

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

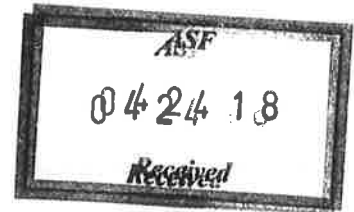
25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

April 18, 2018



Mr. Justin Blankenship, Second Vice Chairman
Brotherhood of Maintenance of Way Employes
Division (BMWED)
9300 Runyan Road
Catlettsburg, KY 41129

Dear Brother Blankenship:

I am writing to follow up on our telephone conversation regarding the Federal Motor Carrier Safety Administration (FMCSA) Electronic Logging Device (ELD) final rule. It is my understanding that you wanted information on the April 1st, 2018 enforcement criteria of the rule.

The ELD rule – congressionally mandated as a part of MAP¹-21 – is intended to help create a safer work environment for drivers, and make it easier and faster to accurately track, manage, and share records of duty status (RODS) data. An ELD synchronizes with a vehicle engine to automatically record driving time, for easier, more accurate hours of service (HOS) recordings. The ELD Rule applies to most motor carriers and drivers who are currently required to maintain RODS to comply with HOS Regulations detailed in 49 CFR Part 395 of the federal regulations. The rule applies to commercial buses as well as trucks.

ELD Rule Exceptions

The following drivers are not required to use ELDs (but carriers may choose to use ELDs even if they are not required):

- Drivers who use paper logs no more than 8 days during any 30-day period;
- Driveaway-towaway drivers (where the vehicle driven is the commodity) or the vehicle being transported is a motor home or a recreation vehicle trailer (at least one set of wheels of the vehicle being transported must be on the surface while being transported);
- Drivers of vehicles manufactured before model year 2000.

¹ Moving Ahead for Progress in the 21st Century Act

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Carriers should have already installed ELDs and ensured drivers were trained to use them by now since the deadline was December 18, 2017, for those using paper logs or logging software or by December 16, 2019, for carriers using Automatic Onboard Recording Devices (AOBRDs). If a driver has paper logs instead of an ELD when required after April 1, 2018, the driver will be put out-of-service for 10 hours for not logging on an ELD.

The April 1st date is an enforcement policy from the Commercial Vehicle Safety Alliance (CVSA). Please refer to the CVSA news article attached or link below². The following is a basic list of all the major consequences of not using an ELD after December 18, 2017, and April 1, 2018:

- Having no ELD when required is the same as having no logs and is a violation of Section 395.8(a). Having paper logs in the vehicle is no defense if an ELD was required. Drivers may be cited for “no logs” every time they are inspected.
- If the violation appears on a roadside inspection report, points will be assessed against the driver and carrier in the HOS Compliance Behavior Analysis and Safety Improvement Category (BASIC) under the Compliance Safety Accountability program. Violating Section 395.8(a) is an automatic 5 points for the driver and carrier.
- The driver could face federal civil penalties during the course of an audit of his/her carrier or as a result of an egregious violation cited at the roadside (i.e., a violation(s) that raises a red flag for the FMCSA and leads to an investigation of the individual driver). Simply failing to have a required ELD record could cost up to \$1,214 per day (this is the same potential price for any recordkeeping violation), or up to \$12,135 total per record (\$400-500 is a typical penalty). If the driver is found to be in violation of HOS limits such as the driving or on-duty limit, which directly impacts highway safety the penalty could be \$3,685 per violation.
- If the company is audited and a pattern of “critical” ELD violations is discovered (including failure to use ELDs), then the result will be an automatic “conditional” safety rating, which could result in higher insurance rates.
- The FMCSA could levy civil penalties against the company after an audit. Failing to have ELD records (or any required records) could cost up to \$1,214 per day, or up to \$12,135 total per record. Violation of a safety rule could cost up to \$14,739 (e.g., if the

²<https://cvsa.org/news-entry/april-1-2018-eld-oos-full-enforcement/>

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auditor finds that drivers used paper logs instead of ELDs and falsified their paper logs to hide violations).

I hope this information will be useful to you. If you have any questions, do not hesitate to contact me at (202) 624-6960.

Fraternally,



Asher Tobin
Industrial Hygienist
Safety and Health Department

AT/sm

Encl.

cc: Roy Morrison, Director of Safety, BMWED
Lamont Byrd, Director, Safety and Health Department

Drivers Operating a CMV Without an ELD Will Be Placed Out of Service

APRIL 1, 2018

Starting April 1, 2018, property-carrying commercial motor vehicle (CMV) drivers operating their vehicle without a required **registered**

(<http://CVSA.informz.net/z/cjUucD9taT03NDk5NTI5JnA9MSZ1PTEwNTgyNjk2ODMmbGk9NTMyOTI0MTI/index.html>)

electronic logging device (ELD) or a **grandfathered**

(<http://CVSA.informz.net/z/cjUucD9taT03NDk5NTI5JnA9MSZ1PTEwNTgyNjk2ODMmbGk9NTMyOTI0MTQ/index.html>)

automatic on-board recording device (AOBRD) will be placed out of service for 10 hours; passenger-carrying CMV drivers will be placed out of service for 8 hours.

