

BILLING CODE 4910-EX-C

**PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION**

■ 14. The authority citation for part 393 continues to read as follows:

**Authority:** 49 U.S.C. 322, 31136, and 31502; sec. 104(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 CFR 1.73.

**§ 393.5 [Amended]**

■ 15. Amend § 393.5 in the definition of “g” by removing “9.823” and add, in its place, “9.81.”

**§ 393.106 [Amended]**

■ 16. Amend § 393.106(a) by removing “§ 393.122 through § 393.142” and add, in its place, “§§ 393.116 through 393.136.”

**PART 396—INSPECTION, REPAIR, AND MAINTENANCE**

■ 17. The authority citation for part 396 continues to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.73.

**§ 396.9 [Amended]**

■ 18. In § 396.9, paragraphs (b) and (c)(2), remove “Driver Equipment Compliance Check” and add, in its place, “Driver Vehicle Examination Report.”

Issued on: September 24, 2003.

**Warren Hoemann,**

*Deputy Administrator.*

[FR Doc. 03-24736 Filed 9-29-03; 8:45 am]

BILLING CODE 4910-EX-P

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 375**

[Docket No. FMCSA-97-2979]

RIN 2126-AA32

**Transportation of Household Goods; Consumer Protection Regulations; Delay of Compliance Date**

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

**ACTION:** Interim final rule; delay of compliance date.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) delays the compliance date for the new part 375, Transportation of Household Goods; Consumer Protection Regulations, which was published as an interim final rule on June 11, 2003. That rule amends regulations governing the

interstate transportation of household goods. On August 25, 2003, FMCSA received two petitions for reconsideration of the rule. On the same date, one of the petitioners, the American Moving and Storage Association, submitted a separate Petition for Stay of Effective Date. The reconsideration petitions address a variety of issues, both substantive and technical. The interim final rule took effect on September 9, 2003, with mandatory compliance to begin March 1, 2004. As the rule's effective date has passed, we are delaying the compliance date to gain time to consider fully the petitioners' concerns.

**DATES:** The compliance date of the interim final rule amending 49 CFR part 375 published at 68 FR 35066 on June 11, 2003, is delayed indefinitely. The Administration will publish a document in the **Federal Register** announcing the new compliance date.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nathaniel Jackson, Household Goods Enforcement Team Leader, (MC-ECI), 202-366-6406, FMCSA, 400 Seventh Street, SW., Room 8310, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** In the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159), which established FMCSA as a separate agency within the U.S. Department of Transportation (DOT), Congress authorized FMCSA to regulate the interstate transportation of household goods. In earlier legislation, Congress abolished the Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to DOT (ICC Termination Act of 1995, Pub. L. 104-88). Prior to FMCSA's establishment, the Secretary of Transportation delegated this household goods jurisdiction to the Federal Highway Administration (FHWA).

In May 1998, FHWA published a notice of proposed rulemaking requesting comments on its proposal to amend the household goods regulations at 49 CFR part 375 and the credit regulations at part 377 (63 FR 27126, May 15, 1998). The public submitted more than 50 comments on the proposal. FMCSA modified the substance of the proposed rule in light of concerns raised by some of the commenters, including the American Moving and Storage Association, and published an interim final rule on June 11, 2003 (68 FR 35064), to become effective September 9, 2003, with mandatory compliance to begin March 1, 2004. We published an interim final rule rather than a final rule to allow the

Office of Management and Budget additional time to complete its review of information collection requirements.

On August 25, 2003, FMCSA received two petitions for reconsideration of the interim final rule. The petitioners are (1) the American Moving and Storage Association and (2) United Van Lines, LLC and Mayflower Transit, LLC. On the same date, the American Moving and Storage Association submitted a separate Petition for Stay of Effective Date. The reconsideration petitions address a variety of issues, both substantive and technical. Certain of the substantive concerns will require the agency's careful analysis. The rule took effect on September 9, 2003, but compliance was not required until March 1, 2004. As the rule's effective date has passed, we are delaying the compliance date until further notice in order to consider fully the petitioners' concerns. FMCSA will publish a document in the **Federal Register** promulgating any necessary technical corrections and/or substantive changes, and announcing the new compliance date for the rule.

