

## **"NOT FOR HIRE" IS NOT GOOD ENOUGH – HOW THE ELD MANDATE WILL IMPACT THE HORSE INDUSTRY**

As a breeder, owner, trainer or competitor in the horse industry, it is important to understand the implications of the ELD Mandate that will be hitting the transportation industry in December of 2017. The facts are that unless we all speak up you may be required to install an electronic logging device (ELD) in your truck.

There are some exemptions in place for farm or agricultural hauling where an ELD would not be required. However, many of the rigs used for hauling horses and the activities horse owners participate in, especially those that frequently travel to horse shows, fall outside the allowed exemptions.

What is the ELD Mandate?

In 2012, the United States Congress enacted the bill "Moving Ahead for Progress in the 21st Century" that was introduced by President Obama. A part of this bill included a provision requiring the Federal Motor Carrier Safety Act (FMCSA) to develop a rule mandating the use of electronic logging devices (ELDs) on commercial vehicles.

Do we have to comply since we are hauling horses, not cattle or other livestock?

Yes, horses are livestock and are specifically listed in the transportation bill language. It is not just the horse industry that is facing the ELD Mandate. Families that show cattle, pigs and other livestock and travel long distances to show and compete will be impacted as well. It will also impact any other type of activity or hobby that requires a large vehicle and trailer and where there is the potential to win money in competitions. The ELD Mandate requires that your vehicle must be fitted with a device under the following conditions:

- Your vehicle is a commercial vehicle (see below)
- Your activities fall outside of the exemptions allowed for agriculture and livestock transportation. Most who show horses will fall outside of the exemption requirements. (see below)
- You are required to obtain a Commercial Driver's License due to the weight of your truck and trailer (see below)

The "Not For Hire" myth:

It is not uncommon to see "Not For Hire" graphics on trucks and horse trailers. The idea behind this is to avoid certain Federal Motor Carrier Safety Administration (FMCSA) regulations. This is an old fable that does not protect those hauling horses from fines for non-compliance. A "Not For Hire" sign on your rig will not protect you if it is determined that your truck and trailer fit into the commercial category or are being used for commercial purposes. Nor will it protect you if you are driving a vehicle and trailer that requires a commercial license.

A recreational vehicle exemption does not always apply:

Living quarters horse trailers can be classified as recreational vehicles for private use. This classification exempts both the truck and trailer from being considered commercial as well as the requirements for the driver to obtain a commercial driver's license. However, if an officer or inspector determines that the truck and trailer is being used in "furtherance of a commercial enterprise", then the driver and vehicle are out of compliance with FMCSA regulations which can result in fines and being detained for an extended period. For example, we have been made aware of situations where the owners of truck and trailers stopped by the Highway Patrol or other inspectors, were required to both obtain a Department of Transportation (DOT) number for their vehicle, and find a driver with a commercial driver's license in order to resume their trip. In these cases, once the ELD Mandate is in effect, the drivers could also have been required to purchase and install an ELD unit. (see below for clarification about the meaning of "furtherance of a commercial enterprise")

What does an ELD do?

The ELD or electronic logging device synchronizes with the engine of a vehicle and keeps track of hours of service. It logs driving time, vehicle speed, routes, and keeps track of mandated rest periods as well as other data points. Once the vehicle is in motion and reaches 5 miles per hour, the ELD keeps track of time for the next 14 hours – nonstop. Under the standard ELD regulations, there are no provisions to account for traffic, fueling, or loading and unloading. In those 14 hours, drivers are only allowed to drive for 11 hours. Because of this, drivers are forced to drive as much as they can during the 14 hours once the clock on the ELD starts.

Ten-hour rest period:

When the 14-hour limit has been reached, the ELD indicates to the driver that they must stop and “rest” for 10 consecutive hours. The ELD keeps track of any “infractions” – that is, going over the 14 hours as well as vehicle speed – and has reporting functions so inspectors can review the logs and fine drivers for infractions from days past. This means that those hauling horses will be required to stop their trip once the 14-hour threshold is reached and cannot resume travel until the 10-hour rest period has passed. If the threshold is breached, the ELD makes a record that can be reviewed by authorities and you can be fined.

Have you noticed in the last several years all of the trucks that are parked along the side of the road? Have you noticed that on and off ramps and picnic and rest areas are sometimes filled up with trucks? Those typically are drivers that have reached their limit and have to immediately find a place to park their trucks to avoid costly violations. If you are required to install an ELD for your truck and horse trailer, this could easily happen to you too.

