PART 723

HOURS OF LABOR FOR OPERATORS OF MOTOR BUSES

The Statutory Authority of Part 723 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and a new Statutory Authority is hereby added to read as follows:

(Statutory Authority: Transportation Law Sections 14, 138, 140, 211, 212, and 214)

Section 723.1 of Part 723 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to add new definitions (j) and (k) to read as follows:

723.1 DEFINITIONS

723.2 APPLICATION

23.3 MAXIMUM DRIVING AND ON DUTY TIME

723.4 DRIVER'S DAILY LOG

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723.8 DRIVERS DECLARED "OUT OF SERVICE"

723.1 DEFINITIONS

Words and phrases when used in this Part shall have the same meaning and be interpreted as in the Transportation Law or such other statute as to which a
particular rule or regulation refers, unless otherwise defined in this Part. In addition, the following supplemental meanings shall apply:

(a) On-duty time. The term on-duty time shall mean and include all time from the time a driver begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work. The term on-duty time shall include, but not be limited to:

(1) all time at a carrier or shipper plant, terminal, facility, or other property, or upon any public property, waiting to be dispatched, unless the driver has been relieved from duty by the carrier;

(2) all time inspecting equipment or otherwise inspecting, servicing or conditioning any motor vehicle at any time;

(3) all driving time as defined in subdivision (b) of this section;

(4) all time, other than driving time, in or upon any motor vehicle, except time spent resting in a sleeper berth;

(5) all time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle;

(6) all time spent performing the driver requirements of Part 722 of this Title relating to accidents;

(7) all time repairing, obtaining assistance, remaining in attendance upon a disabled vehicle, obtaining statements of witnesses and making reports with respect thereto;

(8) performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier;

(9) except with respect to drivers of school buses, performing any compensated work for any non motor carrier entity; and

(10) when a driver, at the direction of a motor carrier, as defined in subdivision (g) of this section, is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on-duty time unless the driver is afforded at least eight consecutive hours off duty when arriving at destination, in which case the driver shall be considered off duty for the entire period.

(b) Driving time. The terms driving and driving time shall mean and include all time spent at the driving controls of a motor vehicle in operation.
(c) Twenty-four-hour period. The term 24-hour period means any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched. In the case of a driver employed by more than one motor carrier, the term 24-hour period means a period beginning at 12:01 a.m.

(d) Consecutive days. The term consecutive days shall mean and include a period of consecutive days beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched, or in the case of a driver employed by more than one motor carrier, beginning at 12:01 a.m.

(e) Consecutive hours. The term consecutive hours shall mean and include any such period starting at the time the driver reports for duty as defined in subdivision (a) of this section.

(f) Motor bus. The term motor bus shall mean and include any motor vehicle designed, constructed and used, or used whether or not so designed, for the transportation of passengers for hire, including taxicabs and vehicles commonly known as livery vehicles or limousines, and including school buses owned and/or operated by any public school or school district, whether or not a separate charge is made for such school bus transportation.

(g) Carrier. The term carrier shall mean and include the owner, lessee, bailee or operator of a motor bus, an owner-driver, a contract carrier by motor vehicle, a common carrier by motor vehicle, and a carrier utilizing the services and/or equipment of an owner-driver.

(h) Automatic on-board recording device. An electric, electronic, electromechanical or mechanical device capable of recording driver's duty status information accurately and automatically as described by section 723.4 of this Part. The device must be integrally synchronized with specific operations of the vehicle in which it is installed. As a minimum, the device must record engine use, road speed, miles driven, the date and time of day.

(i) Sleeper berths.

- A sleeper berth must be at least the following size, the length being measured on the centerline of the longitudinal axis, the width being measured on the centerline of the traverse axis, and the height measured from the highest point of the top of the mattress: if constructed before January 1, 1953, length 72 inches, width 18 inches; height 18 inches; if constructed after December 31, 1952 and prior to October 1, 1975, length 75 inches, width 21 inches, height 21 inches; if constructed after September 30, 1975, length 75 inches, width 24 inches, height 24 inches. In the case of a sleeper berth which utilizes an adjustable mechanical suspension system, the required clearance can be measured when the
suspension system is adjusted to the height to which it would settle when occupied by a driver.

(2) A sleeper berth installed on a motor vehicle on or after January 1, 1953 must be of generally rectangular shape, except that the horizontal corners and the roof corners may be rounded to radius not exceeding 10 ½ inches.

