

WHITE PAPER: SPIREON - ELD & WHAT YOU NEED TO KNOW NOW

# Closing loopholes: How the ELD mandate impacts truck drivers and fleets

With the enactment of the Electronic Logging Device (ELD) mandate, the Federal Motor Carrier Safety Administration is finally bringing clarity — and a new enforcement method — to a series of regulations that have been developing for more than 20 years. The goal is one that drivers and fleets should get behind: improving safety for truck drivers and everyone on the road.

ELDs are GPS-enabled devices that track a driver's hours behind the wheel to make sure they comply with Hours of Service (HOS) laws. These include custom-built electronics and smartphones running special trucking applications. While the mandate passed in 2015 and activates at end of 2017, ELDs are not new. Many larger fleets have stayed on top of technological trends and switched to ELDs as soon as they were available. Their drivers, some of whom resisted the change at first, typically report that they would not go back because of the ease of using an ELD compared to keeping paper logs.

Still, the electronic logging elicited pushback from those in the industry resistant to change and who saw it as an invasion of privacy for drivers. Because of this negative feedback, some fleets have waited until the final rule was passed to introduce ELDs.



Spireon recently presented a webinar featuring John Seidl, a member of the ELD National Implementation Team, who explained how the mandate will impact truck drivers, and how fleet managers should change their policies in response.



## ELD rule brings accountability to trucking industry, and a new regulatory burden

A properly implemented ELD program will help fleets recruit and retain the best driving talent because it protects drivers from unsafe conditions. It proves that fleets treat their drivers with respect and will never coerce them to bend or break laws to deliver a load faster. But, in order to implement it properly and avoid violations with the FMCSA, fleet managers need to thoroughly educate themselves and their drivers about the new policies.

With the competitive pressure on shipping companies to deliver freight sooner, and payment contracts for truckers that often reward driving farther or faster, a culture has developed among some members of the trucking industry of looking the other way around HOS violations. HOS laws set caps on maximum driving time and minimum rest time for different types of commercial drivers, and they are relatively easy to bend or break without getting caught when only using a paper system. The ELD mandate was developed to hold drivers and fleets accountable to observing these laws.

Since they are plugged into the engine, ELDs eliminate many of the ways drivers and fleets have exploited loopholes or blatantly ignored laws in an effort to deliver shipments faster. However, even with GPS tracking, there are still opportunities for drivers to record fraudulent time logs in an ELD, depending on the settings of the devices, and the policies that are in place.

Spireon recommends creating policies that eliminate any chance that drivers could record false logs and trigger an audit/investigation. Better policies protect the drivers and will keep your Compliance, Safety, and Accountability (CSA) score higher, helping fleets attract the best drivers in the workforce. In this situation, the incentives align well with the intended consequences.



To give you a full understanding of the new program, this paper will review the history, the important dates, challenges you might encounter in implementing the program, policies that will help you protect your drivers and keep your fleet in compliance, and some notes for selecting the best device for your fleet.

Whether you already have devices or whether you're in limbo with your decision, this will serve as a primer on everything you need to know to successfully comply with the new law.

### **The ELD mandate: A rule 27 years in the making**

The federal government first introduced the concept of electronic time logging for truckers in 1988 with the Automatic Onboard Recording Device (AOBRD) Final Rule. This legislation governed the trucking industry until 2007, when the federal government proposed a rule to mandate that every trucking company that had a bad review in the United States by the government would have to implement these for two years. That rule was never implemented because of a series of modifications, lawsuits and comment periods to take into account driver concerns. The end result of eight years of negotiations was the ELD mandate, passed in 2015, which requires truckers to update from technology that is now almost three decades old.

### **Important dates for ELD rule compliance**

Trucking companies and owner/operators who have been dragging their feet hoping this rule would be overturned before its compliance deadline now face a quick turnaround to upgrade their fleets. By December 18, 2017, every trucking company needs to have either an AOBRD or an ELD installed and operating in every truck, unless they are exempt from the rule. By December 2019, AOBRD's will be obsolete, and every non-exempt truck must have an ELD.

