

WHITE PAPER: SPIREON - POST ELD INSPECTIONS

Successfully Navigating Roadside Inspections Post ELD

EXECUTIVE SUMMARY

The ELD mandate, which went into full effect April 1, 2018, requires most commercial motor vehicle drivers to electronically log their hours of service.

Since then, officers have been cracking down on ELD compliance.

As of May 25, 2018, inspectors across the nation slapped drivers with 21,219 violations for not having either electronic or paper record of duty status logs when requested, according to data from the Federal Motor Carrier Safety Administration (FMCSA).

The ELD mandate was introduced to make tracking hours of service more accurate and streamlined, but it's been a bumpy experience for drivers, carriers, and officers alike.

While keeping up with all these technological and legal changes is dizzying, it's important drivers feel confident about handling roadside inspections, because the price for not preparing is steep.

Drivers who have failed to properly demonstrate their compliance with the ELD mandate have received fines, out-of-service (OOS) violations, and damage to their Compliance, Safety, Accountability (CSA) scores.

David Osiecki, president of Scopelitis Transportation Consulting, spent 20 years working at the American Trucking Association representing the industry before state legislatures, federal agencies, and the U.S. congress. Using law enforcement data, he educates carriers to prepare for roadside inspections to speed up the inspection process and make it as smooth as possible for drivers.

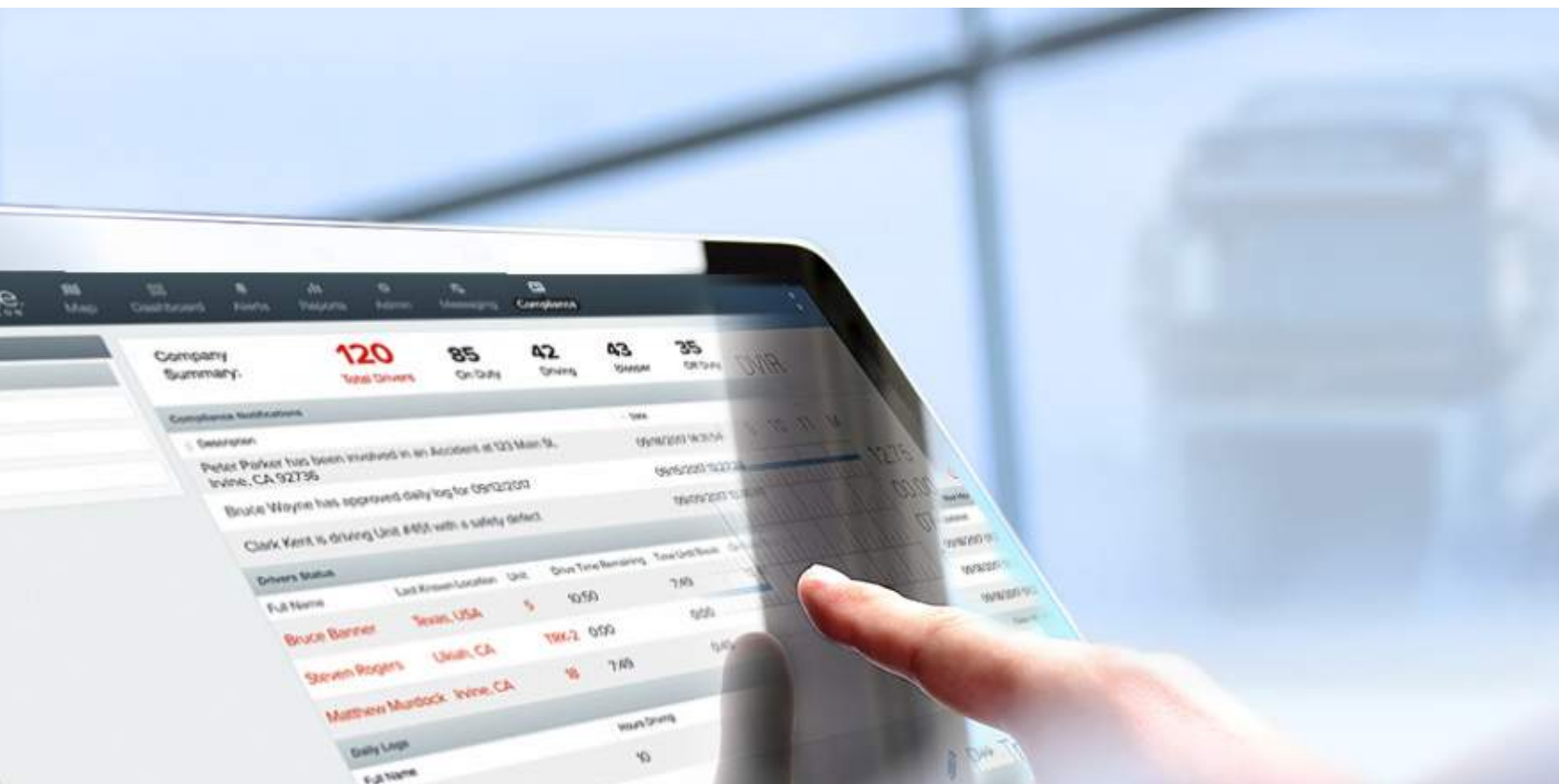
This report was designed to help you successfully navigate roadside inspections. It covers how the inspection process works, what officers look for, how carriers should prepare their drivers, and other tips that can help you avoid fines, higher CSA scores, and OOS violations.

TERMS TO KNOW

This is unfamiliar territory for everyone in the transportation industry. Many drivers don't know the difference between devices, let alone the specific one in their own vehicle. Drivers and companies are also having a hard time keeping up with the constant regulations coming out of the FMCSA.

These are the key terms carriers and their teams must learn.