(3) A sleeper berth must be constructed so that an occupant's ready entrance to and exit from the sleeper berth is not unduly hindered.

(4) A sleeper berth located within the cargo space of a motor vehicle must be securely compartmentalized from the remainder of the cargo space.

(5) Except as herein above provided, there must be a direct and ready means of exit from a sleeper berth. If the sleeper berth was installed on or after January 1, 1963, the exit must be a doorway or opening at least 18 inches high and 36 inches wide. If the sleeper berth was installed before January 1, 1963, the exit must have sufficient area to contain an ellipse having a major axis of 24 inches and a minor axis of 16 inches.

(6) A sleeper berth installed before January 1, 1953 must either conform to the requirements herein above set forth or have at least two exits each of which is at least 18 inches high and 21 inches wide located at opposite ends of the vehicle and useable by the occupant without the assistance of any other person.

(7) A sleeper berth must be equipped with a means of communication between the occupant and the driver. The means of communication may consist of a telephone, speaker tube, buzzer, pull cord or other mechanical or electrical device.

(8) A sleeper berth must be properly equipped for sleeping. Its equipment must include adequate bed clothing and blankets and either a spring and a mattress or an inner spring mattress or a cellular, rubber or flexible foam mattress at least four inches thick or an air mattress of sufficient thickness when inflated to prevent bottoming out by a driver when he is lying on the air mattress while the vehicle is in motion.

(9) A sleeper berth must be designed and constructed so that its mattress and bed clothing can readily be removed for cleaning.

(10) A sleeper berth must have louvers or other means of providing adequate ventilation. A sleeper berth must be reasonably tight against dust and rain.

(11) A sleeper berth must be located so that leaks in the vehicle's exhaust system or fuel system do not permit fuel, fuel system gases, or other exhaust gases to enter the sleeper berth. A sleeper berth must be located so that it will
not be overheated or damaged by reason of its proximity to the vehicle's exhaust system. A motor vehicle manufactured on or after July 1, 1971, and equipped with a sleeper berth must be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle. The restraint system must be designed, installed, and maintained to withstand a minimum force of 6,000 pounds applied toward the front of the vehicle and parallel to the longitudinal access of the vehicle.

(j) Exempt local bus. The term **exempt local bus** shall mean a motor bus that is operated exclusively in a city and/or incorporated village of New York State.

(k) Non-Exempt local bus. The term **non-exempt local bus** shall mean a motor bus that is operated:

(1) exclusively in a town or county of New York State, or (2) by a public transportation authority operating exclusively within its jurisdictional area.

### 723.2 APPLICATION

(a) The provisions of article 9-A of the Transportation Law and of this Part include in their application the owner, lessee, bailee and operator of any motor bus, as defined in this Part, except that they shall not apply to the operation of a motor bus operated exclusively in a city and/or incorporated village, nor to the operation of Federal military vehicles, by members of the Army or Air National Guard, or by federally paid employees of the Army or Air National Guard.

(b) Whenever in this Part or in article 9-A of the Transportation Law a duty is prescribed for a driver or a prohibition is imposed upon him, it shall be the duty of the carrier to require observance of such prescription or prohibition; and if the carrier is himself a driver, he shall likewise be bound thereby, and such carrier shall be liable for any penalty prescribed by law for failure of a driver to observe any such prescription or prohibition; the carrier shall be liable to the same extent as the driver.

Section 723.3(b) and (c) of Part 723 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to read as follows:

### 723.3 MAXIMUM DRIVING AND ON-DUTY TIME

(a) The provisions of this section shall apply to motor buses that:
(1) have a gross vehicle weight rating of 10,001 pounds or more; or

(2) are used to transport more than 15 passengers; or

- are used, or being used, to transport persons under the age of 21 years to and from school or school activities.

(b) Except as specifically provided in this Part, such as for the driving of school buses and exempt and non-exempt local buses or the driving of motor buses in adverse weather conditions, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

- more than 10 hours following 8 consecutive hours off duty; or

(2) for any period after having been on duty 15 hours following 8 consecutive hours off duty.

(c) Except as specifically provided in Section 723.10 of this Part, no motor carrier shall permit or require a driver of a motor bus, regardless of the number of motor carriers using the driver’s services to drive for any period after:

- having been on duty 60 hours in any 7 consecutive days if the employer does not operate every day in the week; or

(2) having been on duty 70 hours in any period of 8 consecutive days if the employer operates motor vehicles every day of the week.