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## HOW THE ELD MANDATE WILL BE ENFORCED

Officers will enforce compliance with the ELD mandate through routine traffic stops for trucks. Under the new mandate, drivers will be required to demonstrate compliance by presenting certain documents, sharing data sets, or verifying settings on the ELD during these stops.

### ► Documents that must be available at roadside

When drivers get pulled over, they need to be able to show the officer a graph-grid display of their on-duty and off-duty time. There are a few options that satisfy this rule, Seidl says. First, they can print a hard copy directly from their ELD, if it's enabled with a printer. Second, they can show the officer a digital display on the ELD. In addition, the officer may ask the driver to transfer the data file of their driving activity. ELDs must come with the ability to transfer data files via email, wireless, Bluetooth, or USB.

### ► Preparing for and responding to ELD malfunctions

An officer will also inspect whether a driver is prepared to handle a malfunction of the ELD, which could happen for a variety of reasons, including loss of cellular service or damage to a connecting cable. If the ELD fails, the driver must immediately begin filling out a paper log for all duties going forward, and must reconstruct the previous seven days' duties to be able to show them to an inspector.

There are three options for reconstructing the log. The driver can recreate it on paper by copying from the electronic version on-file with the fleet manager or stored online. They can receive an electronic version from the fleet manager and keep that accessible on another mobile device



besides the failed ELD, or they can use a mobile device to access the log on the cloud at any time (without requiring a fleet manager to email a file). This option is preferred because it is the most reliable and least disruptive to the driver's workflow, Seidl says.

In order to prove that they are prepared for a failure, the driver must have blank Records of Duty Status logs for at least 7 days on hand at all times. The driver is also required to keep an instruction card explaining the operation of the ELD in the truck at all times. This requirement is consistent with the original 1988 AOB RD Final Rule. Seidl says that despite being a simple task, many drivers have been docked for failing to maintain these blank forms and instruction card in the truck.

"Search any company you want that you know has had these things for a long time," Seidl says. "Look at their hours of service violations, and you'll see that these are the one and two most cited violations with companies that have had AOB RDs for years."

If an ELD does fail, it must be repaired within eight days, or else the truck risks being placed out of service, Seidl notes.

### ► Properly using the ELD

A roadside inspection will also evaluate whether a driver has used the proper form and manner to input the vehicle information, shipping ID, personal login, and duty mode into the ELD. To minimize room for error, it's best to set the preferences on your fleet's ELDs to automatically fill in the information that doesn't change daily, like VIN number.

The duty mode refers to the four options for a driver to log their time: on-duty driving, on-duty not driving, off-duty, and personal conveyance. These modes are covered in more detail later in this paper, when we discuss potential violations.

One notable change between AOB RDs and ELDs is that drivers must now use their driver's license number as their login, instead of a custom login assigned by the company. This change was necessary because some fleets assigned multiple logins to drivers, allowing them to fool the ELD into thinking there were two drivers, instead of one driver exceeding HOS limitations.

### Understanding the potential violations and challenges of implementing the ELD mandate

The FMCSA will enforce the ELD mandate through periodic compliance reviews. These could be randomly scheduled, or could be triggered by things such as a roadside inspection that found violations or a complaint from a driver. Fleet managers must be vigilant about reviewing driver logs to make sure they are not committing these violations, so that they can discipline drivers internally.

"If you're not paying attention to this, the drivers are going to start doing it and the investigator might be the one to find out, and trust me, you want to find this before the investigator," Seidl says.

## Unidentified driver violation

The most likely violation that could occur under the ELD mandate is also the most obvious and easiest to catch: if a driver decides not to login to the device and drives anyway. Knowing that the device would record an HOS violation if it was logged in, the driver might hope to get away with saying, “Oops, I forgot to login.”

Seidl says these violations are easy to catch internally. He related the example of a driver whose log showed him ending the day in Lima, OH, and starting the next day in Reading, PA, 518 miles away.