- **ELD:** As defined in 49 CFR 395.2, electronic logging device (ELD) is a device or technology that automatically records a driver's driving time and facilitates the accurate recording of the driver's hours of service (HOS).
- **AOBRD:** Carriers with automatic on-board recording devices (AOBRDs) installed prior to Dec. 18, 2017, can take advantage of the grandfathered AOBRDs clause. WARNING: Starting Dec. 16, 2019, these devices will no longer be acceptable.
- **RODS:** The driver's record of duty status (RODS), also referred to as the driver log, is the document the driver uses to record his or her on-duty and off-duty time.
- **Roadside Inspections:** Certified inspectors carry out these examinations of commercial motor vehicles and/or drivers to ensure compliance with regulations. They may be conducted at weigh stations, border checkpoints, or if a vehicle is pulled over by a law enforcement official.
- **CSA:** Compliance, Safety, Accountability (CSA) is the FMCSA program to monitor and enforce safety compliance.
- **SMS:** The Safety Measurement System (SMS) is the methodology used by the FMCSA to assess a carrier's safety compliance and on-road performance. A company's safety data appears online in its SMS database. The FMCSA updates the SMS once a month with data from roadside inspections, including driver and vehicle violations, crash reports, and investigation results. It uses this data to assign CSA scores and prioritize carriers for investigations.
- **CSA-SMS Score:** The CSA-SMS score is used by the FMCSA to identify unsafe motor carriers and prioritize enforcement based on carriers that pose the greatest safety risk. A carrier's score is based on data from seven categories: Unsafe Driving, Crash Indicator, Hours-of-Service Compliance, Vehicle Maintenance, Controlled Substances/Alcohol, Hazardous Materials Compliance (HM), and Driver Fitness. The SMS assigns a percentile from 0 to 100 (the higher the percentile, the worse the performance).
- **HOS:** Hours of Service (HOS) regulations are implemented by the FMCSA to limit the working hours of anyone operating a commercial motor vehicle. These rules were designed to eliminate drowsiness in commercial motor vehicle (CMV) drivers that can lead to crashes.



- **OOS Violation:** An out-of-service (OOS) violation removes the driver and vehicle from the road and prohibits them from returning until the violation or the malfunction is corrected or fixed. Inspectors may assign OOS violations if the CMV is not equipped with an ELD or if a driver fails to transfer his/her required hours of service data to law enforcement officials.

HOW THE INSPECTION PROCESS WORKS

After the April 1 deadline went into effect, officers began earnestly conducting traffic stops to ensure compliance with the ELD mandate.

During these traffic stops, drivers are required to demonstrate compliance by presenting certain documents, sharing HOS data, and verifying their HOS information.

The first thing a motor carrier inspector does is ask drivers if they know what kind of device they're using. Typically, the drivers themselves don't know, which slows down the inspection process as both parties spend time trying to figure it out before they can move on.

If the driver doesn't know, the officer will ask for the instruction manual because it will indicate the device model. The ELD mandate requires drivers keep an instruction manual in the CMV at all times for reasons such as this.

After identifying the device, officers will ask for the driver's HOS records. The officer can request records to be transferred wirelessly or sent by email. Officers don't always have a clear understanding of how they're receiving the information, so the verbiage can switch up. Therefore, it's important that drivers have a clear understanding of their device's transfer capabilities.

ELDs are required to transfer driver logs, wirelessly, by email, or locally. The local method — either by USB drive or Bluetooth — is sometimes problematic. Many agencies across the country do not transfer locally because they don't want to risk a virus.

If there are connectivity issues, officers may ask drivers to present their ELD screen.

If there are no connectivity issues, drivers are responsible for initiating an e-RODS file transfer. Inspectors use e-RODS software to analyze duty status files generated by the ELD.

To transfer the requested data, drivers input the officer's "output comment" code. This is an officer-specific alphanumeric code. Output comments usually start with two alphabetic characters representing the state (e.g., TX for Texas) followed by a four- or five-digit number.

When everything works, logs go directly to the FMCSA's servers. The officer then logs into the FMCSA's e-RODS program to check for any HOS violations.

Driver's are also required to input certain information into the device, such as trailer identification

numbers, daily trip information, annotation requests, and to sign-off for verification.

PREPARING FOR ELD INSPECTIONS

The saying goes, “failure to prepare is preparing to fail.” Roadside inspections are no exception.

During FMCSA’s HOS-focused roadside inspection blitz, officers handed out violations for the smallest missteps.

Knowing this, many drivers take time off the week of the blitz. However, since inspections take place year-round and without warning, hiding out isn’t a long-term solution.

When adequately trained, drivers become comfortable with their devices and do not fear inspections. Preparation expedites the inspection process and gets drivers back on the road quicker — rather than placed out of service.

UNDERSTANDING WHAT DEVICE DRIVERS ARE USING

The biggest secret to nailing a roadside inspection is training drivers to understand the device they are using. While this may seem obvious, this is one of the most common issues that keeps coming up, according to feedback Osiecki has heard from inspectors in the field.

There are hundreds of different device manufacturers and various types of technology, but Osiecki says the most fundamental thing drivers need to know is whether they have an ELD or AOBRD.

The ELD mandate includes a grandfather clause that allows early adopters of older electronic logging systems, AOBRDs, to continue using them in lieu of ELDs until Dec. 16, 2019. Drivers using an AOBRD should know they are taking advantage of a grandfathered provision in the ELD rule.

There’s also a third category: an ELD-capable device with AOBRD software. A recent guidance document from the FMCSA allows for ELD-capable devices (a device that meets the hardware specifications of an ELD but is running the older AOBRD software). The FMCSA added this provision to help companies taking advantage of the grandfather clause. It allows carriers to continue to adopt AOBRDs and outfit their new trucks with ELDs without having a mixed fleet in which drivers must juggle trucks that have different devices and different software.

When the inspector gets to the HOS and compliance portion of the inspection, the first question he or she will ask is “Are you using an ELD?”, but many drivers don’t know if it’s truly an ELD or an older AOBRD.