FMCSA recognizes that interstate household goods carriers will require sufficient time to prepare for compliance with this rule. Prior to the compliance date, carriers will need to conduct an educational process, make document changes, and revise operational procedures. In addition, the compliance date must precede the summer peak moving season, which begins May 15, 2004. FMCSA will ensure that the new compliance date provides the household goods transportation industry with this vital lead time.

Issued on: September 23, 2003.

**Warren E. Hoemann,**

*Deputy Administrator.*

[FR Doc. 03-24499 Filed 9-29-03; 8:45 am]

BILLING CODE 4910-EX-P

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 395**

[Docket No. FMCSA-97-2350]

RIN 2126-AA23

**Hours of Service of Drivers**

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

**ACTION:** Final rule; technical amendments.

**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.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Moehring, Office of Bus and Truck Standards and Operations (MC-PSD), U.S. Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone (202) 366-4001.

**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.

### 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

represents a corrected restatement of a principle already incorporated into the final rule, and long enforced by FMCSA and State officials, the agency has determined that notice and comment are unnecessary.

#### Drivers of Oil Well Servicing Vehicles

The current sleeper-berth rule allows drivers "who are off duty at a natural gas or oil well location" to rest "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." [§ 395.1(g) (emphasis added)]. The final rule was intended to retain the "other sleeping accommodations" option; as contained in § 395.1(g)(2). The agency is correcting an inadvertent omission by adding a reference to "other sleeping accommodations" to § 395.1(g)(2)(iv). Because this change merely applies a principle allowed for decades by the previous rule and explicitly endorsed by the new rule, to drivers leaving—in addition to those engaged in—sleeper berth operations, the agency has determined that notice and comment are unnecessary.

#### 16-Hour Exception for Short-Haul Drivers

FMCSA decided short-haul operations should be granted a weekly exception to the prohibition on driving after the 14th hour after coming on duty. Page 9–9 of the Regulatory Impact Analysis clearly states that the analysis concerned "the flexibility to work up to 16 hours up to one day per work week." The final rule, however, erroneously provided that the 16-hour exemption could not be taken "within the previous 7 consecutive days" [§ 395.1(o)(3)], which created an 8-day cycle. FMCSA has therefore determined that notice and comment are unnecessary to correct the drafting error and amend § 395.1(o) to allow the exception if not taken "within the previous 6 consecutive days."

#### Regulatory Flexibility Act of 1980 (RFA)

The RFA generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. Since this rule is not subject to the notice and public comment requirements of 5 U.S.C. 553, it is not subject to the provisions of the RFA.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires Federal agencies to assess the regulatory actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100 million or more in any one year. There are no costs associated with this rule.

#### Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). This rule does not impose any new requirement that: (1) has substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. This rule does not have any federalism implications.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in section 3 of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Intergovernmental Review

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

#### Collection of Information

This rule contains no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Environmental Impact

We have analyzed this action for purposes of the National Environmental Policy Act and have determined that this action does not have any effect on the quality of the environment.

#### Submission to Congress and the Comptroller General

This final rule is also exempt from congressional review under 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, since it only makes minor technical corrections to existing regulations.

#### List of Subjects in 49 CFR part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, FMCSA amends title 49 of the Code of Federal Regulations, chapter III, subchapter B, as set forth below.