“What I suggest is you teach drivers how this works and how you catch them to prevent them from trying it,” Seidl says.

## Improper use of Personal Conveyance and Yard Moves

The new rule includes two terms that are not well defined and could cause some confusion among drivers: “personal conveyance” and “yard moves.” To avoid violations, fleet managers must clearly define personal conveyance and yard moves and make sure drivers understand when they can be used and when they cannot.

Personal conveyance means driving a vehicle while off duty. To be off-duty, a driver must not be performing any commercial purpose, must be driving a short distance, and must not be carrying freight. One area of confusion is that the FMCSA did not define how long a “short distance” is. Seidl says he recommends that fleets set a standard distance, whether it’s 10, 15, or 20 miles.



Since using a commercial vehicle for personal conveyance means the driver can select ‘off-duty’ in the ELD, it’s important that fleets clearly explain the situations when personal conveyance is acceptable, and make sure that drivers don’t use it to hide HOS violations.

Yard moves refers to any time a driver moves the truck while on-duty, but is not on “driving” duty status. It’s intended for short moves around a truck yard and defined as driving on a non-highway. Drivers should take note, however, that “highway” has a broad definition according to the FMCSA. Any road, street or way passable by standard four-wheeled passenger cars that is open to the public is a highway.

Driving a truck under the Yard Moves status does not eat into driving hours, which is why, in the past, it has been used as a loophole to extend the driving day.

“Yard moves is something a lot of people are going to start using to protect their driving time,” Seidl says. “With a paper log, you would just drive and somewhat falsify—again, illegally—but those days are coming to an end.”

Since personal conveyance requires that the truck is not carrying freight, it can’t be used when a driver gets to a destination and wants to drive to a motel or a truck stop to spend the night if the truck has not been unloaded, or the driver can’t unhook from the trailer. In situations like this, fleets need to make sure their policies clearly outline what to do if a shipment is running late and a driver runs out of driving hours before making it to a safe place to spend the night. Fleets should establish a policy for what to do if the driver is forced to leave a location and has to improperly use personal conveyance. This could include sending a message to the fleet manager to document who or what forced them to leave.

### **Back office auditing tasks**

In addition to auditing driver logs to make sure they are not failing to login or improperly using personal conveyance or yard moves, fleet managers must also regularly audit driver logs to check for other ways they might be trying to squeeze more driving time out of a day. One of these concerns fueling. Drivers must count fueling time as “on-duty, not-driving,” but some drivers have tried to use “off-duty.” The ELD is programmed to allow this, even though it breaks HOS laws.

“If a driver wants to choose off duty while he’s fueling, he can physically do it,” Seidl says. “It’s a false log, but he can do it and the ELD’s not going to stop him because it doesn’t know what he’s doing when the truck’s not moving.”

Another back-office duty that is crucial to avoid violations is submitting supporting documents within 13 days of an audit request. These documents provide additional evidence to back up the ELD’s record of the driver’s use of time. Thus, the documents must identify the driver, the date, the location, and time. A toll receipt, or a bill of lading from a shipper are good examples.

## **Vehicle motion settings on the ELD**

Under the guidelines set by the FMCSA, it is acceptable for the ELD to wait to record driving time until the vehicle hits a speed greater than 5 miles per hour. Because of this, many ELDs are programmed to this setting by default. But Seidl recommends changing that to 0 miles per hour to prevent abuse.

“I just heard a story from a trucking company about a month ago,” he says. “They had a driver that drove 3 miles per hour to get from one location to another on a road, which is completely unsafe, so he could keep his log in the off-duty status. It’s crazy to think that that could potentially happen.”

## **Messaging and communication policies**

During the eight-year period of deliberation and debate about the ELD mandate from 2007 to 2015, one of the major delays came from a lawsuit by a group representing drivers, who were concerned that ELDs would lead to harassment of drivers and a violation of their privacy. In an effort to address these concerns, the FMCSA made a rule that if drivers are expected to respond to urgent messages coming through the ELD during 30-minute breaks or 10-hour breaks, that interruption counts as on-duty time.