(3) For treatment of sleeper berth time, see section 723.9(j) and (k) of this Part.

(d) (1) A driver who encounters adverse driving conditions and cannot, because of those conditions, safely complete the run within the maximum times permitted by subdivisions (a), (b) and (c) of this section may drive and be permitted or required to drive a motor bus for not more than two additional hours in order to complete that run or to reach a place offering safety for the vehicle occupants and security for the vehicle and its cargo. However, that driver may not drive or be permitted or required to drive for more than 12 hours in the aggregate following eight consecutive hours off duty; or after he has been on duty 15 hours following eight consecutive hours off duty.

(2) Adverse driving conditions means snow, sleet, fog, other adverse weather conditions; a highway covered with snow or ice; or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.
(3) In the case of any emergency, a driver may complete his run without being in violation of the provisions of these regulations, if such run could reasonably have been completed without such emergency.

(4) The provisions of subdivisions (a), (b) and (c) of this section shall not apply to any carrier subject thereto when transporting passengers or property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster.

(e) Notwithstanding subdivisions (a), (b), (c) and (d) of this section, no person shall drive or be required to drive a motor vehicle while his ability or alertness is so impaired through fatigue, illness or any other cause so as to make it unsafe to begin or continue to drive, except in case of grave emergency where the hazard would be increased by observance of this subdivision and then only to the nearest point at which safety is ensured; nor shall any person be required or permitted to drive a motor bus or go on duty or remain on duty when under the influence of any alcoholic beverage or liquor or any drug or noxious gas or vapor, nor shall any person be permitted to drink any alcoholic beverage or liquor, regardless of alcoholic content, or to take or otherwise use any narcotic or hallucinogenic drug or other substance which may impair his judgment or reaction time, while on duty.

(f) No owner, bailee, lessee or operator of any motor bus shall permit or require any person to drive or be on duty in violation of this section.

Section 723.4(k)(6)(i) of Part 723 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and a new Section is hereby added to read as follows:

723.4 DRIVER'S DAILY LOG

(a) Every motor carrier and every owner, lessee, bailee or operator of a motor bus shall require that a driver's daily log in form set forth in Appendix B-16 of this Title or such other form as may be approved by the commissioner, shall be made by every driver used by it and every driver who operates a motor bus shall make such a log. Use of a log in the form approved by the United States Department of Transportation, including automatic on-board recording devices, will be deemed in compliance herewith. Failure to make logs, failure to make required entries therein, or falsification of entries shall make both the driver and the motor carrier, owner, bailee, lessee and operator of the motor bus liable to prosecution, and, if operating pursuant to authority of the Commissioner of Transportation, suspension or revocation of such authority in addition to any other penalty prescribed by law.
(b) Drivers shall keep the log current to the time of the last change of duty status.

(c) Entries shall be made by the driver only, in his own handwriting, except that the name and principal place of business of the carrier may be printed.

(d) The month, day and year for each calendar day on or off duty shall be entered.

(e) Total mileage entered shall be that mileage traveled while driving, on duty but not driving and resting in a sleeper berth during the day covered by the log. Mileage while driving shall be shown separately.

(f) The carrier's vehicle number or numbers, or the State and license number or numbers of each vehicle or unit of a combination operated during the calendar day shall be entered.

(g) The name or names of the carrier or carriers shall be that or those for which duty is performed. When work is performed for more than one carrier on the same calendar day, the beginning and finishing time, showing ""a.m."" or ""p.m.", worked for each carrier shall show after each carrier name; drivers of leased vehicles shall show the name of the carrier performing the transportation.

(h) The driver shall certify to the correctness of the log by signing his first and last name in full and his middle name or middle initial, if any. Below the driver's signature he shall list the initials and last name of each co-driver.

(i) The driver's home terminal address shown shall be that at which he normally reports for duty.

(j) The log shall be prepared, maintained and submitted using the standard time in effect at the driver's home terminal, for a 24-hour calendar day beginning at midnight; provided, however, that if written notice is given by a carrier to the commissioner, drivers of any named terminal or terminals of the carrier may prepare logs for a 24-hour period beginning at noon of one day and ending at noon of the next succeeding day. For drivers preparing logs on a noon-to-noon basis, the term consecutive days shall mean the period of consecutive days beginning at 12:01 p.m. on the first day of such period.

