

SUMMARY: This rule makes technical amendments to the hours of service (HOS) regulations. These technical amendments are needed to correct inadvertent errors and omissions, and make minor editorial changes to improve clarity and consistency. The amendments do not make substantive changes. The corrections are minor and will not have a significant impact on a substantial number of small entities.

DATE: The technical amendments in this final rule are effective September 30, 2003.

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SUPPLEMENTARY INFORMATION:

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

The term "current rules," as used in this document, refers to the HOS regulations in effect before April 28, 2003, and "final rule" means the HOS regulations adopted on April 28, 2003 (68 FR 22456).

Sleeper Berth Provisions Relating to the 14-Hour Limit

Confusion has arisen among motor carriers and enforcement officials over the provision of the final rule on hours of service (68 FR 22456, April 28, 2003) relating to the use of sleeper berths to accumulate 10 hours of off-duty time.

More specifically, the issue is how to apply the general prohibition on driving "[f]or any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty * * *" [49 CFR 395.3(a)(2)] in the context of the sleeper berth rule, which allows drivers to accumulate 10 hours off duty in two periods in the berth.

Under the current rule, off-duty time (including sleeper berth time) is not counted in calculating the 15-hour limit, thus allowing drivers to take for example, 2 hours off-duty during their work shift to drive up to the 17th hour after coming on duty. The new rule reduces the 15-hour limit to 14 hours, but it also adds a general prohibition on driving "[f]or any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty * * *" [49 CFR 395.3(a)(2)].

Under the new rule, off-duty time is included in calculating the 14th hour since coming on duty. The only exception is sleeper berth time. When taken in 2 periods, each of which must be at least 2 hours long, sleeper berth time does not count toward the 14-hour limit. The final rule, however, attempted to incorporate a modified 14-hour limit by providing that "The on-duty time in the period immediately before and after each rest period, when added together, does not include any driving time after the 14th hour" [§ 395.1(g)(1)(iii)].

Although counting on-duty time toward the 14-hour limit is obviously consistent with the general principle of § 395.3(a)(2), the modified sleeper-berth provision inadvertently omitted reference to off-duty time not spent in a sleeper berth and sleeper berth time of less than 2 hours, neither of which qualifies for exclusion from the 14-hour limit. The agency is therefore amending § 395.1(g)(1)(iii) to clarify that drivers and motor carriers are required to count on-duty time, off-duty time not spent in a sleeper berth and sleeper berth time of less than two hours toward the 14-hour limit.

The final rule also overlooked the need to spell out the underlying principle for dealing with situations in which a driver takes more than 2 sleeper berth periods, all of which are more than 2 hours long. For example, after having been off-duty for 10 hours a driver drives for 4 hours, takes 2 hours in the sleeper berth, drives for another 3 hours, takes 3 more hours in the sleeper berth, drives for 5 hours, and then goes into the sleeper berth for 7 hours. In this case, the second and third sleeper-berth periods (3 hours plus 7 hours, respectively) meet the requirements of the rule (10 hours off duty in two periods, each at least 2 hours long), while the first and second (2 hours plus 3 hours, respectively) do not. Although the previous sentence suggests how this hypothetical should be treated, the amendment to § 395.1(g)(1)(iii) makes it explicit: any 2 sleeper-berth periods totaling 10 hours may be used in calculating the 10-hour

limit, and sleeper-berth periods not used in calculating the 10-hour limit will be included in calculating the 14-hour limit.

Section 395.1(g)(2) restates the principle of § 395.1(g) of the current rule. Since 1963, that rule has allowed drivers who are off duty at a natural gas or oil well location to accumulate the then-required 8 hours off duty in two off-duty periods, each at least 2 hours long, in "other sleeping accommodations at a natural gas or oil well location" [49 CFR 195.3(a), 28 FR 2236, March 7, 1963]. State and Federal officials have understood and enforced that provision for 40 years. The agency is amending the introductory phrase of § 395.1(g)(2) to clarify that although drivers must now take 10 rather than 8 hours off duty, drivers at wellheads may continue to accumulate their off-duty time in two periods. The periods may be taken in sleeper berths, other sleeping accommodations, or both. This technical amendment imposes no added burdens, and simply clarifies the intent of the final rule.

Finally, while §§ 395.1(g)(1)(iv), 395.1(g)(2)(iv), and 395.1(g)(3)(iv) of the new rule provide that a combination of consecutive sleeper berth time and off-duty time totaling 10 hours satisfies the 10 hour-off-duty requirement when a driver changes from a sleeper berth mode of operation to a non-sleeper-berth mode, it inadvertently failed to provide the same option to drivers continuing in the sleeper berth mode. This amendment corrects that oversight.

In summary, the sleeper berth provision is clarified as follows:

For purposes of determining the 14-hour limit in a sleeper berth operation, the following are included in calculating that limit: on-duty time; non-sleeper-berth off-duty time; sleeper berth time of less than 2 hours; and sleeper berth time of 2 hours or more that is not used to accumulate 10 hours of off-duty time.

A combination of consecutive sleeper berth time and off-duty time totaling 8 for passenger-carrying operations or 10 hours for property-carrying and natural gas/oil well operations may be used to comply with either the 8-or the 10-hour off-duty requirement in sleeper berth operations, in addition to situations in which a driver moves from a sleeper berth to a non-sleeper berth operation.

Any two sleeper-berth periods (each at least two hours long) totaling 10 hours may be used in calculating the 10-hour limit, and sleeper-berth periods not used in calculating the 10-hour limit will be included in calculating the 14-hour limit.