“If you send repeated messages through any kind of communication, ‘repeated messages’ is key, you cannot consider that off duty,” Seidl says. “What we really need to do is train our drivers and train our dispatchers not to demand messages to be communicated back and forth during mandatory 30-minute breaks and/or 10-hour breaks.”

## **Log editing**

In most situations, drivers can’t edit driving time after it has been logged in an ELD, since GPS and engine data are considered indisputable. But they can edit all other types of duty time after it has been logged, allowing for drivers to correct mistakes. One exception to this is in the case of a team of two co-drivers. If the new driver forgets to logout and log back in under their own license at the switch, the drivers can agree to retroactively edit the time to account for the actual time of the switch.

Since there are still opportunities for drivers to falsely record their duty hours when the truck is not moving, fleet managers must confirm any edits that are made to make sure the driver is not trying to squeeze more hours out of his day.



## Best practices for complying with the ELD mandate

Both a driver's and a fleet's reputations are at stake under the new ELD mandate. If a driver violates the rules, it could impact the fleet's CSA score, and worse, could result in the truck being placed out-of-service at roadside. Only certain violations will result in this immediate restriction from driving, and they include:

- ☑ Using an unauthorized ELD
- ☑ Violating ELD exemptions (Using an exempt category that doesn't apply to you)
- ☑ Failure to reconstruct a log after an ELD malfunction
- ☑ Driving with a malfunctioning ELD for more than 8 days
- ☑ Starting April 2018, failing to transfer the duty log data file to an inspector at roadside

If a vehicle is placed out-of-service at roadside, the violation must be fixed before it can be driven again, which would require servicing it on the side of the road or towing it to an appropriate location, which are both expensive options.

Seidl sums up the most important policies to enforce in your fleet.

"Don't log off and drive," he says. "Make sure your form and manner is right. Turn your supporting documents in within 13 days. If forced to leave a location, follow the policy."

Providing thorough education about the new policies and equipment, and enforcing them strictly, will keep fleets in compliance and safer.



## Who is the right certified ELD provider for your needs?

The type of ELD that a fleet installs can impact the driver's experience. Some devices, like Spireon's, take the opportunity to provide value-added services to drivers, such as helping them stay connected to family while on the road, and value-added services to fleets, such as providing a full fleet management solution that incorporates driver behavior monitoring.

Other devices are more bare bones, focusing on strict compliance to the regulation. Some are custom-built hardware that cannot be used for other purposes, some are simply a pre-programmed mobile device.

The variety of choices means fleets should evaluate their needs carefully before choosing a device. But there's another reason they should do careful research before purchasing a device. The FMCSA is not actually taking on the task of certifying whether devices function as advertised and in a way that prevents HOS violations.

To become a certified ELD provider, manufacturers testify that their products comply with the regulation, but the FMCSA does not verify their claims unless there is a complaint.

All certified ELD companies are listed on the FMCSA's website, but this list should be taken with a grain of salt, Seidl says.

"Buyers beware: Some of the best vendors in the country are not on the list yet, so just because they're on the list, don't think that it's all good," Seidl says.



Some of the larger, more established ELD manufacturers, who have been producing AOBRDs and/or ELDs since before the ruling came out, have waited to self-register until they could guarantee that their device complies with all of the rules. To make sure you buy a compliant system, you should call references for the company, and only choose to partner with reputable companies.

### **Fleets can set themselves up for success with the right preparation for the ELD mandate implementation**

To ensure a smooth update process following the ELD mandate implementation dates, fleet managers should take a hard look at their policies, and take a proactive approach. Every penny you invest in driver education will be a worthwhile investment in avoiding future FMCSA violations. Strict policies will keep your drivers safe, and your reputation clean, but only if they are accompanied with frequent internal audits. Keep an eye out for accidental or intentional fraud, and discipline your team before the FMCSA does it. Finally, make sure you choose the right ELD system for your needs, from a trusted, certified ELD provider.