily use ELDs listed on the FMCSA Web site, prior to the compliance date (December 18, 2017). Prior to the rule's effective date (February 17, 2016), the Agency will issue a policy addressing how ELDs will be handled for HOS enforcement purposes during this voluntary period. Beginning on the rule's compliance date (December 18, 2017), the Agency will apply the Final rule in its enforcement activities. If a motor carrier elects to voluntarily use ELDs in advance of the rule's compliance date, the provisions of the rule prohibiting harassment of drivers apply. However, those motor carriers that have installed a compliant AOBDR before the compliance date will have the option to continue using an AOBDR through December 17, 2019 (4 years from publication of Final rule in Federal Registrar – December 16, 2015).

### **Yard Moves and Personal Conveyance**

The Final rule permits the driver to indicate the beginning and end of yard moves and personal conveyance, as allowed by the motor carrier. All other special driving categories, such as adverse driving conditions (§ 395.1(b)) or oilfield operations (§ 395.1(d)), would be annotated by the driver, similar to the way they are now.

FMCSA acknowledges and agrees with the commenters to the rulemaking process who stated that ELDs, by virtue of recording all movements, will create a visible consistent record of all actions taken in the Commercial Motor Vehicle (CMV).

The Agency is aware that there are concerns about personal conveyance and yard moves, as some commenters would like clear-cut limits on the mileage or time thresholds for CMV usage acceptable under personal conveyance and yard moves. However, the Agency does not think it is appropriate to include these definitions in the ELD rulemaking, as both clearly fall under the HOS rules and are applicable to a wide variety of CMV operations, not just those using ELDs. Thus, the Agency declines to address these matters at this time.

Additionally, the Agency does not create any new provisions for either status, instead requiring only that they each be recorded. By making specific requirements on how these statuses must be recorded, but not specifying limits in mileage or time, FMCSA has purposely left these guidelines as open as they are today, to suit the diversity of operations across the country. FMCSA wishes to clarify that all miles driven, regardless of the status the driver has selected, are recorded. However, when a personal conveyance status is selected, the CMV's location is recorded with a lower level of precision, i.e., an approximate 10-mile radius. FMCSA believes that the recording of these miles is essential to HOS compliance, but balances this requirement with protections on the privacy of location data when drivers are not on-duty.

If a driver selects the yard moves status and then begins regular driving, the driver simply switches statuses. If there is no break, and the driver forgets to add the new status, the driver can annotate his or her record to explain this, and can switch the time between the two statuses, as both are driving statuses.

At the end of a personal conveyance status, FMCSA does not require that the ELD automatically switch to an off-duty status. Again, the driver can annotate his or her

record to explain if the driver forgets to record an off-duty status at the end of the driving time.

FMCSA understands the potential for abuse of the personal conveyance status, and has purposely required that all movements of the CMV be recorded (with a less precise location requirement). The rules do not allow driving statuses, including off-duty driving, to be edited to say they are non-driving time. These protections will directly address the falsification of HOS records, making it significantly harder. FMCSA believes that recording all the time that a CMV is in motion will limit significantly the amount of falsified time.

Commenters to the rulemaking process asked about mechanics or maintenance personnel operating CMVs, or driving done by employees who are not listed CMV drivers. The Final rule allows any employee of the motor carrier that operates the vehicle to have a unique login. If a CMV is operated by someone without a CDL within a yard, the mileage could be attributed to the individual. Generally, the short-haul exception for RODS would mean these individuals would not be expected to use an ELD and there is nothing in this rulemaking that would preclude the ELD system from having entry categories to capture occasional movements of an ELD-equipped vehicle by individuals who are not required to prepare RODS.

FMCSA agrees that the carrier should have the opportunity to review unassigned driver miles, as they are ultimately responsible for the records. There is no prohibition on the motor carrier reviewing these records. FMCSA does not believe that this will be a significant administrative burden, especially if all employees who have the potential to operate CMVs on company property or beyond are given unique identifiers. The Final rule does not allow “anchoring” or any location-based operational exemption. Drivers have the option to select a yard moves status in this case, and their operational history would need to be consistent with that status, which may look different depending on different types of operations.