Sometimes there are no distinguishing differences in the appearance of these devices, but there are a different set of rules for each, so it’s important that drivers can identify which device they’re using.

If a driver mistakenly answers yes, it will lead the inspector down a series of ELD-focused questions. If it's not an ELD, those questions will lead down the wrong path. This misinformation can result in violations from an unforgiving inspector.

In order to avoid mix-ups, companies must train drivers to understand the differences between devices and clearly explain which is in the cab.

The instruction manual, which is legally required to be in the CMV at all times (discussed later), will most likely explain what device it is.

Tips for Carriers Still Using AOBRDs

If your fleet adopted AOBRDs prior to Dec. 18, 2017, you're still in compliance before Dec. 16, 2019. After that date, however, all fleets are required to be fully ELD-compliant.

If you're running an AOBRD, your drivers need to be able to prove you're taking advantage of the grandfather clause. But how do you prove it?

Print a driver's log for every truck you operate that was outfitted with an AOBRD prior to the Dec. 18 deadline. Put those logs in a file titled "AOBRD evidence."

Give your drivers a copy of this folder to keep in the truck at all times and coach them to communicate this information when asked.

Drivers should say something along the lines of: "I don't have an ELD; I have an AOBRD because my company installed and used them before December 2017. Here is my proof."

KNOW HOW TO USE THE DEVICE

It's helpful if drivers can identify the device they're using, but all training efforts are rendered useless if they don't know how to actually use it. Again, this may sound obvious, but it cannot be overlooked when drivers and/or officers are not tech-savvy. Officers rely on, and expect, drivers to operate the ELD and transfer HOS information.

Osiecki says drivers need to know the various functions and screens, and how to toggle between them. Most importantly, they must be able to transfer their logs to an inspector, discern if there's no internet connectivity, and communicate that issue to the inspector. Even if there's no connectivity, drivers are still required to transfer their data to the inspector. If necessary, this can be done by showing the officer their ELD display or transferring data locally to the officer's computer by USB or Bluetooth connection. However, most law enforcement agencies have opted out of the local transfer option to avoid the risk of downloading a virus.

Osiecki says if drivers need to show their display, they must be able to uncradle the screen from the mount. Regulations require that all ELDs be removable from their mount to be handed out of the window at a reasonable distance.

Not all mounts are made equally. Some are difficult to maneuver. Drivers should practice uncradling their devices to ensure they won't have difficulty doing so during inspection. If they experience problems, they should communicate to their carrier that an easier-to-use solution is needed.

AOBRDs don't have the same electronic transfer capabilities as an ELD, which drivers should know. Some AOBRDs have email capabilities, others rely on fax, and others only display data on screen, highlighting the differences between technologies and why drivers need to understand how to operate them.

Training drivers to use their devices is critical. If they don't know how to operate their ELD and provide HOS records, fines will follow (along with getting placed out of service).

Most ELD manufacturers provide training materials — some even offer one-on-one sessions. Telematics companies include a support system along with their ELD that allows office administrators access from a driver's home terminal. If everything goes wrong when the driver tries to present data locally, carriers should still be able to provide officials with HOS records.

INFORMATION PACKETS ARE REQUIRED

According to the FMCSA, drivers using an ELD are required to carry four items: 1) an ELD user manual, 2) instructions on how to transfer data, 3) instructions for reporting malfunctions and recordkeeping during malfunctions, and 4) a supply of at least eight days of blank paper logs.

During inspection, drivers will be asked to produce the instruction manual for their device for ELD or AOBRD verification.

Missing just this one document could result in three violations: 1) not having the user manual, 2) not having transfer instructions, and 3) not having malfunction instructions.

“WHEN YOU LOOK AT FEDERAL AND STATE DATA FROM ROADSIDE INSPECTIONS, WE ARE STARTING TO SEE THOUSANDS OF USER-MANUAL VIOLATIONS, THOUSANDS OF VIOLATIONS FOR FAILING TO HAVE AN INSTRUCTION SHEET, THOUSANDS OF VIOLATIONS FOR NOT HAVE AN INSTRUCTION SHEET WHEN THE DEVICE MALFUNCTIONS, AND THOUSANDS OF VIOLATIONS FOR DRIVERS NOT HAVING BLANK PAPER LOGS,” WARNS OSIECKI.

For carriers using AOBRDs, data storage instructions, retrieval instructions, and paper logs are required.

Carriers need to ensure they're supplying the correct instruction manuals for the correct trucks.

They should not be carrying both AOB RD and ELD instructions in the same truck. Fleets using AOB RDs should only have AOB RD manuals and ELD users should only carry ELD instructions. When a fleet finally migrates from AOB RD to ELD, it should immediately get rid of all AOB RD documentation in its cabs.

Osiecki says these instruction packets don't necessarily have to be hard copies. They can be electronic and stored within the ELD or on a computer or tablet. Whatever the method, the most important thing is that the driver knows how to access it.

HOS RULES AND THE LATEST GUIDANCE

ELDs were introduced to ensure compliance with HOS rules, so knowing the different HOS rules is integral to ELD compliance.

Most drivers are familiar with the 11-hour rule, the 14-hour rule, and the 70-hours/eight-days rule, but Osiecki asks, "Is everyone confident that drivers understand the 30-minute rest break rule and the intervals at which it has to occur?"

Drivers need to understand that if they take a 30-minute break early in their shift, they may have to take a second one if their driving shift exceeds eight hours.

And what about the restart rule?

Drivers are not allowed to drive after 60/70 hours on duty in seven/eight days. The restart rule states that after a driver has at least 34 consecutive hours off duty, the driver can essentially restart the clock and begin recounting to the maximum 60 or 70 hours.

If using the restart provision, drivers need to know exactly how it works and how much time they have available after a restart.

On-Duty Time

Another "gotcha" for inspectors occurs when drivers fail to log all of their on-duty time.

