



TRUCKER FOCUS
SUMMER 2017



ON THE ROAD TO DRUG TESTING

CONTROLLED SUBSTANCE AND ALCOHOL TESTING

As shown by the Large Truck Crash Causation Study (LTCCS), the majority of factors contributing to commercial motor vehicle (CMV) crashes are related to human factors. This can include the driver being physically impaired, inattentive, or misjudging the situation. Ultimately these contributing human crash factors are ten times more likely to be the cause of the crash than other factors, such as weather, road conditions, and vehicle performance.

This study makes it clear that the industry needs to spend more time addressing driver behavior, empowering them to do their job and holding them accountable for their job duties. Controlled substance and alcohol testing regulations fit into this discussion as their purpose is to prevent crashes

and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of CMVs.

The controlled substance and alcohol testing regulations are found in the Federal Motor Carrier Safety Regulations Parts 40 and 382. These regulations are applicable to most motor carriers and drivers of CMVs operating in interstate and/or intrastate transportation.

Employers are required to have controlled substance and alcohol testing programs and procedures in place to ensure drivers who operate CMVs that require a commercial driver's license (CDL) are tested for controlled substance and alcohol use. The controlled substance and alcohol testing requirements apply to for-hire carriers, private



carriers, and others. An important note is that an employer who employs himself or herself as a driver must comply with both the employer and driver requirements.

A carrier may administer their own controlled substance and alcohol testing program or may contract with outside services to assist with administration of the carrier's program. Frequently contracted services include development of a company policy, selection of subjects for random testing, locating collection sites, and testing/analysis services. If an employer contracts with an outside service, the employer is still responsible for ensuring compliance with controlled substance and alcohol testing regulations.

If your trucking operations require you to comply with FMCSA regulations, failure to do so can result in stiff fines and penalties. But perhaps more important than that is the fact that willful violation of regulations increases your company's exposure to adverse liability.

If you believe your company has some work to do in these areas, Acuity's Loss Control experts and Motor Carrier Tool Box can provide resources to help guide you toward achieving greater compliance. One such tool is the "Motor Carrier's Checklist in Preparing for a DOT Audit." This document can be used as a self-audit tool, providing you with a baseline of where your compliance currently sits. Other options are to contact a federal or state motor carrier enforcement center to request direct help and resources or your local DOT consulting service.

The Details

Drivers/Carriers Subject to the Controlled Substance and Alcohol Testing Requirements

Employers are required to have controlled substance and alcohol testing programs and procedures in place to ensure drivers who operate CMVs that require a commercial driver's license

(CDL) are tested for controlled substance and alcohol use. The controlled substance and alcohol testing requirements apply to:

- For-hire carriers;
- Private carriers;
- Federal, state, local governments, political subdivisions, and tribal governments;
- School bus operations; and
- Church and civic organizations.

An important note is that an employer who employs himself or herself as a driver must comply with both the employer and driver requirements.

Drivers/Carriers Not Subject to Controlled Substance and Alcohol Testing Regulations

The following drivers/carriers are not subject to the controlled substance and alcohol testing regulations:

- Those required to comply with the controlled substance and alcohol regulations applicable to transit operations, 49 CFR, Part 655;
- Those who a state must waive from CDL requirements¹; or
- Those who a state may exempt from the CDL requirements².

Commercial Motor Vehicle (CMV) Definition for Commercial Driver's Licenses

A CMV is defined as a vehicle or combination of vehicles used in commerce to transport passengers or property that:

- Has a gross combination weight rating (GCWR³) or gross combination weight (GCW) of 26,001 or more pounds, whichever is greater, inclusive of a towed unit with a GVWR⁴ or GVW⁵, whichever is greater, of more than 10,000 pounds;
- Has a GVWR⁴ or GVW⁵, whichever is greater, of 26,001 or more pounds;
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of hazardous materials (HM) that require the vehicle to be placarded.

