DEPARTMENT OF TRANSPORTATION   **[4910-EX-P]**

Federal Motor Carrier Safety Administration

49 CFR Part 395

**Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance
Concerning Records of Duty Status Generated by Logging Software Programs**

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

ACTION: Notice of regulatory guidance.

SUMMARY: FMCSA revises its regulatory guidance concerning records of duty status

(RODS) generated by logging software programs on laptop computers, tablets, and

smartphones. These logging software programs are used by certain drivers to help them

prepare RODS, but the computers, tablets, and smartphones with such software do not

meet FMCSA's requirements for automatic on-board recording devices (AOBRDs). The

revision of the guidance clarifies the relationship between the Agency's policy

concerning the use of logging software programs and the Agency's January 4, 2011,

regulatory guidance concerning electronic signatures by removing the requirement that

drivers print and sign paper copies of RODS generated through such logging software,

provided the driver is able to sign the RODS electronically at the end of each work day

and display the electronic record at the roadside. This guidance provides the motor

carrier industry, and Federal, State, and local motor carrier enforcement officials with

uniform information regarding computer software and devices used by drivers to assist

them with hours-of-service (HOS) recordkeeping. All prior Agency interpretations and

regulatory guidance, including memoranda and letters, are rescinded to the extent they

are inconsistent with this guidance.

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

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SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) 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

On January 4, 2011, FMCSA published regulatory guidance for § 390.31 of the Federal Motor Carrier Safety Regulations (FMCSRs) concerning electronic signatures and documents (76 FR 411). The guidance explained how electronic signatures could be used under the existing regulations while the Agency considers a notice-and-comment rulemaking to amend the FMCSRs to explicitly allow electronic signatures on documents

required by the safety regulations. The guidance provides a short-term solution for allowing the use of electronic signatures, to the greatest extent possible under the existing regulations, consistent with the requirements of the Government Paperwork Elimination Act of 1998 (GPEA) and the Electronic Signatures in Global and National Commerce Act of 2000 (E-SIGN). The purpose of GPEA is to improve customer service and governmental efficiency through the use of information technology. The purpose of E-SIGN is to promote the use of electronic recordkeeping in private commerce by establishing legal equivalence between traditional paper-based methods and electronic methods.

On April 28, 2014, FMCSA published a notice of proposed rulemaking concerning "Electronic Documents and Signatures" (79 FR 23306). The proposed regulatory amendments would permit the use of electronic methods to sign, certify, generate, exchange or maintain records so long as the documents accurately reflect the information in the record and can be used for their intended purpose.

Records of Duty Status

Generally, drivers of CMVs as defined in 49 CFR 390.5 who are subject to the Federal hours-of-service requirements must record their duty status for each 24-hour period. However, the rules provide limited exemptions to the RODS requirements, including an exemption for the following drivers:

- CMV drivers (whether the vehicles require a commercial driver's license (CDL) or not) who operate within 100 air-miles of their normal work reporting location and satisfy the time limitations and recordkeeping requirements of § 395.1(e)(1).

- Drivers of property-carrying CMVs for which a CDL is not required and who operate within a 150 air-mile radius of the location where the driver reports for duty and satisfy the time limitations and recordkeeping requirements of § 395.1(e)(2).[1]

For drivers that must prepare RODS, 49 CFR 395.8 specifies a particular "grid" or type of form that must be used to document the driver's activities during the 24-hour period.

As an alternative to written RODS, 49 CFR 395.15 allows the use of AOBRDs. The AOBRD regulation was adopted in 1988. To be considered a compliant device, an AOBRD must be integrally synchronized with specific operations of the CMV in which it is installed (see 49 CFR 395.2, Definitions, AOBRD). Use of AOBRDs is voluntary.

Several vendors market software products to assist the driver in recording and storing RODS information electronically. Laptop computers, tablets, and smartphones running driver logging software should not be confused with AOBRDs because the devices are not integrally synchronized with the specific operations of the CMV on which they are being used. Drivers must manually input their duty status information (e.g., driving time, on-duty not driving, etc.) directly into the computer, tablet or smartphone.

Although FMCSA has allowed CMV drivers to use driver logging software, the Agency's regulatory guidance explains that drivers must print and sign the RODS that these devices generate, for each 24-hour period, just as the driver would with any handwritten RODS. The existing Questions 27 and 28 for § 395.8 (available through www.fmcsa.dot.gov) read as follows:

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[1] A driver who qualifies for this exception is not eligible for the 100 air-mile exception under 49 CFR 395.1(e)(1).