Carriers should take time to review the definition of on-duty time in section 395.2 with drivers — especially the last two sticking points, which get most carriers in trouble.

The second-to-last point states: "Any other time spent working for the motor carrier." If your driver is working on your trucks as a mechanic or working on the docks, all these hours need to be recorded through the ELD in addition to on-duty time.

The last point states: "Time spent working for someone other than a motor carrier." If a driver has a part-time job somewhere else, his or her hours there also need to be logged through the ELD.

If vehicles are used for personal purposes, recent guidance regarding the Personal Conveyance rule may affect them as well. Drivers need to understand what the guidance does and does not allow (more on the Personal Conveyance rule later).

PROVIDING OTHER HOS SUPPORTING DOCUMENTS UPON REQUEST

Inspectors can collect supporting documents to verify the accuracy of driver RODs and HOS rules compliance. Per the FMCSA guidelines, motor carriers must retain a maximum of eight supporting documents for every 24-hour period a driver is on duty. Motor carriers must also retain RODs and supporting documents for six months as well as a backup copy of the data on a separate device.

These supporting documents are pieces of HOS evidence that drivers accumulate during the course of their trip. They include:

- Bills of lading, itineraries, schedules, or similar documents that indicate the origin and destination of each trip
- Dispatch records, trip records, or equivalent documents
- Expense receipts related to any on-duty not-driving time, such as fuel and hotel receipts
- Electronic mobile communication records transmitted through a fleet management system
- Payroll records, settlement sheets, or other documents that indicate what/how a driver was paid

A newer regulation under the ELD mandate requires drivers to show these supporting documents if an inspector requests them. Prior to 2017, no such regulation existed. In the past, the drivers were only asked to provide bills of lading through the ELD. But now, beyond bills of lading, drivers must keep track of day-to-day items like expense receipts for tolls, fueling, and hotels. If a driver has these items, it is now a federal requirement to produce them for the inspector. If none are provided but the inspector finds they were in the driver's possession, the inspector will assign the highest severity point rating in the CSA system.

This rule also applies to drivers using grandfathered AOBRDs.

It's critical for drivers and companies to know about this new requirement and the documents they'll be asked to provide. Drivers must be diligent record-keepers that have access to the organizational tools they need to succeed. Carriers should provide an accordion folder or other type of organizer for record storage.

IF DRIVERS ARE EXEMPT, THEY SHOULD KNOW WHY

There are a series of exceptions in the ELD and HOS rules that exempt a driver from using an ELD in certain portions of a trip or altogether. If claiming an exemption, companies and drivers need to understand it and its limitations. For example, many drivers operate under the short-haul exemption, yet sometimes they go beyond the 150-mile radius, in which case, they must know when and why they're no longer exempt. If a driver tells an inspector he or she is taking advantage of an exemption, the inspector likely will ask questions to see if the boundaries of that exemption have been exceeded.

Drivers not only need to communicate why they have an exemption, but also keep a copy of the exemption in the vehicle at all times. Though not required, this procedure should be implemented in case a driver cannot provide proof of exemption.

Even if a carrier's drivers are exempt, outfitting a fleet with ELDs is not a bad idea. Just in case drivers go beyond the boundaries of their exemption and need to start electronically logging their hours, an ELD system that shows driver exempt status is useful.

For a full explanation of the different types of exemptions, see page 20.

Insider Secret: Use the CVSA Bulletin to Train Drivers

The Commercial Vehicle Safety Alliance (CVSA), an organization of law enforcement representatives across North America, recently created an inspection bulletin that outlines officer responsibilities during HOS inspections when drivers are using an ELD.

This eight-page training manual teaches officers how to conduct the ELD portion of an inspection. It also outlines driver responsibilities in transferring data from an ELD to an officer's computer. Page 4 of the document is particularly significant because it lists the exact items officers check when conducting roadside inspections.

Law enforcement agencies across the country use these guidelines to train their officers. If you want to peek inside the other team's playbook and "game plan" your drivers, the document is available [here](#).

WHEN THINGS GO WRONG, DRIVER LETTERS HELP

Inspections are stressful, and because this is all new, even the trained drivers sometimes need a little help during the ELD portion of the process.

Osiecki says carrier-provided letters are a good training supplement that can even serve as a fail-safe in the event things don't go according to plan.

"The concept is to provide your drivers with — I call it a letter, it could be a memo, it could be just a document," Osiecki explains.

The driver letter provides information including:

- The device they are using, whether it's an ELD or an AOB RD
- Driver exemption status, partial or complete, and why
- Who to contact at the carrier if the inspector has any questions

If things start going south, drivers can turn to this document to communicate essential information to the inspector. This kind of information packet isn't required or even suggested in ELD rules, but it's a fallback for carriers that have had drivers who struggle through inspections.

If utilized, store driver letters on a tablet or in an organizer in the glovebox — anywhere the driver can access it.

Osiecki believes in driver letters because “they go beyond the required instruction sheet, beyond the required logs, and demonstrate that the carrier knows the rules and wants to help both the inspector and the driver during the inspection. That generates goodwill.”

BEST PRACTICES FOR INTERACTING WITH INSPECTORS

The inspector, like the driver, wants the inspection to be quick and uneventful. Drivers should remain polite and keep their cool during these high-stress situations.

This is stressful for the inspector too. Because of their dangerous line of work, inspectors are trained to expect the worst. Drivers should stay in their truck when they get pulled over and keep their hands on the steering wheel where they can clearly be seen as the inspector approaches.

Patience is a virtue, especially during the inspection process. When a driver pulls into an inspection or is pulled over on the side of the road, the inspection doesn't always start immediately. There are times when it may take a couple of minutes, or even longer.

Osiecki says drivers should have their paperwork organized to expedite the inspection. This includes registration, insurance, medical cards, and other documents accumulated during the trip. They should present the latest documents on top and keep them neatly organized, not just thrown into a folder or the glovebox.

