

**Federal Mandate: Electronic Logging Devices to Replace  
Paper Logs by December 18, 2017**

By: Scott E. Smith, Esq.

On December 10, 2015, the U.S. Department of Transportation's Federal Motor Carrier Administration (FMSCA) announced the adoption of a Final Rule requiring electronic logging devices (ELDs) to replace paper logs which are required to show compliance with hours-of-service (HOS) regulations designed to prevent driver fatigue. An ELD automatically records driving time; it monitors engine hours, vehicle movement, miles driven, and location information. The new rule, referred to as the ELD mandate will take effect on December 18, 2017, giving carriers and drivers a two year window to comply with the rule's requirements. Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78292 (December 16, 2015) (to be codified at 49 C.F.R. pts 385, 386, 390 and 395). It applies to all drivers required to keep records of duty status except drivers who (1) keep records of duty status in 8 or fewer days out of every 30 working days; (2) drivers in drive-away and tow-away operations; and (3) truckers operating vehicles older than model year 2000. Federal Motor Carrier Safety Administration 49 C.F.R. Parts 385, 386, 390 and 395.

Key elements of the new regulations include:

1. Strictly prohibiting commercial driver harassment. 49 C.F.R. Part 390. The new rule attempts to address harassment prohibition measures such as interrupting drivers during their off-duty hours or with information gleaned from an ELD. In November the FMSCA published a separate rule to institute stiff penalties against carriers, shippers and brokers who coerce drivers to violate federal safety regulations.
2. Setting technology specifications detailing performance and design requirements for ELDs. 49 C.F.R. Part 395.
3. Establishing new hours-of-service supporting document requirements (e.g. shipping documents, fuel purchase receipts) intended to reduce paperwork. 49 C.F.R. Part 395

According to the FMSCA, the Final Rule will result in an annual net benefit of more than \$1 billion by reducing the amount of required industry paperwork; it will increase the efficiency of roadside law enforcement personnel; and it is estimated to save 26 lives and prevent 562 injuries resulting from crashes involving large commercial motor vehicles.

The day after the Final Rule was released, the Owner-Operator Independent Drivers Association (OOIDA) filed a petition with the 7<sup>th</sup> Circuit Court of Appeals asking it to review

the mandate. OOIDA President and CEO Jim Johnston said the group (founded in 1973, and headquartered in Kansas City, Missouri, with more than 150,000 members nationwide) intends to, “fight with everything we have available.” He continued, “this regulation is absolutely the most outrageous intrusion into the rights of professional truckers imaginable and will do nothing at all to improve highway safety. In fact, we firmly believe it will do exactly the opposite by placing even more pressure and stress on drivers than they already deal with.”

The OOIDA has long been opposed to ELD mandates, based on its position that research fails to prove that ELDs improve highway safety or hours-of-service compliance over paper logs. The devices cannot distinguish between off-duty and on-duty driving activities, thereby rendering them useless in determining actual compliance with the regulations. ELDs can be beneficial for corporate fleets, which, according to Scott Greneth, OOIDA director of regulatory affairs, operate within a business model that, “includes strict monitoring of the drivers, who have minimal training.”

The OOIDA successfully challenged FMSCA’s previous attempt to mandate electronic logging, in 2012. OOIDA claimed, and the courts agreed that the 2012 rule had not gone far enough to prevent driver harassment via ELDs. The new rule includes a protocol for drivers to file complaints against carriers for harassment. 49 C.F.R. Part 390. And the FMSCA, in publishing a companion rule in November has tried to stretch the protections against driver harassment beyond the driver-employer relationship, to include shipper or third-party intermediaries, such as a freight broker, so that a shipper who gives a carrier a load knowing that a driver cannot deliver it legally within the specified time window could be penalized.

But these attempted safeguards are not enough for the OOIDA. Independent drivers are concerned that mandating breaks without flexibility can force drivers to get on the road and begin a shift during peak traffic times or in dangerous weather conditions, or when they may be tired or stressed. ELDs are problematic because they can start the clock on a driver’s shift at every engine start or move, even when the driver isn’t actually working. A rigid shift structure does not account for natural sleep patterns, and can force a driver to stop even if there is no safe place to park.

As one independent driver put it:

I became a trucker for the freedom, self-reliance, and common sense the career both required and provided. I’ve been a trucker for over 22 years. The [largest fleets] and the ATA [American Trucking Association] have driven the narrative on this topic. Whenever I hear someone saying how much they like and prefer the ELD, I always ask if they have ever run under paper logs. The answer 99 percent of the time is no. How can they make an honest comparison if they don’t realize just what they are giving up? The

sad and simple truth is the hours of service rules do *not* fit the economic reality of the very diverse trucking industry. I ran three months under e-logs and hated it. They remove basic human dignity by allowing us to be tracked every second of every minute, but they are reinforcing the continued dumbing down of the industry. I've seen a lot of change in this industry (and nation), and it is not good. Most new drivers cannot trip plan to save their butts. They don't have a basic grasp of math, which is required to not only fill out paper logs but to legally master them and "get the job done" safely. E-logs push people to drive very differently than they do on paper logs, and unfortunately not for the better.

John Larkin, head of Stifel Transportation Research recognizes the tension between corporate fleets and independent drivers:

Part of the problem is that we have a mentality out there that if we're going to be cost competitive we have to micromanage the driver. We want he or she to be in the right hand lane doing 62 miles an hour in a speed-governed truck while we're monitoring his or her fuel efficiency. We're making sure they stay on the prescribed route and we're making sure that they take a rest at the prescribed rest area. We are making sure they take on fuel only at the prescribed fueling point and in the gallons that has been predetermined. We're watching them on the satellite. We've got a camera inside the cab of the truck that will take a movie of you if there's any kind of acceleration, deceleration, swerve to the left or swerve to the right. This is not the kind of job that the swashbuckling truck drivers of years gone past would have any interest in and that's part of what makes it so difficult.

Karen Levy, a post-doctoral fellow at New York University's Information Law Institute who has extensively studied electronic monitoring of drivers, thinks the devices won't solve the fundamental problems that make life difficult for professional truck drivers. ELDs crack down on drivers while missing what really drives fatigue and unsafe behavior: the difficulty of finding safe parking spaces and the financial incentives to spend as much time on the road as possible.

"It's basically a similar dynamic to what's occurring throughout all kinds of low-wage labor contexts," Levy says. "Tech enables much more granular and real-time supervision in the name of productivity, which makes these jobs less livable for workers."