



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**Hours of Service for Drivers: Regulatory Guidance Concerning the Editing of Automatic On-Board Recording Device (AOBRD) Information**

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

**ACTION:** Notice of regulatory guidance.

**SUMMARY:** FMCSA issues regulatory guidance concerning the editing of records created by automatic on-board recording devices (AOBRDs). The guidance makes clear that, within certain limits, a driver must be allowed to review his or her AOBRD records, annotate and correct inaccurate records, enter any missing information, and certify the accuracy of the information. The AOBRD must retain the original entries, and reflect the date, time, and name of the person making edits to the information. Drivers' supervisors may request that a driver make edits to correct errors, but the driver must accept or reject such requests. Driving time may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. All prior Agency interpretations and regulatory guidance on this subject, including memoranda and letters, may no longer be relied upon to the extent they are inconsistent with this guidance.

**DATES:** This regulatory guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, phone (202) 366-4325, e-mail MCPSD@dot.gov.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act), as amended (codified at 49 U.S.C. 31136(a)) authorizes the Secretary of Transportation to regulate commercial motor vehicles (CMVs) and equipment, and the drivers and motor carriers that operate them. Section 211 of the 1984 Act also gives 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 authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation.

**Background**

Motor carriers began to use automated hours-of-service (HOS) recording devices in the mid-1980s to replace paper records. The Federal Highway Administration, the agency then responsible for the motor carrier safety regulations, published a final rule in 1988 that defined Automatic On Board Recording Devices (AOBRDs) and set forth performance standards for their use (53 FR 38670, September 30, 1988, codified at 49 CFR 395.15).

Question 2 of the regulatory guidance for § 395.15 prohibits CMV drivers from “amending” AOB RD records of duty status (RODS ) during a trip; the guidance was published on April 4, 1997 (65 FR 16370, at 16426). The reason for the prohibition -- “If drivers, who use automatic on-board recording devices, were allowed to amend their record of duty status while in transit, legitimate amendments could not be distinguished from falsifications”-- was to block a pathway for drivers to falsify their electronic records. At the time the guidance was written, most AOB RD systems required the driver to physically deliver his or her electronic HOS information to the motor carrier using removable media such as a data disk. The Agency may have been concerned that some of those early AOB RD systems might not have incorporated audit trails into their software.

Over 25 years have passed since the AOB RD rule was published. Many systems now allow electronic transfer of data from in-cab units to a support system. Thousands of motor carriers and hundreds of thousands of drivers are using HOS recording systems that far exceed the minimum performance requirements for AOB RDs. Information technology systems can place very precise controls over the data revision; e.g., specific data elements can be “locked” to prevent any revision once an entry has been made. They also routinely incorporate audit trails to indicate who revised data that was originally entered, when the revision was made, and the reason for the change.

FMCSA acknowledges that drivers need to be able to make legitimate corrections to their electronic AOB RD records. For example, if a driver erroneously enters “off duty” when he or she actually is on duty/not driving, and realizes this error later, under current guidance the driver would have to relay this information to a supervisory motor carrier

official, and that official would need to edit the driver's record. In another example, a driver might need to enter on-duty activity performed when the driver was away from the CMV.

With the steady increase in CMV drivers using AOBDRs, and the ability of software to note edits without deleting the original record, the need for a driver to make this request through another party is no longer necessary and is becoming increasingly less viable. Therefore, as long as the AOBDR record reflects both the original entry and the revised entry, along with information on who made the revision, the date and time, and the reason (in the Remarks sections, see current Question 2 to § 395.15), FMCSA will now allow these edits.

However, FMCSA continues to prohibit drivers from editing records related to driving time, except in limited circumstances. Driving time may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. Such time may be reassigned to the correct driver. Staff of the motor carrier or its electronic systems provider may request that a driver make edits to correct errors. The driver must accept or reject such requests and the AOBDR must record the transaction. If the driver edits the record based on the request, he or she must re-submit and re-certify the corrected record.

In all instances of editing, the AOBDR must retain the original entries, and reflect the date, time, and name of the person making any edit. The motor carrier must also retain both the original and edited record of duty status.

The Agency revises Question 2 of the Regulatory Guidance for § 395.15 to address all of these issues.

## **PART 395—HOURS OF SERVICE OF DRIVERS**

### **Replace the text of § 395.15 Question 2 with the following:**

“Question 2: May entries made on an automatic on-board recording device (AOBRD) be annotated?

Guidance: Yes.

(1) Within certain limits, a driver must be allowed to review his or her AOBRD records, annotate and correct inaccurate records, enter any missing information, and certify the accuracy of the information.

(2) The AOBRD must retain the original entries, and reflect the date and time of an edit, and name of the person making the edit. If the driver has already “certified” the entries for the duty period, he or she must re-certify the edited version, which must be transmitted to the carrier.

(3) “Driving time” may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. Such time may be reassigned to the correct driver.

(4) After reviewing incoming records, drivers’ supervisors may request that a driver make edits to correct errors. The driver must accept or reject such requests and the AOBRD must record the transaction. If the driver annotates the record based on the request, he or she must re-submit and re-certify the corrected record.”

Issued on: September 25, 2015.

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T.F. Scott Darling, III,

Acting Administrator.

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