Once an inspection begins, drivers should be professional, respectful, and try to answer all questions as succinctly as possible.

If potential violations are discovered, drivers should remain calm and consider asking respectful questions to understand how to correct the violations to avoid future infractions.

Osiecki says this is another way to establish goodwill and demonstrate a driver's genuine interest in compliance, which goes a long way with inspectors.



DEVICE REQUIREMENTS

Beyond requiring drivers to electronically log their hours, the ELD mandate also sets rules for the devices themselves.

Though not a full list, this represents a bare minimum of device requirements:

- Allow driver to obtain a copy of ELD records on demand
- Transfer HOS information, either via telematics (web service or email) or locally (USB or Bluetooth)
- Display RODS for the last seven days, plus the current day
- “Integral synchronization” with the engine control module to automatically record engine power status, vehicle motion status, and other data
- Automatic recording of all drive time at intervals of 60 minutes and with one-mile radius accuracy
- Display log details or annotations and prompt driver to review unidentified driving time where applicable
- Display all required standardized data that includes three elements: a daily header, a graph grid showing driving duty status changes, and detailed daily log data
- Tamper prevention that does not allow anyone to alter or erase information originally collected for driver ELD records
- Registered with the FMCSA

There also are rules regarding ELD placement. Per section 395.22G, the device is required to be in a fixed location when the CMV is in operation. This means the device must be fixed in some sort of bracket or mount, not sitting in the passenger side seat or leaning up against the dash.

If there is an internet connectivity issue or the device doesn't have the ability to produce a printout, the driver must use the display to show his or her HOS log. Since ELDs are required to be in a fixed position, drivers must have the knowledge and the ability to get the device out of the bracket or mount to be handed to the officer.

While not part of the ELD mandate, it's worthwhile to note the prohibition of items attached to a windshield that obstruct driver view. Carriers and drivers want to avoid mounting their ELD devices within the sweep of the wipers on the windshield.

If being mounted on the windshield, devices must sit no more than 6 inches from the windshield edge. Best practice is to keep the device as low as possible and in the left corner or right corner, so that it rests on the dash and out of the sweep of the wipers.

These may seem like nitpicks, but an ELD mounted smack dab in the middle of a windshield is a violation that's easy for officers to spot, whether at the scales or on the road. The last thing anyone wants is to give them a reason to pull a driver over, so it's best to set the device low and to the side.

DRIVER RESPONSIBILITIES

Know Your Device

Currently there are more than 364 devices on the market, created by 200 unique manufacturers each outfitted with different technology, screens, and functions. Officers see tens, sometimes hundreds, of different devices in a day. Even the most tech-adept inspector won't know how to operate them all.

Because a driver only has to deal with one ELD, officers expect them to know how to operate their device and get their previous seven days of data without a hitch. If the driver doesn't know how to navigate the device and fails to provide HOS information, they will be placed out of service for a no-record-of-duty-status violation. It's important for drivers to take some time to familiarize themselves with their device and understand how to successfully transfer information both when there's connectivity and when there isn't.

Upload Important Information

Drivers are required to input certain information into the device, such as their personal, truck, and trailer ID numbers, CMV power unit number, daily trip information, and shipping document numbers, if applicable. If a driver fails to do this, it will go down as a form-and-manner violation. Some ELD products don't automatically prompt drivers to insert this information, which could set them up for failure. Carriers should choose an ELD solution that reports only HOS data and requires drivers to upload required trip information.

Drivers must respond to any annotation requests. For instance, when driving through a crowded city area with tall buildings, the GPS might not be able to determine vehicle location, so it will prompt the driver to confirm location. If asked for location confirmation or any other sort of information, the driver is legally required to respond.

Report Malfunctions

In the case of an ELD malfunction, drivers must notify the motor carrier within 24 hours via email or text. The telematics provider should have a system in place that alerts the carrier immediately when its device is malfunctioning. Unless records are retrievable from the ELD, the driver will need to reconstruct HOS for the current day and the previous seven days using paper logs. He or she must continue to recreate their hours of service until the device is working again.

Drivers are required to keep a supply of blank log pages that will sufficiently cover recreation of their current eight-day period. Eight to 10 log pages should be kept in the cab just in case of device malfunction and records need to be transferred over to paper.

Reviewing Unassigned Driving Time

Drivers are responsible for faithfully reporting ALL of their driving time, and there's no way around it. ELDs automatically create logs each time the vehicle moves, even if a driver isn't signed in. When someone drives a vehicle without logging into the ELD, unassigned driving time warnings will appear. According to the FMCSA, a driver must review any unassigned driving time when he or she logs into the ELD. If the unassigned driving time belongs to the driver, he or she must claim and add it to his or her record. If it doesn't belong to the driver, the driver must indicate it in the record.

Unassigned driving time is a big red flag for inspectors. They might see it as a lack of effort or an attempt to sneak in additional hours. Failure to claim unassigned driving time might result in violations for not recording RODS properly or attempting to create a fraudulent report.

Unassigned driving time doesn't have to be the result of someone trying to game the system. It could simply be that drivers were in a yard move that was mistakenly recorded in the log as drive time. In this case, the log may be edited and unassigned from the driver. This is only allowed if the driver provides a short explanation indicating why the log was unassigned. It's important for drivers to annotate all unassigned driving time. It not only provides helpful information to the inspector, but also prevents unwarranted violations.

Whether drivers need to correct their records or not, they're required to sign-off on its accuracy before final submission to authorities or their employer.

Driver Rights

The ELD mandate prohibits harassment of drivers based on ELD data or any other connected technology (such as their fleet management system). The FMCSA also provides recourse for drivers who believe they have been harassed.

FMCSA defines harassment as 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 HOS rules. HOS rules were put in place to prohibit carriers from forcing drivers to drive when they're ill, fatigued, or experiencing any other conditions that could compromise their safety and motoring public.

If a driver feels he or she was harassed or coerced to violate the HOS rules, he or she can file a complaint with the FMCSA.

