

has accumulated driving time and on-duty (not driving) time, that would put the driver over on duty hour limit or over the 60 hour in 7 day or 70 hours in 8 consecutive day limits. In addition, the adverse driving condition exception cannot be used for loading and unloading delays. An absolute prerequisite for claiming the adverse driving condition exception is that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or *should have known* of adverse driving conditions are not eligible for the two hours additional driving time.

Paragraphs (e)(3) and (e)(4) are being revised to update the 100-air mile radius exception to the record of duty status requirement. When all five of the conditions in paragraph (e) are met, a carrier may maintain time records for the driver.

Paragraph (g) is being revised to update the off-duty, on-duty, and driving limits of the sleeper berth exception. The FMCSA is improving the regulatory text for the sleeper berth provision to ensure a clear understanding of the rule. The agency has borrowed, but modified, the Government of Canada's 1994 version of the sleeper berth rule (SOR/94-716, s. 5) because its language is clearer than the wording adopted by the ICC in 1938. This change will not affect the way the FMCSA now enforces the sleeper berth exception.

The provisions requiring the summation of the driving and on-duty hours immediately before and after each rest period are necessary to ensure that drivers on irregular schedules do not accumulate significant amounts of fatigue. These provisions, which reflect many decades of enforcement practice, are well understood in the motor carrier industry. Paragraphs (g)(1)(iv), (g)(2)(iv), and (g)(3)(iv), requiring at least 10 consecutive hours off duty or in a sleeper berth, or a combination of at least 10 consecutive hours of sleeper-berth and off-duty time before returning to regular driving, has also been part of the agency's traditional enforcement practice for sleeper berth operations.

For example, a driver can stretch out her driving and on-duty time by using sleeper berth equipment, although she will continue to be limited by the driving time and on-duty time limits. A driver does not have to take her sleeper berth time all at once. She can get her 10 hours off duty by splitting it into two periods. A sleeper berth period of less

than 2 hours does not count towards the 10 hour total, but the driver must record a period of less than 2 hours as sleeper berth time. This is an example of how the rule works for drivers of property-carrying vehicles:

1. Drive for part of your 11 hours;
2. Rest in the sleeper berth for at least 2 hours;
3. Drive the remaining part of your 11 hours; and
4. Rest in the sleeper berth again to finish your 10 hours off duty before driving again.

After the second sleeper-berth period, the driver cannot drive 11 hours. The driver must count the time she was driving between the two sleeper berth periods, so she must subtract the previous driving time in between the two sleeper-berth periods from the allowed 11 hours to figure her hours left to drive.

Paragraph (h) and (j) are being revised to update the daily off-duty limit in the exceptions for drivers operating in the State of Alaska and for travel time.

Paragraph (k) is being revised to modify the reference to § 395.3 in the exception for drivers transporting agricultural commodities or farm supplies for agricultural purposes in certain States and during certain times of the year. The wording of the agricultural exemption in the NHS Act is not entirely clear. The FHWA initially interpreted the exemption as limited to § 395.3, a conclusion reflected in the interim final rule published on April 3, 1996 [61 FR 14677]. Subsequent consideration of the legislative history, however, made it clear that Congress intended farmers who qualified to be exempt from all of the HOS regulations. The agency therefore issued an interpretation to its field staff clarifying the reach of the regulation. This revision simply conforms the language of the exemption to the interpretation and the intent of the statute.

Paragraph (o) adds an exception/exemption for certain drivers of property-carrying vehicles. Drivers who meet all three of the conditions in this paragraph (o) are eligible for the exception/exemption. First, a property-carrying driver must have returned to the normal work reporting location and the carrier must have released the driver from duty at that location for the previous five days that the driver has worked. Second, the driver must return to the normal work reporting location and the carrier must release the driver from duty within 16 hours after coming on duty. Finally, the driver must not have used this paragraph's exception/exemption within the previous 7 consecutive days, unless the property-

carrying driver has begun a new 7-or 8-consecutive day period. Such a driver will have had 34 or more consecutive hours off-duty thereby restarting the driver's week, which is allowed by new § 395.3(c). Thus, the driver could take the next 16-hour day on the first, second, or third day immediately following the 34 or more consecutive-hour off-duty period.

Section 395.3 Maximum Driving Time for Property-Carrying Vehicles

The section heading and text of § 395.3 are being revised to use the new off-duty, on-duty, and driving limits for drivers of property-carrying vehicles.

A driver of a property-carrying vehicle that does not use a sleeper berth must not drive more than 11 cumulative hours following 10 consecutive hours off duty. Such a driver also must not drive after the end of the 14th hour after coming on duty following 10 consecutive hours off duty. This means that once the driver begins a tour of duty, the driver's driving duties must end within 14 consecutive hours. The current 15 hour rule allows drivers to extend the work day by taking off-duty time, including meal stops and other rest breaks, of less than 8 hours duration other than sleeper berth time. This rule requires that taking off-duty time, including meal stops and other rest breaks, of less than 10 hours duration, other than sleeper berth time, will not extend the work day.

The new rule, like the current rule, does not limit the length of time a person can be on duty. The current rule states that a driver cannot drive after being on duty for 15 hours, but the driver could remain on duty indefinitely. This final rule states that a driver cannot drive after being on duty after the end of the 14th hour after coming on duty, but the driver also can remain on duty indefinitely. That time, however, would apply towards the maximum 60 or 70 hours on duty over 7 or 8 consecutive days. Because there will be a requirement for 10 consecutive hours off duty, most drivers will usually go off duty after 14 hours (at worst) under the new rule, not after 15 hours, as often happens under the current rule. But drivers will be allowed to drive up to 11 hours, not the 10 hours of the current rule. Shorter on-duty time, generally, but longer driving time.

This rule retains the current 60 hours on duty in any period of 7 consecutive days and 70 hours on duty in any period of 8 consecutive day rules.

The new rule will allow any period of 7 or 8 consecutive days to end with the beginning of any off duty period of 34 or more consecutive hours.