¹Active-duty military personnel, members of the reserves, members of National Guard, and active-duty U.S. Coast Guard Personnel. ²Operators of farm vehicles owned and controlled by a farmer hauling the farmer's products when used within a 150-mile radius of the farm, and operators of authorized emergency vehicles. ³GCWR means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. ⁴GVWR means the value specified by the manufacturer as the loaded weight of a single motor vehicle. The GVWR can typically be found on the manufacturer's VIN plate. ⁵GVW means the actual weight of the vehicle plus the weight of its load.



Alcohol Prohibitions

A CMV driver shall not:

- Report for duty or remain on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater;
- Use alcohol while performing safety-sensitive functions;
- Use alcohol during the four hours before performing safety-sensitive functions;
- Use alcohol after being involved in a crash in which the driver is required to take a post-accident test for up to eight hours after the crash or until the driver undergoes a post-accident test, whichever occurs first; or
- Refuse to submit to a required alcohol test.

Controlled Substance Prohibitions

A CMV driver shall not:

- Report for duty or remain on duty to perform safety-sensitive functions when the driver uses any drug¹ or controlled substance;
- Report for duty or remain on duty to perform safety-sensitive functions if the driver tests positive for controlled substances; or
- Refuse to submit to a required controlled substance test.

Employers having actual knowledge² that a driver has used a controlled substance shall not permit the driver to drive or perform safety-sensitive functions.

Establishing a Controlled Substance and Alcohol Testing Program

A carrier may administer their own controlled substance and alcohol testing program or may contract with outside services to assist with administration of the carrier's program. Frequently contracted services include development of a company policy, selection of subjects for random testing, locating collection sites, and testing/analysis services. If an employer contracts with an outside service, the employer is still responsible for ensuring compliance with controlled substance and alcohol testing regulations.

Company Policy and Educational Materials

Employers must provide educational materials to all drivers, including each newly hired driver and any employee transferred into a position that requires driving a CMV. The educational materials must explain the controlled substance and alcohol testing requirements and the employer's policies and procedures.

Type of Tests Required

The controlled substance and alcohol testing regulations require the following types of tests:

- Pre-employment tests (controlled substances only);
- Random tests;
- Post-accident tests;
- Reasonable suspicion tests; and
- Return-to-duty and follow-up tests.

Required Training for Supervisors

Each employer shall ensure that all persons designated to supervise drivers receive 60 minutes of training on controlled substance use and an additional 60 minutes of training on alcohol misuse. The training is used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo reasonable suspicion testing. Employers are required to maintain documentation relating to supervisory training. Recurrent training for supervisory personnel is not required. An owner/operator who is an employer and the only employee is not required to comply with the supervisory training requirements.

Testing Process

Alcohol tests must be conducted on alcohol-testing devices approved by the National Highway Traffic Safety Administration. Controlled substance tests and analysis must be conducted by laboratories certified by the Substance Abuse and Mental Health Services Administration. These laboratories are often separate from the actual collection site. A Federal Drug Testing Custody and Control Form (CCF) must be completed for every controlled substance test specimen collected. The CCF will accompany and document the test specimen's handling and transfer to the laboratory where it is tested.

¹Except for non schedule I prescription medications that are used in accordance with a medical practitioner's instructions and when the medical practitioner has advised the driver that the medication will not adversely affect the driver's ability to safely operate a CMV. ²Actual knowledge means knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substance use, except admission in accordance with a written employer-established voluntary self-identification program or policy. A driver cannot self-identify alcohol or controlled substance use under an employer's established voluntary self-identification program or policy in order to avoid any testing required by the carrier's alcohol and controlled substance testing program.



**Drug
Testing
Ahead**



Test Results

If an alcohol test result is 0.02 or higher, the test administrator must immediately notify the employer's designated employer representative (DER) by telephone or secure electronic means.

