

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 395****Regulatory Guidance on Hours of Service of Drivers Rest Break Requirement; Drivers Who Become Ineligible for the “Short-Haul” Exception During the Duty Day**

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

ACTION: Regulatory guidance.

SUMMARY: This regulatory guidance addresses application of the 30-minute break rule to interstate drivers of commercial motor vehicles (CMVs) who begin their duty days as “short haul” drivers exempt from the break rule, but who occasionally exceed the short haul distance or time limits. Such drivers are then subject to the break requirement and must prepare a record-of-duty-status (RODS) for the day. The intent of the break rule would be satisfied if drivers in these situations take a break at the earliest safe opportunity after exceeding the short haul limits and explain in a RODS annotation why the rest break was not taken within the required 8 hours of the last off-duty break of at least 30 minutes.

DATES: *Effective Date:* This regulatory guidance is effective December 19, 2013.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, 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 for equipment of, a motor private carrier, when needed to promote safety of operation” [49 U.S.C. 31502(b)]. This guidance is based on the Secretary’s authority to regulate maximum hours of service.

The Motor Carrier Safety Act of 1984 (MCSA) 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)(1)–(4)]. Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, i.e., that the regulations ensure that (5) an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of a regulation promulgated under § 31136, Chapter 51 [Transportation of Hazardous Material], or chapter 313 [Commercial Vehicle Operators]. This guidance clarifies the applicability of a portion of the hours-of-service (HOS) regulations based on authority of § 31136(a)(1), (2) and (4); it is unrelated to § 31136(a)(5) and only peripherally related to § 31136(a)(3).

The MCSA 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)]. Clarification of the regulations is an “appropriate” act. The functions vested in the Secretary by the Motor Carrier Act of 1935 and the MCSA have been delegated to the FMCSA Administrator by 49 CFR 1.87(i) and (f), respectively.

Background

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its HOS regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule adopted several changes to the HOS regulations, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia

issued its opinion on petitions for review of the 2011 HOS rule filed by the American Trucking Associations, Public Citizen, and others [*American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration*, No. 12–1092 (D.C. Cir. Aug. 2, 2013)]. The Court upheld the 2011 HOS regulations in all respects except for the 30-minute break provision as it applies to short haul drivers. By guidance effective August 2, 2013, FMCSA has declared that it would no longer enforce the break rule against any driver that qualifies for either of the “short-haul operation” exceptions in 49 CFR 395.1(e)(1) or (2) [See www.fmcsa.dot.gov/documents/HOS/30-minute-guidance.pdf]. Section 395.1(e) defines two categories of drivers who qualify as being engaged in short-haul operations: the “100 air-mile radius driver” and “operators of property-carrying CMVs not requiring a commercial driver’s license (CDL).” To qualify for the exception, the 100 air-mile radius driver must remain within a 100 air-mile radius of the normal work reporting location, return to that location at the end of the duty day, and be released from duty within 12 consecutive hours of the beginning of the duty day. The operator of a property-carrying CMV not requiring a CDL must remain within a 150 air-mile radius of the normal work reporting location and must return to that location at the end of the duty day.

Drivers meeting the requirements to qualify for the short haul exception in § 395.1(e) are not required to maintain the standard RODS (“logbooks”) described in § 395.8.

Reason for This Guidance

Occasionally, a CMV driver will begin the duty day fully expecting to meet all the requirements of “short-haul operations” as defined by § 395.1(e). Nevertheless, circumstances beyond the driver’s control may arise and result in operations that do not meet those requirements. For example, a driver engaged in short-haul operations would no longer qualify for that exception if he or she is unable to remain within the required radius of operation (100 or 150 air-miles), or, in the case of the 100 air-mile radius driver, when a CMV driver cannot complete the duty day within 12 hours of its start.

