placed in a distinct section of the bill separate from all carrier charges. This rule places some burden on carriers, but the burden is mitigated because no specific format is mandated. Carriers have flexibility to develop their own solutions that comply with the rule as best works for their size and particular billing system, thereby reducing the burden. The rule will make it much easier for consumers to identify the charges on their bill that the record suggests are most likely to be crammed.

23. *Separate Totals for Carrier and Non-Carrier Charges.* The Commission requires carriers to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third parties on the payment page of their bills. The separate totals requirement is part-and-parcel of the separate section for non-carrier third-party charges. The benefit to consumers in making their bills more clear and usable outweighs the burden on the carrier.

24. The Commission specifically identified two alternatives to the rules adopted in the *R&O* for the purpose of reducing the economic impact on small businesses. First, the Commission considered requiring all carriers to offer blocking. Second, the Commission considered requiring a specific bill format. However, the Commission rejected both of these alternatives because they are more costly to small businesses.

Congressional Review Act

25. The Commission will send a copy of the *R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

26. Pursuant to the authority found in sections 1–2, 4, 201, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, 303(r), and 403, the *R&O is adopted.*

27. Pursuant to the authority found in sections 4, 201, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201, 303(r), and 403, the Commission's rules *are adopted.*

28. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart Y—Truth-in-Billing Requirements for Common Carriers

■ 1. The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

■ 2. Revise the heading for Subpart Y to read as follows:

Subpart Y—Truth-in-Billing Requirements for Common Carriers; Billing for Unauthorized Charges

■ 3. Amend § 64.2400 by revising paragraph (b) to read as follows:

§ 64.2400 Purpose and scope.

* * * * *

(b) These rules shall apply to all telecommunications common carriers and to all bills containing charges for intrastate or interstate services, except as follows:

(1) Sections 64.2401(a)(2), 64.2401(a)(3), 64.2401(c), and 64.2401(f) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.

(2) Sections 64.2401(a)(3) and 64.2401(f) shall not apply to bills containing charges only for intrastate services.

* * * * *

■ 4. Amend § 64.2401 by redesignating paragraph (a)(3) as paragraph (a)(4), and add new paragraphs (a)(3) and (f) to read as follows:

§ 64.2401 Truth-in-Billing Requirements.

(a) * * *

(3) Carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from all carrier charges. Charges in each distinct section of the bill must be separately subtotaled. These separate subtotals for carrier and non-carrier charges also must be clearly and conspicuously displayed along with the bill total on the payment page of a paper bill or equivalent location on an electronic bill. For purposes of this subparagraph ''equivalent location on an electronic bill'' shall mean any location on an electronic bill where the bill total is displayed and any location where the bill total is displayed before the bill recipient accesses the complete electronic bill, such as in an electronic mail message notifying the bill recipient of the bill and an electronic link or notice on a Web site or electronic payment portal.

* * * * *

(f) *Blocking of third-party charges.* Carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each telephone bill, and on each carrier's Web site.

[FR Doc. 2012–12673 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 385

[Docket No. FMCSA–2007–27659]

Commercial Driver's License Testing and Commercial Learner's Permit Standards

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

ACTION: Notice of regulatory guidance and applicability of ''tank vehicle'' definition.

SUMMARY: On May 9, 2011, FMCSA published a final rule titled ''Commercial Driver's License Testing and Commercial Learner's Permit Standards.'' Among other things, the rule revised the definition of ''tank vehicle.'' The change required additional drivers, primarily those transporting certain tanks temporarily attached to the commercial motor vehicle (CMV), to obtain a tank vehicle endorsement on their commercial driver's license (CDL). The Agency has since received numerous questions and requests for clarification. This notice responds to questions about the new definition and the compliance date for

drivers to obtain the tank vehicle endorsement.

DATES: *Effective date for the regulatory guidance:* May 24, 2012.

Compliance date for the May, 9, 2011 final rule: States must be in compliance with the requirements in subpart B of Part 384 (49 CFR part 384) by July 8, 2014.

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366–5014 or email *robert.redmond@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2008, FMCSA issued a notice of proposed rulemaking (NPRM) to amend the CDL knowledge and skills testing standards and establish new minimum Federal standards for States to issue the commercial learner's permit (CLP) (73 FR 19282). On May 9, 2011, FMCSA published the final rule, which made a CLP holder subject to virtually the same requirements as a CDL holder, including the same driver disqualification penalties (76 FR 26854). This final rule also implemented section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act).

