

requirements of the States in which they travel so that they do not transport tanks in States already requiring the endorsement.

**Commercial Driver's License Standards; Requirements and Penalties; Regulatory Guidance on 49 CFR 383.5, Definitions**

*Question:* On May 9, 2011, FMCSA revised the definition of "tank vehicle" to include any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded intermediate bulk containers (IBCs) or other tanks temporarily attached to a CMV?

*Guidance:* Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

*Question:* On May 9, 2011, FMCSA revised the definition of "tank vehicle." Does the new definition cover the transportation of empty intermediate bulk containers (IBCs) or other tanks, or empty storage tanks?

*Guidance:* No. The definition of "tank vehicle" does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

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**Anne S. Ferro,**  
Administrator.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**Regulatory Guidance on Entering Data in an Automatic On-Board Recording Device While Commercial Motor Vehicle Is in Motion**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of regulatory guidance.

**SUMMARY:** FMCSA issues regulatory guidance to clarify that a co-driver may make entries to an automatic on-board recording device (AOBRD) while a commercial motor vehicle (CMV) is in motion. The prohibition in 49 CFR 395.15 against making entries to an AOBRD while the vehicle is in motion pertains only to the current driver. This guidance responds to recent inquiries from manufacturers of recording devices concerning updates to the duty status of co-drivers making the transition from the passenger seat to the sleeper berth or vice versa.

**DATES:** This regulatory guidance is effective May 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Phone (202) 366-4325.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Motor Carrier Act of 1935 provides that "The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation" [49 U.S.C. 31502(b)].

The Motor Carrier Safety Act of 1984 (MCSA) confers on the Secretary the authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe safety standards for CMVs. At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is

adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)]. The Act also grants the Secretary broad power to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate" [49 U.S.C. 31133(a)(8) and (10)].

The Administrator of FMCSA has been delegated the authority to carry out the functions vested in the Secretary by the Motor Carrier Act of 1935 [49 CFR 1.73(l)] and the MCSA [§ 1.73(g)]. The provisions affected by this Notice of Regulatory Guidance are based on these statutes.

**Reason for This Notice**

This document adds regulatory guidance to clarify that a co-driver may make entries to an AOBRD while the CMV is in motion. The AOBRD regulation states that duty status may " \* \* \* be updated only when the commercial motor vehicle is at rest \* \* \*" [§ 395.15(i)(2)]. However, this restriction pertains only to the current driver. This guidance is provided in response to recent inquiries from manufacturers of recording devices concerning updates to the duty status of co-drivers making the transition from the passenger seat to the sleeper berth or vice versa.

This guidance will not contribute to distracted driving because the driver is still prohibited from making duty status entries in the AOBRD while driving.

For the reasons explained above, FMCSA issues new Regulatory Guidance, Question 4 to FMCSR § 395.15.

**Part 395—Hours of Service of Drivers**

*Section 395.15, "Automatic On-Board Recording Devices"*

*Question 4:* Are automatic on-board recorders (AOBRDs) required to be designed and maintained to prevent team drivers in a non-driving duty status from making updates to their electronic record of duty status while the vehicle is in motion?

*Guidance:* No. AOBRDs are required only to prevent updates to the electronic record by the person who is actually driving while the vehicle is in motion. The on-board recorder must be capable of recording separately each driver's duty status when there is a multiple driver operation (49 CFR 395.15(i)(6)). Therefore, a system designed and maintained to handle multiple drivers would have a means for drivers to identify themselves and prevent the

current driver from making entries on the electronic record (except when registering the time the vehicle crosses a State boundary) until the vehicle is at

rest. However, the system may allow a co-driver to log into the system at any time to make updates while the vehicle is in motion.

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**Anne S. Ferro,**  
*Administrator.*

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