ELDs also have features that protect drivers from harassment, including a mute function that ensures no interruption to a driver's sleeper berth. ELDs also limit the edits a carrier can make and prohibit changes to the original electronic log. As a result, if a carrier were to attempt to force a driver to violate the HOS rules, it would leave an electronic trail leading to the original and revised records.

The driver certification requirement is also intended, in part, to protect drivers from overriding, unilateral changes — a factor that drivers have identified as a contributing factor to harassment.

COMPANY RESPONSIBILITIES

Training

Carriers that rushed to adopt ELDs at the last hour before the Dec. 18 deadline, often didn't leave time to properly train drivers on device usage. They were also ill-equipped to integrate ELD support systems into their back offices.

It's the carrier's ultimate responsibility for all issues regarding driver HOS and ELD compliance.

Carriers should establish a work culture that prioritizes driver safety and ELD compliance from the top down. Drivers, office administrators, compliance managers, and all other employees whose job involve using ELDs should be included in training.

Time should be set aside for company-wide ELD training sessions, for both drivers and office admin. Initial orientation, periodic refreshers, and "spot training" to correct common user mistakes should be included.

A document should be created to provide guidance on proper record editing, consistent annotations, supporting document submission and retention, and process reporting on ELD malfunctions and other technical issues.

Carriers should regularly keep up with the latest FMCSA rules and guidances, and keep their drivers educated. The CVSA inspection bulletin mentioned earlier is an excellent reference to run through practice inspections. Incentives can also be offered to drivers who receive positive reports from inspectors.

Setting Up Accounts

Carriers need to set up DOT accounts and do so properly.

Some issues that crop up during roadside inspections are neither the driver's fault or the officer's fault but rather a carrier issue in which information wasn't entered correctly. The most crucial information includes state information, driver's license number, CDL number and issuing state, and DOT number.

If accounts and devices are not set up properly, an error will occur and data transfer won't go through. ELDs should include a function that tests whether accounts are set up correctly.

If a driver has job responsibilities other than driving, such as administrative functions where he or she creates, removes, and manages user accounts, the carrier will need to set up a separate ELD user account for those functions. The driver will have two accounts: one for when he or she is driving the truck and a second for his or her administrative duties.

Indicating Special Driving Categories

Companies can configure their ELDs to apply special driving categories to drivers, such as personal conveyance and yard moves.

For carriers that allow drivers to use vehicles for personal conveyance, ELDs can allow drivers to edit their records and add log details to explain why specific time shouldn't be counted against their HOS.

There is no specific guidance regarding yard moves, but if a vehicle stays under 20 miles an hour within a certain area, geofences can be used in the ELD that differentiate drivers in yard moves rather than on-duty driving.

Ensuring Accurate Information

An ELD automatically creates a driving log any time a vehicle is in motion, regardless whether a driver is logged in or not. Anytime a driver isn't logged in but he or she drives, it will show up in the records as unassigned driving time.

Carriers must claim all unassigned driving time logs.

When a motor carrier discovers unassigned driving time, they must either explain why the time is unassigned or assign it to the correct driver.

Drivers are required to review and respond to all unassigned driving time when they first log into their ELD. If a driver cannot determine who to assign driving time to, the carrier can assign it.

Carriers are required to include a short explanation as to why the log was assigned to the driver. Once the edit is made, the driver must certify the accuracy of the carrier change and resubmit the record.

If a driver refuses or fails to certify an edit, the carrier's edit remains part of the record.

Inspectors know drivers and carriers can attempt to falsify logs through these edits. For this reason, it's important that carriers always include annotations after making edits and monitor their logs on a daily basis.

Establishing Malfunction Procedures

In the event of device malfunction, the carrier should be notified by either the driver or an ELD alert. The carrier then needs to instruct the driver to switch to paper logs until the device is repaired or replaced. The carrier has eight days to get the device operational again. If it's not a quick fix, the carrier needs to contact its home-state FMSCA to request an extension, otherwise it'll be required to stop operating the vehicle.

If granted an extension, a copy of the extension should be sent to the driver so he or she can show officers upon request.

Purchasing Verified ELDs and Avoiding Non-Verified ELDs

As carriers scrambled to make their fleet ELD-compliant before the Dec. 18 deadline, vendors started pouring into the market to take advantage of the gold rush.

The problem was, many of these devices didn't meet ELD regulations — some were even advertised as ELDs but were in fact AOBRDs.

Between Jan. 1 and April 1, carriers received 34,000 violations for using ELDs not registered on the FMCSA list of verified ELDs.

If carriers are not using an authorized device or if the device they're using ends up on the revoked list, it will be recorded as a no-log violation, which will result in OOS hours.

These flash-in-the-pan devices have been costly for fleet owners. Fleets that purchased unreliable technology are now coping with fines and starting the shopping process all over again.

Part of the reason sketchy ELDs flooded the market is because the FMCSA allows ELD makers to "self-certify" their own devices without requiring any kind of third-party or government review.

The FMCSA says it has a process in place to remove vendors it suspects shouldn't be on the list, but it has yet to remove any.

Since the FMCSA doesn't exercise much regulatory authority over ELD makers, it's up to carriers to sniff out the bad ELD manufacturers.

There are several considerations carriers should keep in mind when shopping for an ELD or trying to replace a non-compliant device.



Not All ELDs Are Created Equally

1) Check the FMSCA Revoked List. Even though not all devices listed are 100 percent ELD-compliant, company officials should still periodically take a look at the revoked list of ELDs on the FMCSA website to make sure their device isn't included.

2) Universal Solutions For Any Type of Vehicle. In any fleet, there could be many types of vehicles: light-duty, van, box truck, bucket truck, tractor truck, etc. It may even include trailers, equipment, or vehicles with no regulatory requirement to track. It is important that the solution you choose can be used for every vehicle and asset in your fleet. Finding a universal solution saves your team from having to learn multiple systems. Also, having one solution for all vehicles reduces the overall complexity of the entire process.