(k) (1) A continuous line shall be drawn on the first line, between the appropriate time markers, to record the period or periods of time when the driver is not on duty, not required to be in readiness to work, and is not in any responsibility for performing work.

- A continuous line shall be drawn on the third line, between the appropriate time markers, to record the period or periods of time on duty driving a motor vehicle.
(3) A continuous line shall be drawn on the fourth line, between the appropriate time markers, to record the period or periods of time on duty but not driving.

- The appropriate time markers and the name of the city, town or village and state at or near the place at which each change of duty occurs shall be recorded under remarks, together with an explanation for any hours exceeding those permitted by this Part and article 9-A of the Transportation Law.
- The total hours in each day or off-duty status shall be entered, the total of which entries shall equal 24 hours.

(6)(i) Each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded under "Remarks".

(ii) If the origin and destination points are both shown to be within the State of New York, or if a pickup and delivery are both shown to be within the State of New York, the entire trip will be presumed to have been made entirely within the State, unless the route is specified and supported by documentary evidence, such as a toll receipt.

(l) The requirement that every driver shall keep and carry on the vehicle records showing the day and hour when, and the place where the driver went or was released from duty, shall not apply to any driver driving within a radius of 100 air miles of the garage or terminal at which the driver reports for work; provided, however, that records showing the driver's starting and ending time each day, the total amount of on duty time each day and the total amount of on duty time for the preceding seven days shall be kept at such garage or terminal.

(m) Motor carriers, when using a driver for the first time, or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding seven days and the time at which such driver was last relieved from duty prior to the beginning work for such carrier, which information shall be noted on the driver's daily log for the first day of such employment.

723.5 FILING AND PRESERVATION OF DRIVER'S LOG

(a) (1) The logs or certifications in lieu of logs of a driver of a motor bus who drives wholly within a radius of 100 miles of the garage or terminal at which he reports shall be kept maintained for a period of at least 60 days after the period covered by such logs or certification at such garage or terminal; provided, however, that if such garage or terminal is located outside of the State of New York the logs or certification shall be maintained at a place within the State.
(2) The logs of a driver of a motor bus operating on a fixed schedule shall be kept and maintained, for a period of at least 60 days, within the State of New York in an office designated by operator.

(3) Except as specifically provided in paragraphs (1) and (2) of this subdivision, the driver of a motor bus shall retain a copy of each daily log for a period of seven days, which shall be and remain in the driver's possession while on duty; provided, however, if such logs, or any of them, shall be exhibited to the Commissioner of Transportation, his representative, to the State Police or any peace officer who shall demand to see the same, such logs shall be held available for further inspection for a period of 60 days within the State of New York.

(b) Daily logs or certifications in lieu of logs shall be retained for a period of at least six calendar months, in addition to the periods of time above stated, at the carrier's principal place of business. A motor carrier may, upon written request to, and upon receiving consent from the Commissioner of Transportation, forward and retain such records at such regional or terminal offices as are proposed by the carrier and approved by the commissioner.

723.6 PRODUCTION OF RECORDS

The logs and records required to be kept pursuant to article 9-A of the Transportation Law and this Part shall be exhibited to the Commissioner of Transportation, his representatives, the State Police or to any peace officer who shall demand to see the same. Failure to produce such records upon demand shall be presumptive evidence of a violation of this Part relating to the keeping of such records.

723.7 DISPLAY OF REGULATIONS

Every owner, lessee, bailee and operator of a motor bus and every employer of a driver who operates a motor bus shall prominently display a copy of article 9-A of the Transportation Law and this Part in each garage, terminal or office used by him within the State of New York.