### **Driver Edits and Annotations**

The design of the ELD allows only limited edits of an ELD record by both the driver and the motor carrier’s agents and in either case the original record generated by the device cannot be changed, which will protect the driver’s RODS from manipulation. The design of the ELD allows only limited edits of an ELD record by both the driver and the motor carrier’s agents and in either case the original record generated by the device cannot be changed. Drivers may edit, enter missing information into, and annotate the ELD records but the original record will be retained. The ELD prevents electronically-recorded driving time from being shortened. A motor carrier may request edits to a driver’s RODS to ensure accuracy. However, for the carrier-proposed changes, the driver must confirm them and certify and submit the updated RODS. Section 395.30(c)(2) requires all edits, whether made by a driver or the motor carrier, be annotated to document the reason for the change.

### **ELD Malfunctions and Data Diagnostic Events**

In case of an ELD malfunction, a driver must do the following:

(1) Note the malfunction of the ELD and provide written notice of the malfunction to the motor carrier within 24 hours.

(2) Reconstruct the record of duty status for the current 24-hour period and the previous 7 consecutive days, and record the records of duty status on graph-grid paper logs that comply with § 395.8, unless the driver already possesses the records or the records are retrievable from the ELD.

(3) Continue to manually prepare a record of duty status in accordance with § 395.8 until the ELD is serviced and brought back into compliance with this subpart.

(b) Inspections during malfunctions. When a driver is inspected for hours of service compliance during an ELD malfunction, the driver must provide the authorized safety official the driver's records of duty status manually kept as specified under paragraphs (a)(2) and (3) of this section.

(c) Driver requirements during ELD data diagnostic events. If an ELD indicates that there is a data inconsistency that generates a data diagnostic event, the driver must follow the motor carrier's and ELD provider's recommendations in resolving the data inconsistency.

If a motor carrier receives or discovers information concerning the malfunction of an ELD, the motor carrier must take actions to correct the malfunction of the ELD within 8 days of discovery of the condition or a driver's notification to the motor carrier, whichever occurs first.

A motor carrier seeking to extend the period of time permitted for repair, replacement, or service of one or more ELDs shall notify the FMCSA Division Administrator for the State of the motor carrier's principal place of business within 5 days after a driver notifies the motor carrier under paragraph (a)(1) of this section. Each request for an extension under this section must be signed by the motor carrier and must contain:

(i) The name, address, and telephone number of the motor carrier representative who files the request;

(ii) The make, model, and serial number of each ELD;

(iii) The date and location of each ELD malfunction as reported by the driver to the carrier; and

(iv) A concise statement describing actions taken by the motor carrier to make a good faith effort to repair, replace, or service the ELD units, including why the carrier needs additional time beyond the 8 days provided by this section.

(3) If FMCSA determines that the motor carrier is continuing to make a good faith effort to ensure repair, replacement, or service to address the malfunction of each ELD, FMCSA may allow an additional period.

## **Key Technical Specifications of ELD's**

Integral Synchronization -- Integral synchronization interfacing with the CMV engine ECM, to automatically capture engine power status, vehicle motion status, miles driven, engine hours.(CMVs older than model year 2000 exempted).

Recording Location Information -- Require automated entry at each change of duty status, at 60-minute intervals while CMV is in motion, at engine-on and engine-off instances, and at beginning and end of personal use and yard moves.

Graph Grid Display – An ELD must be able to present a graph grid of driver’s daily duty status changes either on a display or on a printout.

HOS Driver Advisory Messages – HOS limits notification not required. “Unassigned driving time/miles” warning provided upon login

Device “Default” Duty Status -- On-duty not driving, when CMV has not been in motion for 5 consecutive minutes, and driver has not responded to an ELD prompt within 1 minute. No other non driver initiated status change is allowed.

Clock Time Drift -- ELD time must be synchronized to UTC, absolute deviation must not exceed 10 minutes at any point in time.

### **Communications Methods -- Two Options:**

1- Telematics: As a minimum, the ELD must transfer data via both wireless Web services and wireless email

2- “Local Transfer”: As a minimum, the ELD must transfer data via both USB 2.0 and Bluetooth Both types of ELDs must be displaying a standardized ELD data set to authorized safety officials via display or printout.

Resistance to Tampering -- ELD must not permit alteration or erasure of the original information collected concerning the driver’s ELD records or alteration of the source data streams used to provide that information. ELD must support data integrity check functions.

Identification of Sensor Failures and Edited Data -- ELD must have the capability to monitor it compliance (engine connectivity, timing, positioning, etc.) for detectable malfunctions and data inconsistencies. ELD must record these occurrences.

### **Further Information**

For the complete FMCSA rulemaking please visit -- <https://www.gpo.gov/fdsys/pkg/FR-2015-12-16/pdf/2015-31336.pdf>