3) Easy and Quick Installation. The speed of installation can affect the overall rollout of your ELD program. Complicated installation is time-consuming, costly to your budget, and delays compliance. Be sure to ask how quick the installation will be and all the costs involved.

4) Ease of Use. Drivers need a solution that makes it easy to update their status, complete vehicle inspections, and swiftly provide a compliance report during roadside inspections. Office administrators need robust data collection and reporting so they can easily monitor HOS compliance and violations. A confusing user interface or complicated workflow may impede a driver's ability to transfer critical HOS information during roadside inspections.

5) Smartphone Compatible. Compatibility with a smartphone, tablet, or rugged handheld helps reduce upfront costs by eliminating the need to buy and install a dash-mounted single-purpose onboard computer. Additionally, this makes it easier for drivers who are already comfortable using mobile devices.

6) Consistently Updated With Changing Regulations. As regulations change and new regulations are released, your ELD provider needs to be adaptable to ensure your future compliance. If the government releases something new tomorrow, your provider should be on top of it.

7) Cloud-Based. An ELD solution that leverages cloud architecture is more reliable and robust. Regardless if something happens to your smartphone or tablet during an inspection, a cloud-based solution allows your office administrators to access and transfer driver HOS information to officials.

8) Pre- and Post-Trip Inspections. Regulations specify that a post-trip inspection must be completed after each trip, but many companies would also like their drivers to complete a pre-trip inspection. Look for an ELD solution that tags inspections as pre or post, and sends alerts for inspections not completed.

9) Vendor Experience and Reputation. Vendor experience and reputation in the industry is evidence of reliability. Find out who its top clients are and how long they have been with the company. A vendor with a broader offering of solutions and services can provide more long-term value than one that only sells one product or that just recently came on the scene.

UNDERSTAND THE VIOLATIONS BEFORE YOU GET PUNISHED

If an inspector finds a carrier in violation of any ELD mandate requirements, it will receive fines, CSA points will start racking up, and the carrier potentially could be forced off the road.

Since the mandate went into effect, officers have been issuing tickets in earnest, with price tags ranging from \$2,867 to \$13,680.

Out-of-service hours are even more costly than tickets. If a carrier is hit with a no-ELD violation, whether it's because it didn't have a device in place or was using non-compliant technology, the result is 10 out-of-service hours.

After a driver spends 10 hours out of service, then what? If a carrier still doesn't have an ELD in place, the driver will be able to complete the trip using paper logs. Once re-dispatched, the driver will need to be using an ELD or face being placed out of service again.

In addition, if a driver fails to transfer the HOS information to the officer from his or her ELD, the driver is considered to have no record of duty status and will be placed out of service, which is why training is essential.

After the mandate went into full effect on April 1, CSA points officially have been assigned to drivers and carriers for ELD violations found during roadside inspections. The FMCSA uses CSA-SMS scores to identify motor carriers with potential safety problems and investigates those carriers that pose the greatest risk. The CSA-SMS assesses a carrier's and driver's on-road performance based on seven categories: Unsafe Driving, Crash Indicators, Vehicle Maintenance, Controlled Substances/Alcohol, Hazardous Materials Compliance, Driver Fitness, and, most pertinently, Hours of Service Compliance. The agency then assigns a percentage from 0 to 100 (the higher the percentile, the worse the safety performance).

The agency has assigned severity weights to about a dozen ELD violations, ranging from seven points for drivers not providing supporting documents to one point for failing to make annotations on the ELD when asked.

For carriers, a high CSA could mean receiving a warning letter from the FMCSA or being the subject of an investigation. Many shippers also review CSA scores and some refuse to do business with potentially unsafe carriers. Insurance companies also look at CSA scores to determine a carrier's risk profile. Poor CSA scores can result in higher premiums, deductibles, or denial of coverage.

For drivers, a high CSA score not only puts their carrier in jeopardy, which could result in termination, but also a poor safety record that could hinder their ability to find future employment.

Therefore, comprehensive ELD compliance training is critical for carriers to avoid a high CSA scores, higher insurance rates, and potentially shuttering business altogether.

The appendix of ELD violations and their corresponding CSA scores is available online. Fleet supervisors should print it out and place it in their trucks for driver reference.

VIOLATIONS AND THEIR CORRESPONDING CSA SCORES

Section	Violation Description Shown on Driver/Vehicle Examination Report Given to CMV Driver after Roadside Inspection	Violation Group Description	Violation Severity Weight
395.8A-ELD	ELD – No record of duty status (ELD Required)	Incomplete/Wrong Log	5
395.8A-NON-ELD	No record of duty status when one is required (ELD Not Required)	Incomplete/Wrong Log	5
395.8A1	Not using the appropriate method to record hours of service	Incomplete/Wrong Log	5
395.11G	Failing to provide supporting documents in the driver's possession upon request	False Log	7
395.20B	The ELD's display screen cannot be viewed outside of the motor vehicle	Incomplete/Wrong Log	5
395.22A	Operating with a device that is not registered with FMCSA	Incomplete/Wrong Log	5
395.22G	Portable ELD not mounted in fixed position and visible to driver	EOBR-Related	1
395.22H1	Driver failing to maintain ELD user's manual	EOBR-Related	1
395.22.H2	Driver failing to maintain ELD instruction sheet	EOBR-Related	1
395.22.H3	Driver failed to maintain instruction sheet for ELD malfunction reporting	EOBR-Related	1
395.22.H4	Driver failed to maintain supply of blank driver's graph-grids	EOBR-Related	1
395.24C1I	Driver failed to make annotations when applicable	Other Log/Form & Manner	1
395.24C1II	Driver failed to manually add location description	Other Log/Form & Manner	1
395.24C1III	Driver failed to add file comment per safety officers request	Other Log/Form & Manner	1
395.24C2I	Driver failed to manually add CMV power unit number	Other Log/Form & Manner	1
395.24C2II	Driver failed to manually add the trailer number	Other Log/Form & Manner	1
395.24C2III	Driver failed to manually add shipping document number	Other Log/Form & Manner	1
395.28	Failed to select/deselect or annotate a special driving category or exempt status	Other Log/Form & Manner	1
395.30B1	Driver failed to certify the accuracy of the information gathered by the ELD	Other Log/Form & Manner	1
395.30C	Failing to follow the prompts when editing/adding missing information	Other Log/Form & Manner	1
395.32B	Driver failed to assume or decline unassigned driving time	Incomplete/Wrong Log	5
395.34A1	Failed to note malfunction that requires use of paper log	Incomplete/Wrong Log	5

