

Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.247-7003 is added to read as follows:

252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

As prescribed in 247.207, use the following clause:

PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUL 2009)

(a) The Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in all subcontracts with motor carriers, brokers, or freight forwarders. (End of clause)

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

Regulatory Guidance on the Definition of "Principal Place of Business"

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

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA announces regulatory guidance concerning its definition of "principal place of business." The regulatory guidance is presented in a question-and-answer format and is generally applicable to motor carrier operations subject to the Federal Motor Carrier Safety Regulations. No prior interpretations or regulatory guidance concerning the term "principal place of business," whether published or unpublished may be relied upon as authoritative if they are inconsistent with the guidance published today. This guidance will provide the motor carrier industry and Federal, State and local law enforcement officials with uniform information for use in determining which locations may be designated by a motor carrier as its principal place of business.

DATES: *Effective Date:* This regulatory guidance is effective on August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Mahorney, Chief, Enforcement and Compliance Division, (202) 493-0001. Federal Motor Carrier Safety Administration, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m. EST, Monday through Friday, except legal holidays.

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) provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators. (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary 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 1.73(g) 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.

This document provides regulatory guidance to the public with respect to the definition of "principal place of business" in 49 CFR 390.5 of the Federal Motor Carrier Safety Regulations (FMCSRs).

Members of the motor carrier industry and other interested parties may also access the guidance in this document through the FMCSA's Internet site at: <http://www.fmcsa.dot.gov>.

Specific questions addressing any of the interpretive material published in this document should be directed to the contact person listed above or the FMCSA Division Office in each State.

Basis for This Guidance

The regulatory guidance in this notice responds to recurring questions FMCSA has received concerning the definition of "principal place of business" in 49 CFR 390.5: What location may a motor carrier designate as its principal place of business?

Section 390.5 defines principal place of business as "the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration."

The original definition of "principal place of business" in § 390.5 required that the motor carrier designate a single location where records required by Parts 387, 391, 394, 395, and 396 would be maintained. However, other provisions of the regulations permitted certain records to be maintained at other locations. (53 FR 18054). In 1993, the definition was revised to remove part 394 from the regulatory text and to add part 390. (58 FR 33777). In 1995, the definition was revised again. However, it still required that the location designated by the carrier be a location where records were maintained and available for inspection. (60 FR 38744). The current definition of "principal place of business" was adopted in 1998 in order to allow motor carriers with multiple terminals and business locations to maintain records, such as driver records of duty status or vehicle maintenance records, at a location where activity related to the records took place rather than at a company's headquarters. The definition was revised to accompany a new § 390.29 allowing motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices, driver work reporting stations or the principal place of business. Nonetheless, it was still anticipated that in most cases the "principal place of business" would also be the company headquarters. (63 FR 33254).

It has been the position of FMCSA and its predecessor agencies that a

motor carrier's principal place of business is a physical location where the motor carrier conducts a significant portion of its business and maintains company records and where management reports to work. In many instances, the principal place of business identified by a motor carrier will be the location where FMCSA conducts a safety audit or compliance review pursuant to part 385. For this reason, it is necessary to emphasize that the definition of "principal place of business" has always required that a motor carrier designate a single physical location operated, controlled, or owned by the motor carrier where the carrier conducts operations relating to the transportation of persons or property and where some if not all of the records required by parts 382, 387, 390, 391, 395, 396 and 397 are regularly maintained. It has long been understood that the principal place of business is the location designated by the motor carrier for the purpose of managing and administering its safety and regulatory compliance programs. Activities conducted at the principal place of business include oversight, retention, and retrieval of records required to be maintained by the FMCSRs.

Regulatory Guidance

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Sections Interpreted

Section 390.5 Definitions

Question: What location may a motor carrier designate as its "principal place of business"?

Guidance: In instances where a motor carrier has more than one terminal or office, the regulations do not explicitly place a restriction on which location a motor carrier may designate as its principal place of business. The definition states that such a location is "normally" the carrier's headquarters; the rule does not require motor carriers to use the company's corporate headquarters as its principal place of business. However, motor carriers are limited to using an actual place of business of the motor carrier. Moreover, a motor carrier may designate as its principal place of business only locations that contain offices of the motor carrier's senior-most management executives, management officials or employees responsible for the administration, management and oversight of safety operations and compliance with the FMCSRs and Hazardous Materials Regulations. In determining its principal place of

business a motor carrier must consider the following factors: (a) The relative importance of the activities performed at each location, and, if this factor is not determinative, then (b) time spent at each location by motor carrier management or corporate officers.

FMCSA authorized representatives will use the above two factors in determining whether a motor carrier has designated an appropriate location as its principal place of business. In addition, FMCSA may also consider whether the location is operated, controlled or owned by the motor carrier, whether operations relating to the transportation of persons or property regularly take place at the designated location, whether any of the employees of the motor carrier regularly report to the location for duty, whether any leased or owned vehicles of the company are maintained on the premises, and whether any of the records required by parts 382, 387, 390, 391, 395, 396 and 397 are maintained on the premises. In the event a carrier does not designate a qualifying location as its principal place of business, FMCSA may initiate appropriate enforcement action or take action regarding the carrier's USDOT registration.

A motor carrier with multiple business locations may maintain some records at locations of the motor carrier other than, or in addition to, its principal place of business. However, after a request has been made by an FMCSA authorized representative, a motor carrier with multiple business locations must make records required by parts 382, 387, 390, 391, 395, 396 and 397 available for inspection at the principal place of business or other location specified by the special agent or authorized representative within 48 hours. Pursuant to § 390.29, "Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time." A motor carrier with a single business location must make records required by parts 382, 387, 390, 391, 395, 396 and 397 available upon request.

A motor carrier may not designate as its principal place of business any location where the motor carrier is not engaged in business operations related to the transportation of persons or property. For example, post office box centers or commercial courier service establishments that receive and hold mail or packages for third party pickup may not be designated a "principal place of business" (other than by the courier service provider itself). A motor carrier may not designate the office of a consultant, service agent, or attorney as the motor carrier's principal place of

business if the motor carrier is not engaged in operations related to the transportation of persons or property at that location.

Question: May a motor carrier with a single business location, including a private residence, designate a different location as its "principal place of business"?

Guidance: No. The definition of "principal place of business" in 49 CFR 390.5 allows a carrier with multiple terminals or offices to designate a single terminal or office as its primary business location for identification purposes. Consistent with this definition, a motor carrier with a single place of business may designate only its actual place of business as the "principal place of business." Notwithstanding this restriction, a motor carrier and an authorized representative of FMCSA may agree that a compliance review or other investigation of a motor carrier will be conducted at a mutually acceptable location other than the motor carrier's principal place of business.

Issued on: July 24, 2009.

Terry Shelton,

Acting Chief Safety Officer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344-9056-02]

RIN 0648-XQ57

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of shortraker rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2009 total allowable catch (TAC) of shortraker rockfish in the Western Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2009, through 2400 hrs, A.l.t., December 31, 2009.