#### PART 395—HOURS OF SERVICE OF DRIVERS

■ 1. The authority citation for Part 395 continues to read as follows:

**Authority:** 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

■ 2. Section 395.1 is amended by revising paragraphs (g)(1), (g)(2), and (o)(3), and revising the introductory paragraph (g)(3) to read as follows:

#### § 395.1 Scope of rules in this part.

\* \* \* \* \*

(g) \* \* \*

(1) *General property-carrying commercial motor vehicle.* A driver who is driving a property-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, may accumulate the equivalent of 10 consecutive hours of off-duty time by taking a combination of at least 10 consecutive hours off-duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The driver does not drive after the 14th hour after coming on duty following 10 hours off duty, where the 14th hour is calculated:

(A) by excluding any sleeper berth period of at least 2 hours which, when added to a subsequent sleeper berth period, totals at least 10 hours, and

(B) by including all on-duty time, all off-duty time not spent in the sleeper berth, all sleeper berth periods of less than 2 hours, and any sleeper berth period not described in paragraph (g)(1)(iii)(A); and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth, or a combination of at least 10 consecutive hours off duty and sleeper berth time.

(2) *Specially trained driver of a specially constructed oil well servicing commercial motor vehicle at a natural gas or oil well location.* A specially trained driver who operates a commercial motor vehicle specially constructed to service natural gas or oil wells that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, or who is off duty at a natural gas or oil well location, may accumulate the equivalent of 10 consecutive hours off duty by taking a combination of at least 10 consecutive hours of off-duty time, sleeper-berth time, or time in other sleeping accommodations at a natural gas or oil well location; or by taking two periods of rest in a sleeper berth, or other sleeping accommodation at a natural gas or oil well location, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The driver does not drive after the 14th hour after coming on duty following 10 hours off duty, where the 14th hour is calculated:

(A) by excluding any sleeper berth or other sleeping accommodation period of at least 2 hours which, when added to a subsequent sleeper berth or other sleeping accommodation period, totals at least 10 hours, and

(B) by including all on-duty time, all off-duty time not spent in the sleeper berth or other sleeping accommodations, all such periods of less than 2 hours, and any period not described in paragraph (g)(2)(iii)(A); and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth or other sleeping accommodations, or a combination of at least 10 consecutive hours off duty, sleeper berth time, or time in other sleeping accommodations.

(3) *Passenger-carrying commercial motor vehicles.* A driver who is driving a passenger-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, may accumulate the equivalent of 8 consecutive hours of off-duty time by taking a combination of at least 8 consecutive hours off-duty and

sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

\* \* \* \* \*

(o) \* \* \*

(3) The driver has not taken this exemption within the previous 6 consecutive days, except when the driver has begun a new 7- or 8-consecutive day period with the beginning of any off duty period of 34 or more consecutive hours as allowed by § 395.3(c).

Issued on: September 25, 2003.

**Warren E. Hoemann,**

*Deputy Administrator.*

[FR Doc. 03-24765 Filed 9-29-03; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

**I.D. 092403C**

#### Atlantic Highly Migratory Species Fisheries; Bluefin Tuna Retention Limit

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

**ACTION:** Atlantic bluefin tuna retention limit adjustment.

**SUMMARY:** This action adjusts the Atlantic bluefin tuna (BFT) General category daily retention limit to allow for maximum utilization of the proposed coastwide General category quota. NMFS increases the daily retention limit to three large medium or giant BFT. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of the General category quota.

**DATES:** Effective September 27, 2003, through October 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale at 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT)

among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2003 BFT Quota Specifications and General category effort controls were proposed on July 10, 2003 (68 FR 41103).

#### Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the month of October is appropriate and necessary to maximize use of the proposed coastwide General Category quota. Based on this seasons landings rates in June through September, it is highly unlikely that the proposed September subquota will be filled in the remaining fishing days. At current catch rates and a daily retention limit of two BFT per vessel, it is also unlikely that the proposed October through December subquota, will be attained in the October through December time-period. An adjustment to the General category daily retention limit will allow full use of the General category quota proposed for the 2003 fishing year, while preventing overharvest and ensuring reasonable fishing opportunities in all areas. Therefore, NMFS adjusts the General category daily retention limit to three large medium or giant BFT per vessel, effective September 27 through October 31, 2003.

The intent of this adjustment is to allow for maximum utilization by General category participants of the remaining General category quota (specified under 50 CFR 635.27(a)), (which has been adjusted by the quota carryover from the June through August and September time-period subquotas), to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, owners/operators may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9305 for updates on quota monitoring and retention limit adjustments.