Mandated breaks:

According to the Hours of Service outlined in the Federal Motor Carriers Safety Administration rules, rest breaks are mandatory in addition to the ten-hour rest period. Commercial drivers are required to take a 30-minute break within the 11 hour driving period and cannot go past 8 hours without taking a break. This mandatory break is calculated from when the vehicle starts moving and is tracked by the ELD. It does not take into account any other stops or breaks that may have occurred within the 8-hour time period. The break must be 30 consecutive minutes. A driver cannot substitute the 30-minute break with a 10-minute break and later a 20-minute break. There is no getting around this as the ELD records and stores the 30 consecutive minute break periods and will subject the driver to penalty for a rule violation upon inspection. Additionally, the 30-minute break is included in the 14-hour time limit.

What constitutes a Commercial Motor Vehicle (CMV) classification?

- Are you writing off your truck or trailer as a business loss or expense on your tax returns? Tax write offs for your truck and trailer would make them fall under the commercial classification.
- Are your truck and/or trailer being used for your business? If your truck or trailer is being used for your business, they fall under the commercial classification. If you are a trainer, your truck and trailer is used for business, there's no doubt about it. If you are a non-pro or amateur competitor, your truck and trailer can be considered as used for business (see “furtherance of a commercial enterprise” explanation below). If you are a non-pro or amateur and breed horses and sell them, your truck and trailer are considered as used for business.
- Do you only haul your own horses? If not and if you collect payment, (for example splitting fuel costs) to haul a friend or client's horse to a show, to the trainer, to the vet, or to the breeder, your truck and trailer are considered commercial vehicles.
- Have you won money competing with your horse or a client's horse? Even though most often competing with horses is not profitable for a non-pro when calculating all the costs, the FMCSA could consider money won at a horse show or event, a profit. They can also consider hauling to an event with the intent or hopes of winning some money, as pursuing a profit. This definition of “profit” then classifies your truck and trailer as commercial.

- Do you have sponsors? Do you have their stickers on your truck or trailer? Just about everyone knows a roper, rodeo or horse show contestant who has a “day job” (horseshoer as an example) that spends part of their time traveling to events to compete. In many cases, especially with rodeo events, (some associations have strict rules about sponsorships and others do not) they also have sponsors, whether its ropes, saddle pads, clothing or other equipment. Those sponsorships qualify as “furtherance of a commercial enterprise” and then puts them in the commercial category.
- If your vehicle has a Gross Vehicle Weight Rating of more than 10,000 pounds and is used for your business or with the intent to make a profit (see “furtherance of a commercial enterprise” below), or involved in interstate commerce, like going to horse shows out of your home state, it then falls into the commercial vehicle classification by the Federal Motor Carrier Safety Administration (FMCSA).

What “furtherance of a commercial enterprise” means:

The FMCSA rule has some language that is far reaching with significant ramifications for horse enthusiasts. The category “furtherance of a commercial enterprise” is one of the qualifications considered when determining whether a driver and their truck and trailer fall under the commercial classification and apply to the scenarios we have listed above.

Here’s the information as outlined on the FMCSA website’s Q&A section:

“ Question 21: Does the exemption in §390.3(f)(3) for the "occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise" apply to persons who occasionally use CMVs to transport cars, boats, horses, etc., to races, tournaments, shows or similar events, even if prize money is offered at these events?

Guidance: The exemption would apply to this kind of transportation, provided: (1) The underlying activities are not undertaken for profit, i.e., (a) prize money is declared as ordinary income for tax purposes, and (b) the cost of the underlying activities is not deducted as a business expense for tax purposes; and, where relevant; (2) corporate sponsorship is not involved. Drivers must confer with their State of licensure to determine the licensing provisions to which they are subject.”

Do I need a Commercial Driver’s License?

Your truck and trailer can be considered a commercial vehicle without the requirement that you obtain a Commercial Driver’s License (CDL). However, you will need to obtain a CDL if your vehicle fits the following categories:

- Any combination of vehicles with a gross combined weight rating (GCWR) of 26,001 or more pounds. For example, if your dually has a GVWR of 10,000 pounds and your horse trailer has a GVWR more than 16,000 pounds, a commercial license is required.
- Any single vehicle with a GVWR of 26,001 or more pounds.

What is the GVWR (Gross Vehicle Weight Rating)?

- The GVWR is the value specified by the manufacturer as the maximum loaded weight of a single vehicle or combination of vehicles, or the registered gross weight.

What is the GCWR (Gross Combined Weight Rating)?

- The GCWR is the value specified by the manufacturer as the GVWR of the power unit plus the GVWR of the towed unit or units, or the combined registered weight of the power unit plus the towed unit(s). The GCWR includes the passengers and cargo in the tow vehicle, plus the weight of the trailer and cargo in the trailer.