Misuse of Personal Conveyance

Carriers and drivers are both responsible for reporting HOS information as accurately as possible. A false log will result in a \$2,500 fine, an OOS violation, and a seven-point CSA score (the severest penalty possible).

Officers are starting to see a lot of drivers misusing the Personal Conveyance rule as an excuse to inch closer to their next pickup, which constitutes as falsifying a log. According to the law, if a driver is operating under a special driving category, such as personal conveyance, when not involved in that activity, the driver's log is considered to be false and he or she will be placed out of service.

The FMCSA recently issued guidance on personal conveyance, listing examples of "appropriate uses" and "uses that would not qualify." The FMCSA gives six different examples of what it calls appropriate uses. We've highlighted two of the most important ones.

The first is time spent traveling to a nearby, reasonable, safe location to obtain required rest after loading or unloading. The resting location must be the first such location reasonably available.

Osiecki says this addresses the concern that so many drivers and carriers have when shippers or receivers kick the driver out of the facility after the truck is unloaded. In this instance, drivers are often out of hours and feel stuck because they can't move and can't stay in the shipping facility. Personal conveyance status allows drivers to leave the facility and find a nearby, reasonable, safe location to take the required off-duty period.

The second example occurs when moving a truck or CMV at the request of a safety official during the driver's off-duty time.

Osiecki says this addresses the "common scenario where the driver is at a rest area or state facility and he or she gets a knock on the window from a state trooper saying 'Hey, you can't stay here any longer.' In this case, if directed by a law enforcement official, he or she can move in an off-duty status."

It's important to note that there are no limits when drivers are using personal conveyance in order to find nearby, safe parking or resting locations.

"The short answer is, there are no limits", Osiecki says. Nearby "might mean 3 miles, it might mean 30 miles, depending on what part of the country a driver is in.

"When in doubt, remember the keyword here is PERSONAL. As long as you're actually using personal conveyance for off-duty, personal driving time, indicating this status properly in the ELD and able to reasonably demonstrate your reason for doing so, then there's no need to worry."

WHO'S EXEMPT?

Most carriers are required to comply with the ELD mandate; however, there are a few exceptions. It's important to note that if drivers are not required to use ELDs, they are still required to submit paper or electronic RODS. The main exemptions companies might qualify for include:

- **Short Haul Rule.** This exemption applies to drivers operating to and from their destination within a 100-air-mile radius or 150-air-mile radius for non-CDL drivers. Drivers also must not exceed the normal 11 hours of driving in that 12-hour day.

- **8/30 Rule.** These are drivers who log eight or fewer days out of every rolling 30-day period. Drivers that operate under the 100- or 150-air-mile radius, but on occasion go beyond those boundaries, could claim this exemption as long as it doesn't happen more than eight days out of every 30.
- **Driveaway-Towaway Rule.** This rule applies to drivers who transport empty vehicles intended for sale, lease, or repair, as long as the vehicle they are driving is part of the shipment being delivered.
- **Pre-Model Year 2000 Vehicles.** Drivers of vehicles manufactured before model year 2000 are not required to use ELDs. This refers to the engine model year, not the vehicle model year.

Recently, the FMCSA also issued an ELD exception to agricultural transporters. Per FMCSA definition, companies transporting “agricultural commodities (including livestock, bees, horses, fish used for food and other commodities that meet the definition of ‘agricultural commodity’ under § 395.2) within a 150 air-mile radius” are exempt from ELD and HOS regulations. Basically, this means companies transporting agricultural commodities within 150 air miles are not only absolved from using an ELD, but they are also exempt from the HOS rules and don't have to fill out a record of duty status. Furthermore, those hours don't count toward their daily and weekly limits.

However, according to the FMCSA, “Once the vehicle operates beyond the 150 air-mile-radius, the HOS regulations apply.” This means a driver must record his or her HOS using an ELD starting at the time and location the driver goes past the 150-air-mile radius marker. While these exemptions might be nice for some, it's a headache for carriers with mixed fleets that have to keep up with a jumbled assortment of exempt times, papers log, and electronic records. To solve this problem, carriers should consider implementing ELDs in all of their trucks even if they're not required to.

CONCLUSION

Both your fleet's reputation and your bottom line are at stake under the new ELD mandate. If a driver violates the rules, it could lead to fines, impact the fleet's CSA score, and worse, could result in the truck being placed out-of-service.

According to information he's gathered from inspectors, Oseicki says these problems arise when drivers don't have a solid understand of the device in their truck or when they don't have the instruction manual with them. Companies should do the following to prepare for ELD-focused inspections:

- Train drivers to identify what device their using and how to operate it.
- Train drivers on how roadside inspections work and their responsibilities.
- Provide the required device manuals and information packets.
- Consider providing supplementary materials like driver letters and best practice info for interacting with inspectors.
- Keep up with the latest FMSCA guidance.

Carriers using AOB RD's should also be proactive and purchase an ELD before the December 2019 deadline. This is when AOB RD's will no longer be acceptable and all CMV's are required to have an ELD in place.

In summation, companies need to spend the time getting their drivers ready for an inspection, so when it occurs, problems are kept to a minimum.