723.8 DRIVERS DECLARED "OUT OF SERVICE"

Every motor carrier investigator, every motor vehicle inspector of the Department of Transportation, and such other personnel of the department as may be from time to time designated by the commissioner, and any police officer is authorized to notify and declare "out of service" any driver found at the time and place of examination to have been on duty or to have driven or operated immediately prior to such examination, longer than the maximum time permitted. No carrier shall permit or require a driver who has been notified or declared "out of service" to drive or operate any motor vehicle unless and until such time as he has met
the requirements of article 9-A of the Transportation Law and of this Part. Such ""out of service"" declaration shall be noted on the driver's log by the person declaring the driver ""out of service."" It shall be the duty of the driver immediately to notify the carrier, and time of such notification and method of communication shall be entered in the log by the driver. In the case of a driver not working for a carrier able to furnish a replacement driver, the vehicle and driver shall be declared ""out of service."" A driver may be declared ""out of service"" if he fails to have in his possession a record of duty status current on the day of examination and the prior day. If such driver has completed records of duty status, however, for the previous six days and fails only to have possession of a record of duty status current on the day of examination and the prior day, he will be given the opportunity to make the duty status records current, and then be allowed to continue driving and/or on duty. Nothing in this section shall be construed to alter the hazardous materials requirements of this Title pertaining to attendance and surveillance of motor vehicles transporting hazardous materials.

Section 723.9(a)(1), (a)(3), and (b)(4) of Part 723 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to read as follows:

723.9 PRACTICAL APPLICATION

To ensure uniform interpretation of these regulations in a manner which would not unduly burden interstate commerce, the following practical applications are provided:

(a) (1) Where a driver's record of duty status shows driving in excess of the hours permitted by this Part following eight consecutive hours off duty, the driver is to be placed out of service for eight consecutive hours.

(2) Where the driver's record of duty status shows driving for any period after having been on duty 15 hours following eight consecutive hours off duty, the driver is to be placed out-of-service for eight consecutive hours.

(3) Where a driver's record of duty status shows driving after having been on duty more than the hours permitted in this Part the driver is to be placed out-of-service until such time as eligibility to drive is reestablished.

(4) Where the driver has no record of duty status in possession when one is required, the driver is to be placed out-of-service for eight consecutive hours.

(5) Where the driver fails to have a record of duty status current on the day of examination and for the prior seven consecutive days, the driver is to be placed out-of-service for eight consecutive hours.
Exception: A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous six days) will be given the opportunity to make the duty status record current.

(6) Drivers involved in sleeper berth (sleeper teams) placed out-of-service for hours of violations can be replaced by a co-driver, if the co-driver has hours available to drive.

(7) A solo driver using a sleeper berth to obtain rest who exceeds the hours-of-service limitations shall be placed out-of-service until said driver has hours available to drive.

(8) A record of duty status that does not accurately reflect the driver's actual activities and duty status (including time and location of each duty status change and the time spent in each duty status) in an apparent attempt to conceal a violation of an hours-of-service limitation shall be placed out-of-service for eight consecutive hours.

(b) Drivers are exempt from completing a daily record of duty status, in accordance with the provisions of section 723.4(l) of this Title providing all of the following conditions are met:

- the driver operates within a 100 air-mile radius of the normal work reporting location;

(2) the driver, except a driver sales person, returns to the work reporting location and is released from work within 12 consecutive hours;

(3) at least eight consecutive hours off duty separate each 12 hours;

(4) the driver does not exceed the maximum driving time permitted by this Part following eight consecutive hours off duty;

(5) the employing motor carrier maintains and retains for a period of six months accurate and true time recordings showing:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time for the preceding seven days when first time or intermittent drivers are used; and
(6) even though a driver and motor carrier may meet all of the provisions hereof, the motor carrier may still require records of duty status to be completed. If this situation is encountered during a vehicle inspection, no violation of record of duty status should be recorded, in the event the record is not complete, nor should the driver be placed out-of-service for failure to have a proper record available in the vehicle.

(c) (1) When a driver is relieved from work and all responsibility for performing work, time spent traveling to and from place of employment is considered off duty. The type of conveyance used between the terminal and home, restaurant, etc. would not alter the situation. However, if the driver used a company vehicle for transportation home, and is called by the employing carrier at home and/or is dispatched from home or commences a trip from home, on-duty time starts from the time the driver leaves home.

(2) If the driver uses a company vehicle for transportation from home to place of employment, and is dispatched from place of employment, on-duty time starts from the time the driver arrives at place of employment.

(d) (1) A driver transported from a point of breakdown to a terminal may record the travel time to the terminal as off duty if given eight consecutive hours off duty upon reaching the terminal.

(2) If the same driver, upon reaching the terminal, was dispatched on another run, the time traveling from the point of breakdown to terminal would be "on duty not driving".

(e) (1) A driver should record meal stops or other routine stops while en route to a destination as on-duty time. This interpretation deals solely with the characterization of meal stops or other routine stops while a driver is en route and would not be applicable where the driver is relieved for extended periods of time.