All controlled substance test results are forwarded to a medical review officer (MRO) who will verify the test results. If a controlled substance test result is positive, the MRO will attempt to contact the driver and determine if there is a legitimate medical explanation for the positive test result. The MRO will report the verified test results to the employer's DER by telephone or secure electronic means. For positive test results, the MRO's report to the DER will identify what controlled substance was found by the test.

Consequences for Engaging in Alcohol or Controlled Substance Prohibitions

A driver who engages in any prohibited conduct for alcohol or controlled substances must:

- Not perform, nor be permitted to perform, any safety-sensitive function, including driving a CMV requiring a CDL to operate or a CMV in interstate commerce that:
 - Has a GVWR or GVW >10,000lbs;
 - Is designed to transport 16 or more passengers; or
 - Is a vehicle of any size and is transporting hazardous materials that require the vehicle to be placarded in interstate commerce.
- Be referred to a substance abuse professional (SAP) who will make a clinical evaluation and determine what assistance is needed by the employee, refer the employee to an appropriate education or treatment program, and conduct a follow-up evaluation.
- Undergo a return-to-duty test.

Other Consequences for Engaging in Alcohol Misuse

A driver tested for alcohol and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, must be removed from the performance of safety-sensitive functions until the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

Recordkeeping

Each employer must maintain records related to the administration of their alcohol and controlled substance testing program. All alcohol and controlled substance test records and results must be maintained in a secure location with controlled access. Carriers must make all records related to the administration of their testing programs and individual test results available to agencies with regulatory jurisdiction.

Definitions

"Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

"Alcohol use" means the consumption of any beverage, liquid mixture, or preparation (including medication) that contains alcohol.

"Controlled Substances" means:

- Marijuana;
- Cocaine;
- Opiates;
- Amphetamines; and
- Phencyclidine (PCP).

"Safety-sensitive function" means all time from the time a driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time spent at a carrier's or shipper's plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved of duty by the employer;
- All time spent inspecting, servicing, or conditioning any CMV at any time;
- All time spent at the driving controls of a CMV;
- All time, other than driving time, in or upon any CMV, except time spent resting in a sleeper berth;
- All time loading or unloading a commercial vehicle, supervising or assisting in loading or unloading, remaining in readiness to operate the CMV, or giving/receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled CMV. ●

10 TIPS FOR AVOIDING BACKING FENDER BENDERS

After a long day of driving to make pickups and deliveries, planning routes over congested roads, and determining hours available yet to drive, you have finally found a safe place to park the rig for the night—or at least you thought so. Unfortunately, most fender benders to CMVs occur while at shipping docks, truck stops, and similar locations. Also, a significant percentage of CMV crashes occur while a driver is backing up or by being backed into.

Due to greater congestion, larger CMVs, and newer drivers still learning, professional CMV drivers of today must exercise more diligence in safeguarding their equipment and driving record than in the past. It only takes looking at the overflowing truck stops, rest areas, and on-ramps to realize drivers have to be more on guard than ever.

The cost of these crashes not only affects a motor carrier's ability to remain competitive with other transportation companies, but also impacts insurance. When these minor crashes are reported on a motor carrier's CSA scores and a driver's MVR, insurance company underwriters want to know what is happening and how it is being managed to prevent reoccurrence.

The following 10 points discuss some solutions that may help your company address these hazards.