What are the ongoing requirements for a Commercial Driver’s License?

After passing the written and driving examination for a commercial license, including other steps such as a special medical examination, drug testing, and vehicle inspections, there are ongoing requirements for driving a vehicle that fall under the commercial classification. Each state has their own set of regulations in addition to the federal code so it is important to understand the laws in your state in regards to a commercial license.

Do I need to have a Department of Transportation (DOT) number?

Your vehicle may require a USDOT (Federal) number if your vehicle and travel meet the following conditions:

- Your truck and trailer are considered commercial vehicles. This applies if you use your truck and trailer for business or for “furtherance of a commercial enterprise” (see above).
  - The GVWR is over 10,000 pounds
  - AND if you travel into other states
- Depending on the state in which you live, you may also be required to obtain a State DOT if your truck and trailer are considered commercial vehicles.

#### HOS or Hours of Service:

Most drivers of commercial vehicles must comply with Federal Motor Carrier Safety Administration (FMCSA) Hours of Service.

Hours of Service require that drivers can only be on the road for 11 hours of a 14 hour shift. However, with the ELD, and the fact that the machines start recording time from the moment wheels move past 5 miles per hour, drivers are not able to make allowances for traffic, loading and unloading, and taking a longer rest, or breaking up rest time.

There are some exceptions to compliance with Hours of Service. They are listed below.

#### ROD or Record of Duty:

The Record of Duty (ROD) is a log book that every driver of a commercial vehicle must maintain and keep on file for 6 months. The following information must be logged into the ROD:

- The status for each 24-hour period
- Time must be recorded in duplicate
- Time for Off Duty
- Driving Time
- Time spent sleeping
- Time on duty but not driving
- Each change in duty status that is recorded on the log must also include the name of the city/town/village and state.
- Other supporting documentation must also be maintained to coincide with the ROD (log book) these include toll receipts, fuel receipts, and other documentation.

If you have a commercial vehicle and your activities fall outside of the exemptions for farming and agriculture, you will be required to install an ELD

If you have a Commercial Driver’s License and therefore are required to follow the Hours of Service and keep a Record of Duty, you will be required to install an ELD  
Are there situations where we are not required to follow the Hours of Service (HOS) or install an ELD?

#### Agricultural Use:

Drivers transporting ‘agricultural commodities,’ including livestock, are exempt from the Hours of Service regulations while operating within 150 air-miles of the source of such commodities.

Vehicles and drivers are exempt if they are not:

- Hauling farther away than 150 miles and not more than 8 days in a 30 day period. To put this in perspective, if you travel to a horse show, and are driving more than 150 miles to reach the show grounds, your trip there and back counts as driving days. If you stay in a hotel instead of on the showgrounds, any driving to the show grounds counts as days. In this light, it is pretty easy to consume the 8 days in a 30 day period if you attend more than one horse show during that time, or go to horse shows that last an extended period of time. If you are traveling to horse shows frequently, and drive a dually with a 4+ horse trailer, you are more than likely to fall into the classification where an ELD is required on your vehicle.
- Drivers of vehicles manufactured before 2000 are not required to implement an ELD.
- Drivers will be required to use an ELD if they use a paper log more than 8 times in a rolling 30 day period. (Exceed 12 hours or more than 100 air miles from terminal). Once a driver has exceeded that threshold, they’ll have to drive an ELD equipped truck until their 30 day record drops to 8 or less paper log events.

#### Short Haul:

Short haul vehicles are exempt from the ELD Mandate. There are a few key components required to meet the FMCSA definition for short haul.

You must:

- Start and return to same location within 12 hours of duty time
- Drive no more than 11 hours
- Have ten consecutive hours off between shifts
- Maintain your time clock function. Meaning, employees who are on the clock, punching in and out for work.
- Not exceed a 100-mile radius from your starting location

What can we do about this government overreach?

Representatives from Protect The Harvest as well as Lucas Oil have been working hard to bring these issues to light. In addition to sharing information, we have made trips to Washington DC to meet with lawmakers. There are other groups that have also been sounding the alarm about the ELD Mandate. We need to do more and we need your help. If you have concerns about how the ELD Mandate and other regulations will impact your business or enjoying horses as a hobby, the time is now to act. Make sure to let others know about what is coming up. Share information and encourage others to do so as well. Get your local clubs and groups involved too. Most importantly, contact your Congressional Representative and let them know your concerns. They have heard from group representatives, now they need to hear from individuals, as many as possible. If we don't act now, soon many of us including those that simply enjoy showing animals, or other hobbies that require a truck and trailer, will be required to install electronic logging devices on our vehicles."