(2) On-duty time is defined as all time from the time a driver begins to work or is required to be in readiness to work until the time relieved from work and all responsibility for performing work. The purpose of the rule is to allow the driver opportunity to obtain adequate rest. This means that the driver must be relieved of all responsibility from work and be free to use the time effectively for any purpose during the specified period of time. However, the fact that a driver is paid for a certain period of time does not always establish that the driver was on duty during that period of time even though it may be a good indication that the driver was on duty. A driver may be relieved of duty at a foreign terminal or at home terminal when waiting for bills, equipment, breakdown of equipment or for a return of a charter trip, yet being paid for the time waiting. Generally, it would be necessary for the driver to be notified of relief from duty for a specified
predetermined period and that the driver have a suitable facility available for rest and relaxation during that period.

(f) (1) Drivers performing other work for carrier employer including tasks not related to transportation, must show the time spent as "on duty" in the record of duty status. The term "work" and "duty" is not limited to employment related to transportation.

(2) A driver who is working for another employer during off-duty time must include as "on duty, not driving" any work whatsoever, whether or not such employment includes actual driving.

(3) A driver is considered "on duty" and "driving" while driving a company car or a safety patrol car. The driver is considered to be performing such work at the direction of the motor carrier and is, in fact, "driving".

- A motor carrier assigns a number of drivers to operate out of a particular terminal which requires 12 to 14 hours of driving time to reach; one of the drivers drives the other drivers to this distant terminal. All of the drivers were traveling at the direction of the motor carrier and were paid for the trip. If any of the drivers are expected to share in the driving duties, they are not passengers. In such case, the time spent in the vehicle driving must be recorded as such and shown as "on duty" by the other passengers when they are not driving. Drivers cannot show such time as off duty, even if they take eight consecutive hours off duty when arriving at their destination. The passengers so being transported are considered "off duty" only if they do not perform any driving duties and are actually in the relationship of passengers.

(5) A driver starts on a round trip under instructions to complete the first half of the journey and drive the vehicle back until his 10 hours driving are completed. At this point the driver is relieved by a driver who has been sent out in another vehicle, the relieved driver returning the other vehicle. The relieved driver is, under the circumstances, not "relieved from work and all responsibility for performing work" and is, therefore, on duty until the other vehicle is returned. Inasmuch as this driver is not only on duty, but actually driving, the time spent is computed as "driving" time and would place this driver in violation.

(6) Two drivers, A and B, are used on one bus trip requiring 14 hours. Driver A drives seven hours and is relieved by driver B for the remaining seven hours. Driver B would show himself not driving for the first seven hours; and driving for the remaining seven hours. Driver A has full driver responsibility to the carrier and, upon being relieved by driver B, continues in a relationship to assume the duty, if occasion arises, to assist driver B in the proper handling of the bus and its passengers. This driver is not in the relationship simply of a passenger and, therefore, the riding time must be recorded as "on-duty" time.
(7) In general, and except under the limited circumstances hereinafter set forth, meal stops and other routine stops must be recorded as "on-duty" time. The purpose of the hours-of-service statute and regulations are to ensure that fatigued drivers are not operating motor vehicles on the public highways. In certain limited circumstances, and in no others, an en route stop may serve to lessen a driver's fatigue. Accordingly, a driver may record duration of a routine en route stop as "off-duty" time only when all of the following criteria are fulfilled:

(i) The driver must be relieved of all duty and all responsibility for the vehicle and custody of the vehicle, its accessories, cargo or passengers it may be carrying;

(ii) The duration of the driver's relief from duty must be a definite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a commercial vehicle will be significantly reduced. It is presumed that a rest period of less than 10 minutes is insufficient to achieve a substantial reduction in the driver's fatigue.

(iii) The fact that the driver has been relieved from duty, as noted in subparagraph (i) of this paragraph, and the duration of this relief from duty, must have been made known in written instructions from the employer and provided prior to departure.

(iv) During the stop, and for the duration of the stop, the driver must be at liberty to pursue any personal activity and to leave the premises on which the vehicle is situated.

(v) If any one or more of the four foregoing factors are absent, the driver must consider time spent during an en route meal stop or other routine stop as "on-duty" time.

