

### Drivers of Oil Well Servicing Vehicles

Section 395.1(g) currently permits drivers with sleeper berths who are off duty at a natural gas or oil well location to accumulate the required 8 hours of off-duty time “in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.” These “other sleeping accommodations” are routinely provided at oil and gas well sites.

In the final rule adopted on April 28, 2003 [68 FR 22456 at 22515], the agency intended to continue to permit these drivers to accumulate the required off-duty time—extended from 8 hours to 10 hours—in 2 periods in either a sleeper berth or other sleeping accommodations. In fact, the new § 395.1(g)(2) specifically permits this conduct. The new rule, however, also included an additional provision [§ 395.1(g)(2)(iv)], relating to the off-duty requirements a driver must meet when going from sleeper berth to non-sleeper berth operations. This additional provision inadvertently omitted the specific reference to “other sleeping accommodations” for these drivers. FMCSA is therefore restoring this phrase to § 395.1(g)(2)(iv).

Also, § 395.1(g)(2)(iv) is being amended to match § 395.1(g)(1)(iv), again for the same reason. Because a combination of consecutive sleeper berth time, time in other sleeping accommodations, 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, that same option should have been provided to a driver continuing in the sleeper berth mode. This amendment corrects the oversight.

Finally, like the general sleeper berth rule, the special provision for drivers of oil-well-servicing vehicles inadvertently omitted any reference to off-duty time not spent in a sleeper berth and sleeper berth time of less than 2 hours. The agency is therefore adopting the same language for § 395.1(g)(2)(iii) as for § 395.1(g)(1)(iii), and for the same reason.

### 16-Hour Short-Haul Exception

Section 395.1(o) of the April 28 final rule [68 FR 22456 at 22516] was intended to give short-haul drivers one 16-hour on-duty limit in a 7-day period. In describing this provision, the Executive Summary (page 1) to the Regulatory Impact Analysis prepared for the rule (item # 23302 in the docket) states “This option allows short haul

and local drivers (drivers who sleep at home all evenings and who have limited range of operations) the flexibility to work up to 16 hours up to one day per work week.” Page 9–9 of the Regulatory Impact Analysis also describes § 395.1(o) as “allowing one 16-hour shift per week.”

As published in the final rule, however, § 395.1(o)(3) provides that the driver may not have taken this exemption “within the previous 7 consecutive days.” The previous 7 days and the current day (when the exemption could again be used) constitute an 8-day cycle, not the 7-day cycle intended by the agency. FMCSA is correcting the erroneous reference to “the previous 7 consecutive days” to “the previous 6 consecutive days.” The exemption will therefore be available once a week, as originally intended.

### Regulatory Analyses and Notices

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

We have determined these amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866 or within the meaning of DOT regulatory policies and procedures. This document was not reviewed by the Office of Management and Budget.

#### *Exception to Notice and Comment Rulemaking*

The Administrative Procedure Act (APA) allows agencies to dispense with prior notice and an opportunity for comment if it finds them impracticable, unnecessary, or contrary to the public interest [5 U.S.C. 553(b)(B)]. FMCSA finds good cause to publish these technical amendments without prior notice. These amendments do not increase the regulatory burden on the motor carrier industry, nor do they alter the substantive rights or obligations of any party. They merely clarify the intent of the final rule.

#### *Sleeper Berth Provisions*

As indicated by the preamble to the final rule, “[t]his 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.” [68 FR 22504, April 28, 2003]. FMCSA inadvertently failed to articulate clearly in § 395.1(g)(1)(iii) the full implications of combining the sleeper-berth provisions with the 14-hour limit, and is therefore amending the provision to clarify that off-duty time and sleeper-berth time of less than two hours are counted toward the 14-

hour limit. Because these requirements were spelled out in other portions of the final rule, FMCSA finds prior notice and opportunity for comment on this clarifying amendment unnecessary.

In finalizing the general sleeper berth provisions, FMCSA also failed to articulate with adequate specificity how the rule would work if a driver took not just 2 sleeper berth periods (each at least 2 hours long), but 3 or even more such periods. The agency is therefore amending § 395.1(g)(1)(iii) to make completely clear that any two sleeper berth periods totaling 10 hours will be counted, while any other sleeper berth periods (even those more than 2 hours long) will simply be treated as off-duty time for purposes of the 14-hour limit. The change merely states in detail a result already required by the final rule. Therefore, notice and comment are unnecessary.

The so-called “oil well exception,” which has been in effect for 40 years, allows drivers of trucks specially constructed to service oil and gas wells to cumulate the required 8 hours (now 10 hours) of off-duty time in two periods in “other sleeping accommodations” at oil and gas wells. That exception is embodied in § 395.1(g)(2) of the final rule. However, in the course of combining the “oil well exception” with the more detailed requirements of the sleeper-berth provisions for the final rule, the clarity of the exception was obscured. FMCSA has therefore clarified the wording of § 395.1(g)(2) to recapture the original and unchanged meaning of this provision and to ensure that both enforcement personnel and the regulated community understand the purpose and effect of this provision. Because the changes do not alter the meaning of the rule and impose no additional obligations on anyone, FMCSA has determined that these technical amendments do not require notice and comment.

For decades, FMCSA and State enforcement personnel treated the current sleeper berth rule as allowing a driver to satisfy the requirement for 8 hours off duty by taking either two sleeper berth periods totaling 8 hours, or a combination of consecutive sleeper berth time and other off-duty time totaling 8 hours. The agency intended to ratify this practice in the new rule, but failed to include the necessary text in all of the relevant places. Sections 395.1(g)(1)(iv), 395.1(g)(2)(iv), and 395.1(g)(3)(iv) were correctly drafted, and FMCSA is therefore inserting that language in the introductory phrase of §§ 395.1(g)(1), 395.1(g)(2), and 395.1(g)(3) as well. Because this