

INTRASTATE ELD RULE IN EFFECT

The new rule took effect September 28, 2016

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Commercial intrastate motor carriers would be required to use electronic logging devices (ELDs) instead of paper logs by 2019 under a Texas Department of Public Safety rule, just as interstate carriers will be required to do so by the federal government next year.

DPS rulemaking created a rule similar to the one that was finalized December 10 by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA's rule gives carriers until December 18, 2017, to switch from paper logbooks to ELDs. Texas's rule gives motor carriers engaged in intrastate driving until December 16, 2019.

Exceptions exist in the federal rule that applies to the state rule as well. Drivers who are not required to keep records of duty status, or who keep such records no more than eight days during any 30-day period, are exempt from the federal rule. Other exceptions are drivers of pre-2000 model year vehicles and driveaway-tow-away drivers who are transporting an empty vehicle that is being sold, leased or repaired, as long as the vehicle is part of the shipment.

Les Findeisen, Texas Trucking Association director of policy and intergovernmental relations, said certain other exemptions that currently exist in Texas did not change. Intrastate agricultural carriers still would be exempt from any state logbook requirement if they are driving within a 150 air-mile radius of the commodities' source or the farm supplies' dis-

tribution point. Carriers whose drivers operate within a 150 air-mile radius of the driver's work reporting location are also exempt if the driver returns to that location and is released from work within 12 hours and has at least eight hours off duty.

The FMCSA says the rule will affect about three million drivers and will save 26 lives and prevent 562 injuries annually. It will have a net benefit of more than \$1 billion by reducing paperwork and increasing law enforcement efficiency, the agency says.

The Owner-Operator Independent Drivers Association, which represents independent drivers, does not agree. In March, it filed suit against the FMCSA, saying the mandate does not improve safety and violates the Constitution's fourth Amendment protection against unreasonable searches and seizures. It says the ELDs are no more reliable than paper logbooks because drivers must manually input a change in their duty status. The court heard the case on September 13. OOIDA lost that appeal on October 31.

ELD technology is less flexible than paper logs and leaves less room for drivers to use common sense in certain situations. If a driver reaches the limit 30 minutes from home, the truck must be parked or the carrier risks a violation. Meanwhile, drivers no longer can use a 25-minute stop at a customer's dock to fulfill the 30-minute rest break. To an ELD, 25 minutes is not 30.

THE MANDATE PROTECTS CARRIERS FROM SHIPPERS WHO THREATEN TO USE A DIFFERENT CARRIER IF AN HOURS-SHORT DRIVER REFUSES TO VIOLATE THE RULE.

But many in the industry say the benefits outweigh the costs. The mandate long has been sought by the American Trucking Associations, said David Saunders, president of WorkforceQA, a third party compliance

partner who has served on the ATA's Regulations Committee since 1999.

Saunders encourages motor carriers to adopt the technology. Hours of service violations, the number one violation on the FMCSA's website showing closed enforcement cases, are a much smaller problem with ELDs, he said. Carriers always know their drivers' statuses and can better inform shippers when a shipment will be delivered or retrieved. The mandate protects carriers from shippers who threaten to use a different carrier if an hours-short driver refuses to violate the rule. ELDs make it easier for law enforcement to enforce the regulation, he said.

John Esparza, Texas Trucking Association president and CEO, said that almost 90 percent of his members polled supported the FMCSA rule — but those who opposed it were firmly opposed.

For the Texas rule, Findeisen said the association did "not oppose." He said having a Texas rule would create uniformity with the federal requirement. He reasoned that Texas eventually will adopt the rule, so it's better to do it now so that carriers purchase ELD technology that already complies with both federal and Texas requirements. ★