For many years, the definition of ''tank vehicle'' in 49 CFR 383.5 read:

> ''*Tank vehicle* means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.''

The NPRM proposed to revise the definition to read:

> ''*Tank vehicle* means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.'' 73 FR 19301.

The final rule further revised the definition:

> ''*Tank vehicle* means 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. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.'' (Emphasis added.) 76 FR 26878.

The change from the NPRM's definition (a single tank with an aggregate capacity of 1000 gallons) to that of the final rule (multiple tanks with an aggregate capacity of 1000 gallons) was made in response to comments to the rulemaking docket.

Applicability of the Tank Vehicle Definition to Intermediate Bulk Containers (IBCs)

The Dangerous Goods Advisory Council (DGAC) advised the Agency after publication of the final rule that the revised definition could have a dramatic impact on the number of drivers required to have a tank vehicle endorsement, especially if IBCs were considered tanks covered by the definition. An IBC is a container used for transport and storage of fluids and bulk materials. IBCs are generally cubic in form and, therefore, can transport more material in the same area than cylindrically shaped containers.

The DGAC noted that IBCs—which may have a capacity as high as 3,000 liters but more typically do not exceed 1,000 liters (264 gallons)—are commonly used to transport liquid hazardous materials and are subject to the Department of Transportation's hazardous materials regulations. These packages are frequently transported by less-than-truckload (LTL) carriers. DGAC and others have asked whether FMCSA intended IBCs to be considered tanks, as that term is used in the ''tank vehicle'' definition. If so, many drivers who had not previously held a tank vehicle endorsement would be required to get one.

FMCSA acknowledges the trucking industry's concerns. However, the Agency intended that the revised definition would cover IBCs secured as indicated by the definition. For example, the aggregate capacity of four or more 1,000-liter IBCs would exceed the 1,000 gallon threshold. Drivers for many LTL carriers will therefore need to obtain a tank vehicle endorsement for their CDLs in order to maintain operational flexibility and to qualify to transport the range of cargo they normally handle.

The Agency includes in this notice new regulatory guidance on this issue. It will be posted to the Agency's Web site with previously published regulatory guidance for the benefit of interested parties and publishing companies that reprint the Federal Motor Carrier Safety Regulations and guidance.

Load Securement

In response to other questions submitted to the Agency since the publication of the final rule on May 9, 2011, FMCSA confirms that the final rule covers IBCs that are attached to the vehicle, whether they are secured by bolts, straps, chains, or by blocking and bracing. The aggregate capacity of the tanks, not the details of their securement, determines the applicability of the rule. As noted above, the Agency includes in this notice new regulatory guidance which clarifies how the new tank vehicle definition covers IBCs, and in doing so emphasizes that the definition covers tanks that are permanently or temporarily attached to the vehicle.

American Trucking Associations (ATA) Petition for Rulemaking

On February 22, 2012, the ATA petitioned FMCSA to revise the tank vehicle definition. This notice and the regulatory guidance address, in part, some of the issues raised by the petition, including the applicability of the definition to IBCs, the transportation of IBCs manifested as empty or residue, and the transportation of empty storage tanks on flatbed vehicles. The Agency granted the ATA petition on March 30, 2012, and is committed to initiate notice-and-comment rulemaking that will seek input on the tank vehicle definition.

Compliance Date for the Tank Vehicle Definition Change

The effective date of the final rule was 60 days after publication, or July 8, 2011. While the compliance date for the State requirements under subpart B of 49 CFR part 384 is three years from the effective date of the rule, or July 8, 2014, the definition of tank vehicle is not in subpart B of part 384 and therefore is currently effective. States that adopt amendments to the Federal Motor Carrier Safety Regulations by reference, or complete their administrative adoption procedures relatively quickly, will be able to take action against a driver transporting materials in a tank vehicle without the proper endorsement before July 8, 2014.

FMCSA recommends that drivers affected by the tank vehicle definition obtain the needed endorsement as quickly as possible or investigate the

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.

Issued on: May 16, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–12692 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–EX–P

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*. 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