

Attachment R

§395.34 ELD malfunctions and data diagnostic events.

(a) *Recordkeeping during ELD malfunctions.* In case of an ELD malfunction, a driver must do the following:

(1) Note the malfunction of the ELD and provide written notice of the malfunction to the motor carrier within 24 hours;

(2) Reconstruct the record of duty status for the current 24-hour period and the previous 7 consecutive days, and record the records of duty status on graph-grid paper logs that comply with §395.8, unless the driver already possesses the records or the records are retrievable from the ELD; and

(3) Continue to manually prepare a record of duty status in accordance with §395.8 until the ELD is serviced and brought back into compliance with this subpart.

(b) *Inspections during malfunctions.* When a driver is inspected for hours of service compliance during an ELD malfunction, the driver must provide the authorized safety official the driver's records of duty status manually kept as specified under paragraphs (a)(2) and (3) of this section.

(c) *Driver requirements during ELD data diagnostic events.* If an ELD indicates that there is a data inconsistency that generates a data diagnostic event, the driver must follow the motor carrier's and ELD provider's recommendations in resolving the data inconsistency.

(d) *Motor carrier requirements for repair, replacement, or service.* (1) If a motor carrier receives or discovers information concerning the malfunction of an ELD, the motor carrier must take actions to correct the malfunction of the ELD within 8 days of discovery of the condition or a driver's notification to the motor carrier, whichever occurs first.

(2) A motor carrier seeking to extend the period of time permitted for repair, replacement, or service of one or more ELDs shall notify the FMCSA Division Administrator for the State of the motor carrier's principal place of business within 5 days after a driver notifies the motor carrier under paragraph (a)(1) of this section. Each request for an extension under this section must be signed by the motor carrier and must contain:

(i) The name, address, and telephone number of the motor carrier representative who files the request;

(ii) The make, model, and serial number of each ELD;

(iii) The date and location of each ELD malfunction as reported by the driver to the carrier; and

(iv) A concise statement describing actions taken by the motor carrier to make a good faith effort to repair, replace, or service the ELD units, including why the carrier needs additional time beyond the 8 days provided by this section.

(3) If FMCSA determines that the motor carrier is continuing to make a good faith effort to ensure repair, replacement, or service to address the malfunction of each ELD, FMCSA may allow an additional period.

(4) FMCSA will provide written notice to the motor carrier of its determination. The determination may include any conditions that FMCSA considers necessary to ensure hours-of-service compliance. The determination shall constitute a final agency action.

(5) A motor carrier providing a request for extension that meets the requirements of paragraph (d)(2) of this section is deemed in compliance with §395.8(a)(1)(i) and (a)(2) until FMCSA makes an extension determination under this section, provided the motor carrier and driver continue to comply with the other requirements of this section.