Violations will be recorded on a roadside inspection report and the driver may be cited (e.g., issued a violation ticket or a civil penalty) for failing to have a required electronic record of duty status.

After 8 or 10 hours out of service, the driver may continue to their final destination, provided the driver has accurately documented their hours-of-service requirements using a paper record of duty status (e.g., log book, daily log or log) and has a copy of the inspection report and/or citation.

If the driver is stopped again before reaching his/her final destination, the driver must provide the safety official with a copy of the inspection report and evidence (e.g., bill of lading) proving that he/she is still on the continuation of the original trip.

After reaching their final destination, if the driver is re-dispatched again without obtaining a compliant ELD, he/she will again be subject to the out-of-service process outlined above, unless the driver is traveling back to the principle place of business or terminal empty to obtain an ELD.

All ELD violations will be counted against a motor carrier's **Safety Measurement System (SMS)**

(<http://CVSA.informz.net/z/cjUucD9taT03NDk5NTI5JnA9MSZ1PTEwNTgyNjk2ODMmbGk9NTMyOTI0MTU/index.html>)

score, which will drive selection for investigation within the Federal Motor Carrier Safety Administration's (FMCSA)

Compliance, Safety, Accountability (CSA)

(<http://CVSA.informz.net/z/cjUucD9taT03NDk5NTI5JnA9MSZ1PTEwNTgyNjk2ODMmbGk9NTMyOTI0MTY/index.html>)

program. FMCSA will determine appropriate action against non-compliant motor carriers.

Please note that motor carriers that installed and used an AOBRD prior to Dec. 18, 2017

(<http://CVSA.informz.net/z/cjUucD9taT03NDk5NTI5JnA9MSZ1PTEwNTgyNjk2ODMmbGk9NTMyOTI0MTc/index.html>),

may install and use additional ELD-capable devices with complaint AOBRD software after Dec. 18, 2017. These

AOBRDs may be used until Dec. 16, 2019, and must meet the requirements of 49 CFR 395.15.

Violation Changes						
BASIC	Section	Violation Description Shown on Driver/Vehicle Examination Report Given to CMV Driver after Roadside Inspection	Violation Group Description	Violation Severity Weight	Violation in the DSMS (Y/N)	What Changed
HOS Compliance	395.8A-ELD	ELD - No record of duty status (ELD Required)	Incomplete/Wrong Log	5	Y	Added in 3.0.9
HOS Compliance	395.8A-NON-ELD	No record of duty status when one is required (ELD Not Required)	Incomplete/Wrong Log	5	Y	Added in 3.0.9
HOS Compliance	395.8A1	Not using the appropriate method to record hours of service	Incomplete/Wrong Log	5	Y	Added in 3.0.9
HOS Compliance	395.11G	Failing to provide supporting documents in the driver's possession upon request	False Log	7	Y	Added in 3.0.9
HOS Compliance	395.20B	The ELD's display screen cannot be viewed outside of the commercial motor vehicle.	Incomplete/Wrong Log	5	N	Added in 3.0.9
HOS Compliance	395.22A	Operating with a device that is not registered with FMCSA	Incomplete/Wrong Log	5	Y	Added in 3.0.9
HOS Compliance	395.22G	Portable ELD not mounted in a fixed position and visible to driver	EOBR-Related	1	Y	Added in 3.0.9
HOS Compliance	395.22H1	Driver failing to maintain ELD user's manual	EOBR-Related	1	Y	Added in 3.0.9
HOS Compliance	395.22H2	Driver failing to maintain ELD instruction sheet	EOBR-Related	1	Y	Added in 3.0.9
HOS Compliance	395.22H3	Driver failed to maintain instruction sheet for ELD malfunction reporting requirements	EOBR-Related	1	Y	Added in 3.0.9
HOS Compliance	395.22H4	Driver failed to maintain supply of blank driver's records of duty status graph-grids	EOBR-Related	1	Y	Added in 3.0.9
HOS Compliance	395.24C1I	Driver failed to make annotations when applicable	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.24C1II	Driver failed to manually add location description	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.24C1III	Driver failed to add file comment per safety officer's request	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.24C2I	Driver failed to manually add CMV power unit number	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.24C2II	Driver failed to manually add the trailer number	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.24C2III	Driver failed to manually add shipping document number	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.28	Driver failed to select/deselect or annotate a special driving category or exempt status	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.30B1	Driver failed to certify the accuracy of the information gathered by the ELD	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.30C	Failing to follow the prompts from the ELD when editing/adding missing information	Other Log/Form & Manner	1	Y	Added in 3.0.9
HOS Compliance	395.32B	Driver failed to assume or decline unassigned driving time	Incomplete/Wrong Log	5	Y	Added in 3.0.9
HOS Compliance	395.34A1	Failing to note malfunction that requires use of paper log	Incomplete/Wrong Log	5	Y	Added in 3.0.9

For a complete list of Hours-of-Service (HOS) Compliance Violations see the HOS Compliance tab.