1. Does dispatch or a driver manager help in pre-planning routes and share this information with the driver? If so, identify safe parking locations in advance.
2. In addition to using experience to identify safe parking locations, some drivers use tools such as Park My Truck, TSPS, Roadbreakers, DAT Trucker, Truckbubba, and more. Choose the one that best suits your needs and geographical location.
3. Use rest areas designed to allow trucks to pull through a parking spot instead of backing.
4. Some truckers are choosing weigh stations to park their trucks as they are often well lit with pull-through spots. Several states are encouraging truck drivers to use these facilities at night to help with the truck parking shortage.
5. Attempt to find parking spots that are in a straight line. This allows you to pull through to your spot. If you do have to back up, try to do it from the driver's side rather than the blind side.
6. Use GOAL: Get Out And Look. Drivers sometimes take unnecessary risk by continuing to back up even though they are unsure of where their trailer is and how it is swinging in relation to other parked equipment.
7. Use your four-ways when pulling through a lot and backing up. Drivers in parking lots can often be tired or distracted, and four-way indicator lights activate peripheral vision and increase the likelihood they will see you. If needed, sound your horn to alert other drivers.
8. Avoid parking spots where truck traffic is crossing directly in front of or to your side. These spots increase your exposure to damage from trailers not being swung wide enough to make the corner.
9. Drivers can respectfully provide feedback to truck stops and their employer on any parking safety issues they find. As a professional driver, you have the right to expect safe and acceptable parking facilities.
10. Keep your dash camera on at all times. On roadways, most CMV-related crashes are caused by passenger vehicles, and it is important to have this evidence to defend yourself. In parking lots, dash cameras can capture how damage occurs when you're out of the truck, allowing you to seek compensation for repairs. ●



POST-ACCIDENT DRUG TESTING REQUIREMENTS

The FMCSA, per CFR Part 382.303, requires the employer to test as soon as practicable following an accident involving a commercial motor vehicle (CMV) on a public road in commerce, each of its surviving drivers:

- Who was performing safety-sensitive functions if the accident involved the loss of human life (fatality); or
- Who receives a citation within 32 hours of the accident under state or local law for a moving violation arising from an accident if the accident involved either:
 - Injury of any person requiring medical treatment away from the accident scene; or
 - A vehicle has to be towed from the accident scene. (If your truck just has a flat tire, fixing the tire on the roadway may prevent the need for testing or from it becoming a DOT recordable accident.)

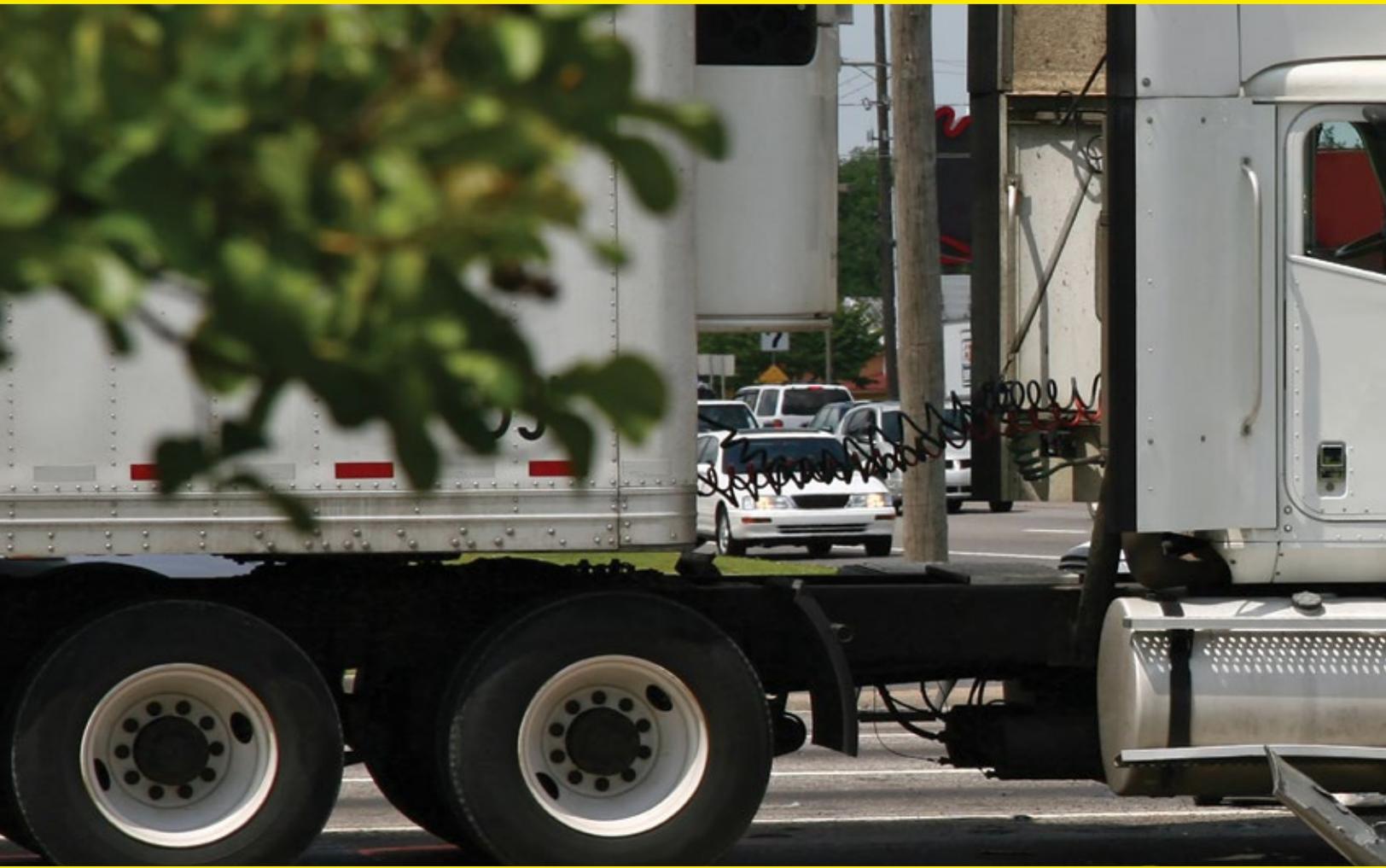
The following chart may be used to help determine if a DOT test needs to be done:

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

Source: FMCSA, 66FR43103, August 17, 2001

Remember:

FMCSA does not authorize or allow a post-accident test to be conducted under their authority for any other reason. Any other testing an employer would conduct would have to fall under their company policy.



Reminders:

- DOT test kits may only be used on DOT accidents.
- Non-DOT test kits should be used for all other post-accident testing situations. “Form E” (found in the Forms section of the Drug and Alcohol Testing web pages) should be completed to document the following rule requirements:
 - If a required alcohol test could not be completed within two hours, prepare and maintain on file a record stating the reason a test was not promptly administered.
 - If a required alcohol test could not be completed within eight hours, cease attempts to administer the test and prepare and maintain the same record described above.
 - If a required drug test could not be completed within 32 hours, prepare and maintain on file a record stating the reason the test was not promptly administered.
- Employers may be required to submit post-accident records to FMCSA if requested.
- Drivers must remain readily available for testing until it is concluded whether testing will be required. This shall not be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from

leaving the scene of an accident to obtain assistance in responding to the accident or to obtain emergency medical care.

- Employers are required to provide drivers with necessary post-accident information, procedures, and instructions prior to the driver operating a CMV.

Post-accident testing administered by law enforcement and their use:

In lieu of administering a post-accident test, employers may substitute a test administered by on-site police or public safety officials under separate authority. The employer is allowed to substitute a blood or breath alcohol test and a urine drug test performed by such local officials, using procedures required by their jurisdictions. This may be particularly useful if that test can be administered before the employer can get to the scene. The employer must obtain a copy of the test results.

What should you do if you're unsure of whether a DOT drug or alcohol test must be administered:

- Review the rules under 49 CFR Part 382.303.
- Check your company drug and alcohol policy.
- Contact your federal or state DOT office for guidance.
- Contact the drug and alcohol consortium in which you participate. ●



DISTRACTED DRIVING AND THE TRUCKING INDUSTRY

Because texting—and similar activities such as checking email or social media feeds—requires visual, manual, and cognitive attention from the driver, it is by far the most alarming driving distraction. In fact, drivers texting while driving were looking away from the road 4.6 seconds out of every 6 seconds, a time period in which a vehicle rolling at 55 miles per hour will travel more than the length of three football fields.

