

EPA-APPROVED GEORGIA REGULATIONS

| State citation            | Title/subject         | State effective date | EPA approval date | Explanation  |
|---------------------------|-----------------------|----------------------|-------------------|--|
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| <b>Emission Standards</b> |                       |                      |                   |  |
| *                         | *                     | *                    | *                 | *  |
| 391-3-1-.02(4)            | Ambient Air Standards | 9/13/2011            | 5/16/2013         | Only subparagraphs (b), (e), (f), and (g) were approved. |
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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Off-Duty Time**

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Regulatory guidance.

**SUMMARY:** FMCSA revises its April 4, 1997, regulatory guidance concerning the conditions that must be met in order for a commercial motor vehicle (CMV) driver to record meal and other routine stops made during a work shift as off-duty time. The Agency has reviewed the guidance and determined that it includes language that is overly restrictive and inconsistent with the hours-of-service regulations. The 1997 guidance has the effect of discouraging drivers from taking breaks during the work day, or documenting such breaks in their logbooks.

**DATES:** This guidance is effective July 12, 2013.

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

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Secretary of Transportation has statutory authority to set minimum

standards for commercial motor vehicle safety. These minimum standards 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; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation. (49 U.S.C. 31136(a)(1)–(5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations 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 of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

**Background**

On April 4, 1997 (62 FR 16370), the Federal Highway Administration (FHWA) published “Regulatory Guidance for the Federal Motor Carrier Safety Regulations.” The notice presented interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs) based on the FHWA’s consolidation or previously issued interpretations and regulatory guidance materials. The FHWA developed concise interpretive guidance

in question-and-answer form for each part of the FMCSRs.

The 1997 notice included the following guidance to 49 CFR 395.2 on page 16422 (62 FR 16422):

*Question 2:* What conditions must be met for a Commercial Motor Vehicle (CMV) driver to record meal and other routine stops made during a tour of duty as off-duty time?

*Guidance:* 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. The duration of the driver’s relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a Commercial Motor Vehicle (CMV) will be significantly reduced.

3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver’s departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier’s principal place of business.

4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

While FMCSA has not received any requests for clarification of the guidance, the Agency believes it is out-of-date and no longer provides practical assistance to motor carriers attempting to achieve compliance with the HOS rules. As currently written, the guidance lays out requirements for written instructions from drivers’ employers concerning the duration of breaks during the work shift which is inconsistent with the requirements of 49

CFR part 395. The guidance implicitly imposes a recordkeeping requirement, but relieves both the carrier and the driver of any responsibility for maintaining a copy of the instructions at the principal place of business or on the CMV.

In addition, the current guidance includes an unenforceable performance standard for assessing the validity of a break that will be recorded as off-duty. The guidance states the break must be long enough to ensure that the accumulated fatigue resulting from driving the CMV will be significantly reduced.

#### FMCSA's Decision To Revise the Regulatory Guidance

In consideration of the above, FMCSA has determined the 1997 regulatory guidance should be revised to eliminate language that has the effect of discouraging drivers from taking breaks during the work day, or documenting such breaks in their logbooks. The FMCSA revises Question 2 to 49 CFR 395.2, to read as follows:

#### Hours of Service for Commercial Motor Vehicle Drivers Regulatory Guidance for 49 CFR 395.2, Definitions

*Question 2:* What conditions must be met for a commercial motor vehicle (CMV) driver to record meal and other routine stops made during a work shift as off-duty time?

*Guidance:* Drivers may record meal and other routine stops, including a rest break of at least 30 minutes intended to satisfy 49 CFR 395.3(a)(3)(ii), as off-duty time provided:

1. The driver is relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing.

Through the revision of the regulatory guidance, FMCSA makes clear that the motor carrier need not provide formal guidance, either verbal or written, to drivers with regard to the specific times and locations where rest break may be taken. The revised guidance also emphasizes that periods of time during which the driver is free to stop working, and engage in activities of his/her choosing, may be recorded as off-duty time, irrespective of whether the driver has the means or opportunity to leave a particular facility or location. All previously issued guidance on this matter should be disregarded if inconsistent with today's notice.

Issued on: July 5, 2013.

**Anne S. Ferro,**

*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Chapter I

[Notice No. 13-6]

#### Safety Advisory Guidance: Heating Rail Tank Cars To Prepare Hazardous Material for Unloading or Transloading

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Safety advisory guidance.

**SUMMARY:** This guidance provides safety precautions and recommended guidance for persons responsible for unloading or transloading<sup>1</sup> hazardous materials from rail tank cars, specifically those persons heating a rail tank car to prepare its hazardous material contents for unloading or transloading. Further, this guidance reminds such persons of current regulatory requirements addressing this type of operation. PHMSA is issuing this guidance in coordination with the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), and in consultation with the Federal Railroad Administration (FRA).

**FOR FURTHER INFORMATION CONTACT:** Cheryl West Freeman, Division of Engineering and Research, Pipeline and Hazardous Materials Safety Administration, 202-366-4545. For further information regarding OSHA regulations, contact OSHA, Office of Communications at 202-693-1999 and for further information regarding EPA's Risk Management Plan, go to: [www.epa.gov/emergencies/rmp](http://www.epa.gov/emergencies/rmp).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. PHMSA's Coordinated Response With OSHA and EPA
- III. Federal Regulations
  - A. Applicable PHMSA Regulations
  - B. Applicable OSHA Regulations or Standards
  - C. Applicable EPA Regulations

<sup>1</sup> As defined in § 171.8, *Transloading* means the transfer of a hazardous material by any person from one bulk packaging to another bulk packaging, from a bulk packaging to a non-bulk packaging, or from a non-bulk packaging to a bulk packaging for the purpose of continuing the movement of the hazardous material in commerce.

IV. Guidance for Heating of Rail Tank Cars for Unloading or Transloading

## I. Background

PHMSA's mission is to protect people and the environment from the risks of hazardous materials transportation, including those loading and unloading operations covered under PHMSA regulations. Our efforts to enhance the safety of hazardous materials loading and unloading operations include development of standards for bulk loading and unloading of hazardous materials as part of our current strategic plan. Towards this end, on May 24, 1999, the Research and Special Programs Administration (PHMSA's predecessor agency) published a final rule [Docket No. RSPA-97-2718 (HM-225A), Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases] that revised regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions included new inspection, maintenance, and testing requirements for cargo tank discharge systems, including delivery hose assemblies, and revised attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia. Also, more recently, on March 11, 2011, PHMSA published a Notice of Proposed Rulemaking [Docket Number PHMSA-2007-28119 (HM-247), Hazardous Materials: Cargo Tank Motor Vehicle Loading and Unloading] that proposes to amend our regulations to require each person (*i.e.*, carrier or facility) who engages in cargo tank loading or unloading operations to perform a risk assessment of the loading and unloading operation and develop and implement safe operating procedures based upon the results of the risk assessment. We received comments on the proposals in this NPRM and are currently evaluating the best course of action to address them.

As part of our continuing efforts to enhance the safety of hazardous materials loading and unloading operations, our combined effort with other Federal agencies to protect the public, and in response to the findings from an NTSB investigation, PHMSA is issuing this safety advisory guidance to all entities responsible for unloading or transloading of heated hazardous material from a rail tank car. In 1999 and again in 2002, accidents occurred as a result of the process of heating rail tank cars for unloading hazardous materials. On February 18, 1999, a rail tank car, which was on the unloading rack at the Essroc Cement Corporation