When the driver first learns of the changes to his or her itinerary and subsequent ineligibility for the short-haul exemption, the driver may have already missed the first mandatory rest break of the break rule; i.e., more than 8 hours may have elapsed since the driver was last off duty, or in the sleeper

berth, for at least 30 minutes. To address this issue, FMCSA advises that in such situations, the driver should not be considered to be in violation of the break rule. The driver should annotate the RODS to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity. Ideally, this would be prior to preparing the RODS or immediately following the preparation of the RODS. Under FMCSA's existing HOS requirements and guidance, drivers would begin preparing the RODS as soon as they determine they are no longer eligible for the RODS exemption.

Guidance

For the reasons explained above, FMCSA issues Regulatory Guidance Question 33 to § 395.1 of the FMCSRs:

PART 395—HOURS OF SERVICE OF DRIVERS

§ 395.1 Scope of rules in this part.

Question 33. If a driver using either short-haul exception in § 395.1(e) finds it necessary to exceed the exception limitations for unforeseen reasons, is the driver in violation of the § 395.3 rest break provision if more than 8 hours have passed without having taken the required rest break?

Guidance. No. A driver using a § 395.1(e) short-haul exception who finds it necessary to exceed the exception limitations for unforeseen reasons, is not in violation of the § 395.3 rest-break requirements if 8 or more hours have passed at the time the driver becomes aware of the inability to use the short-haul exception. The driver should annotate the record-of-duty-status to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity.

Issued on: December 12, 2013.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130212129-3474-02]

RIN 0648-XC967

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2014 Gulf of Mexico Recreational Season for Red Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure date of the recreational season for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2014 fishing season through this temporary rule. Federal waters of the Gulf will close to red snapper recreational harvest at 12:01 a.m., July 11, 2014. This closure is necessary to prevent the recreational sector from exceeding its quota for the fishing year and prevent overfishing of the Gulf red snapper resource.

DATES: The closure is effective 12:01 a.m., local time, July 11, 2014, until 12:01 a.m., local time, January 1, 2015. The recreational sector will reopen on June 1, 2015, the beginning of the 2015 recreational fishing season, unless superseding notification is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727-824-5305, email Susan.Gerhart@noaa.gov.
SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The season length analysis for 2014 used a tiered projection approach for forecasting recreational red snapper average weight and in-season catch rates in the Gulf. The results of retrospective analyses indicate improvements in projection methodologies have occurred over time. Average weight estimates were historically underestimated, but in 2013 projected and observed average weights were within 3 percent of one

another, and well within the range of average weights considered for projections. Similarly, estimates of season length improved from 2009 through 2012 with season estimates at or near the lower end of the range of season lengths projected. Past overages have occurred for a variety of reasons, including challenges with predicting angler behavior and landing rates, inconsistent state regulations, and rapidly increasing fish sizes. As a result, projection assumptions in more recent years, including the analysis used for 2014, have been refined to better account for increases in landings per day and changes in average weights.

To encompass the uncertainty inherent in projection modeling, ten models were selected to estimate the 2014 Federal season length. These models incorporated: (1) Upper/lower confidence limits of landings per day; (2) upper/lower confidence limits of average weights; (3) recent average weights (2011-13 or 2013 only); and (4) 2013 Louisiana Creel survey landings per day and average weights. The average season length predicted by all model runs was 39 days (± 2 days) and the median season length for all projections was 40 days. For additional details about the calculation of the projection please see http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2014/2014_rs_rec_season.pdf.

Based on the analysis summarized above, NMFS projects the recreational red snapper quota of 5.390 million lb (2.445 million kg), round weight (50 CFR 622.39(a)(2)(i)), to be harvested in 40 days in 2014. This projection assumes Alabama, Mississippi, and Florida will implement consistent regulations in their state waters, and that Louisiana and Texas will continue the same regulations in their state waters as were implemented for the 2013 season. Therefore, Federal waters of the Gulf will open to red snapper recreational harvest at 12:01 a.m., June 1, 2014, and close at 12:01 a.m., July 11, 2014. The recreational sector will reopen on June 1, 2015, the beginning of the 2015 recreational fishing season, unless superseding notification is published in the **Federal Register**.

During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero. In addition, a person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued must also abide by these closure provisions in state waters. NMFS has determined this action is necessary to prevent the