To address this hazard, the FMCSA has banned texting using handheld devices. However, there are many other distractions drivers can face behind the wheel. Even common activities such as adjusting a radio, eating and drinking, or using a map or navigation system can be distracting.

As a motor carrier, you have an important role to play in reducing distracted driving. Here are some important steps you can follow to help drivers stay safe and distraction-free.

1. Have a distracted driving policy that clearly states drivers are to be focused on driving tasks while behind the wheel. Explicitly forbid activities such as texting, using handheld cell phones, and similar distractions. Include operations personnel and other employees in the policy, not just drivers.
2. Educate and train all affected by the policy. Send information home and put stuffers in paycheck envelopes. Involve drivers by asking them to become ambassadors to represent the company while out on the road. Provide an in-cab sticker or decal to remind drivers of your policy.
3. Enforce the policy. Make sure the policy is communicated and understood by all, and demonstrate you are willing to enforce it, which is essential for changing behavior.
4. Use technology to help with compliance and enforcement. Have on-board communications systems that “lock out” when the vehicle is in motion. Add-ons are available for text-based and cell phone-based systems that shut down device functions when the vehicle is in motion.
5. If instant communications with drivers are needed, invest in systems that alert drivers to stop safely and check messages. Hands-free or voice-activated systems can also be used, but are not as good as eliminating the use of devices altogether while driving.
6. Be willing to let go (discharge) unsafe, problem personnel. ●



THE FMCSA ELD RULING AND ITS IMPACT ON YOU

The old way of keeping paper records for your logs will soon be a thing of the past. The Federal Motor Carrier Safety Association (FMCSA) announced their final ruling requiring the adoption and use of electronic logging devices (ELDs) by all drivers who are currently required to complete paper logs. By December 2017, all drivers currently required to complete paper logs will need to be compliant.

The final ruling has a lot of facets. Here are the most important parts and how this ruling might affect you.

- **Grandfathered Equipment.** If you are currently using ELD-like devices that meet the standards of automatic on-board recording devices, you are able to continue using these devices until December 2019, providing two extra years before you are required to adopt ELDs. Also, with software updates or other modifications, you may be able to keep using these devices after the 2019 deadline.
- **Short-Haul Drivers Are Exempt.** If you are a motor carrier who meets one of the short-haul exemptions in section 395.1(e), you are not required to use an ELD. If this is you, you can continue operating as normal.
- **Monitor Your Location.** At every change-of-duty status and at 60-minute intervals, your ELD is required to record your vehicle's location. When you are on duty, the device will monitor your location within approximately one mile. When you are off duty, it will record the location within ten miles to

help protect the privacy of the driver and to help prevent harassment.

- **Electronic Data Transfer.** All ELDs must have the ability to transfer data electronically. There are two acceptable methods of data transfer: connecting the ELD to a wireless web service, and utilizing Bluetooth and/or USB 2.0 transfers. Either way, you must be able to show a roadside inspection officer a graph of your hours to prove you are compliant. The graph can be displayed on the ELD or a hard-copy printout.
- **Device Testing and Purchasing.** All ELD manufacturers must go through a process to get their devices certified. The FMCSA will create a public registry of compliant devices to help you select a device that meets the requirements of the ruling.
- **Editing Your ELD Reports.** As a driver, you will be able to make edits and annotations to your electronic logs. These edits will not take the place of or remove any of the original record, which will remain in the system for tracking purposes. Employers can also request edits or annotations to records, but the driver will have to approve before they go into the log.

There are additional exemptions, such as for drivers who use paper logs no more than 8 days during any 30-day period and for drivers of vehicles manufactured before model year 2000. For a full outline of the ruling, including current information on hours-of-service and agricultural exemptions, visit www.fmcsa.dot.gov.





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