"Question 27: Would a driver who prepares his/her log on a computer, 'digitally' signs the log, and then transmits it directly to the carrier, be in compliance with 49 CFR §395.8(f)(2)?

Guidance: No. The driver's activities must be recorded in accordance with the provisions of §395.8(f)(2). This section requires that all entries relating to driver's duty status must be legible and in the driver's own handwriting."

"Question 28: May a driver use a computer to generate his or her record of duty status (log book) and then manually sign the computer printouts in lieu of handwritten logs?

Guidance: A driver may use a computer to generate the graph grid and entries for the record of duty status or log books, provided the computer-generated output includes the minimum information required by §395.8 and is formatted in accordance with the rules. In addition, the driver must:

1. Be capable of printing the record of duty status for the current 24-hour period at the request of an enforcement officer.

2. Print the record of duty status at the end of each 24-hour period, and sign it in his or her handwriting to certify that all entries required by this section are true and correct.

3. Maintain a copy of printed and signed records of duty status for the previous 7 consecutive days and make it available for inspection at the request of an enforcement officer."

Electronic Signatures and Hours-of-Service Records

Question 11 from the January 2011 regulatory guidance notice for § 390.31 advises motor carriers and other parties that they may use electronic methods to generate, sign, maintain and/or exchange any document that is generated and maintained or exchanged by private parties, regardless of whether FMCSA subsequently requires them to be produced or displayed to Federal and State enforcement personnel. The list of examples of documents includes RODS.

The Regulatory Guidance for § 390.31 was originally developed to allow motor carriers to store documents in electronic format. The January 2011 revisions to the Guidance expand the scope to allow documents to be created, maintained, and generated in electronic format. Specifically, as stated in the January 2011 Notice:

- Any electronic record or signature is considered the legal equivalent of a paper document or signature if it is the functional equivalent with respect to integrity, accuracy, and accessibility.

- [This revised] guidance establishes parity between paper and electronic records and signatures, greatly expanding interested parties' ability to use electronic records.

The January 2011 regulatory guidance is consistent with the Agency's previous policy concerning RODS prepared using logging software in that it continues to accept them as equivalent to paper documents. Signatures may be electronically embedded on printed copies or may be manually added to printed copies of the records.

Guidance Question 9 to § 390.31 provides that documents stored electronically must be capable of being reproduced in the same time frame as the original document. A paper RODS must be presented to an enforcement official upon request. Therefore, the

electronically-stored RODS must also be printed for an enforcement official upon request during a roadside inspection.

Today's guidance harmonizes the January 2011 guidance interpreting § 390.31 with the previously issued guidance interpreting 49 CFR 395.8. **FMCSA withdraws Question 27** for § 395.8, which currently states that a driver who prepares his/her log on a computer, 'digitally' signs the log, and then transmits it directly to the carrier, would not be in compliance with 49 CFR 395.8(f)(2). In addition, **FMCSA revises the response to Question 28** for § 395.8 to make clear that a driver may create, sign and store electronic RODS if certain conditions are met.

Hours of Service for Commercial Motor Vehicle Drivers

Regulatory Guidance for 49 CFR 395.8, Driver's Record of Duty Status

Question 28*: May a driver use a computer, tablet, or smartphone (that is not an Automatic On-Board Recording Device) to create, electronically sign, and store the record of duty status (RODS)?

Guidance: Yes. A driver may make manual duty-status entries to a computer, tablet, or smartphone program that is used to generate the graph grid and entries for the record of duty status (RODS) or log book, provided the electronically-generated display (if any) and output includes the minimum information required by §395.8 and is formatted in accordance with that section. The driver must sign the RODS (manually or electronically) at the end of each 24-hour period to certify that all required entries are true and correct.

(A) If electronic signatures are not used:

- The driver must print and manually sign the RODS daily.

- The driver must have in his or her possession the printed and signed RODS for the prior seven consecutive days (if required on those days).

- The driver should be given an opportunity to print and manually sign the current day's RODS at the time of the inspection.

(B) If RODS have been electronically signed:

- At the time of an inspection of records by an enforcement official, the driver may display the current and prior seven days RODS to the official on the device's screen.

- If the enforcement official requests printed copies of the RODS, the driver must be given an opportunity to print the current and prior seven days RODS (if required on those days) at the time of inspection.

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Anne S. Ferro
Administrator

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