(g) The New York State Department of Transportation has no jurisdiction over driving in another state or country, but it has jurisdiction to enforce hours-of-service regulations on drivers while they are operating in the State of New York, either in intrastate commerce or in the course of transportation to or from another state or country. On an operation involving interstate or foreign commerce, the fact that a portion of the overall service is conducted outside the State of New York does not relieve the carrier from any duty prescribed in these rules. The record of duty status must show the driver's time spent on-duty and driving in any other state or foreign country.

(h) (1) Every motor carrier shall require that a daily record of duty status shall be made by every driver used by the motor carrier and every driver who operates a motor vehicle shall make such a record of duty status. Two-person records of duty status to be prepared jointly by both drivers are not sanctioned and may not be used.
• A driver driving for two different carriers must furnish true copies of daily records of duty status to each carrier under whose authority the driver performs transportation. The second carrier becomes a carrier using the driver for the first time or intermittently, and has the responsibility of determining whether the driver has sufficient duty hours to continue the transportation without incurring hours of service violations. In order to make that determination it must have a signed statement from the driver giving total duty time during the immediately preceding seven days or duplicate copies of the drivers records of duty status covering the same period.

(i) (1) While it is true that unforeseen contingencies do arise from time to time in the course of motor carrier operations, loading and unloading delays are not unusual. The safety regulations make ample allowances for unforeseen contingencies that cannot always be anticipated. Boarding and unloading delays do not fall within the definition of such provisions and appropriate time shall be made, in establishing schedules, to provide for boarding and unloading.

• Mechanical failures are not treated as emergencies. The majority of mechanical difficulties are the result of failure to assume an appropriate degree of responsibility as to maintenance and inspection. Only if a genuine emergency occurs may a driver complete a run and be on duty for more than fifteen hours without being in violation of the provisions of this Part, if such run reasonably could have been completed without such emergency.

• An absolute prerequisite for any such claim of emergency must be that the run is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver started on tour of duty. The term "emergency" shall not be construed as accomplishing such things as a driver's desire to get home, passenger's demands, need to make connections, shortage of drivers or mechanical failures.

• What constitutes a calamitous visitation or disaster is best answered by replying in the negative. For example, a three inch snow fall in New York City, in the winter time, is not a calamitous visitation or disaster. Emergencies are events which are relatively unpredictable and rare especially at a catastrophic level. A tugboat strike and resulting fuel shortage is not a "act of God" and a three-inch snowfall in New York City in the winter time is not a rare event. Appropriate scheduling must be made in anticipation of prevailing and predictable conditions.

(j) A driver of a motor bus may be considered as being off duty for eight consecutive hours by spending eight consecutive hours in a sleeper berth, by having eight consecutive hours combination of sleeper berth and off-duty times or by having two separate periods in the sleeper berth totaling at least eight hours with each period being no less than two hours. Once a driver starts using
the last noted sleeper berth exemption, the driver must continue using it until eight consecutive hours off duty have been taken.

(k) A sleeper berth is used frequently by drivers who drive more than 10 hours following eight consecutive hours off duty. To determine if the driver is "legal":

- Count the number of driving hours between each eight consecutive hour off-duty period. If the hours total 10 or less, the driver is legal. If the driving hours total more than 10 then:

  (i) find two separate periods in the sleeper berth, (each period being not less than two hours) totaling at least eight hours;

  (ii) make an imaginary pyramid over each period used to total the eight hours;

  (iii) total the driving hours on each side of the pyramid. They must not total more than 10 hours or the driver is in violation.

- The sleeper berth system may also be used in satisfying the requirements of the 15-hour on-duty rule. The procedure is the same except that on-duty time is added to each side of the pyramid. If the driver drove or returned to on-duty status after 15 hours on duty, a violation occurred.

Section 723.10 of Part 723 of Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby repealed and a new Section is hereby added to read as follows:

**723.10 DRIVING OF SCHOOL BUSES AND EXEMPT AND NON-EXEMPT LOCAL BUSES.**

(a) Except as specifically provided in this section, all of the provisions of this Part shall apply to the driving of school buses, as that term is defined in the Transportation Law, and non-exempt local buses as the term is defined in this Part. Exempt local buses operating exclusively in a city and/or incorporated village shall be exempt from this entire Part.

(b) The provisions of section 723.1(a)(9) and (10) of this Part shall not apply to the driving of school buses.
(c) The provisions of section 723.3(b)(1) of this Part shall not apply to the driving of school buses and non-exempt local buses.

(d) The provisions of section 723.3 (c) of this Part shall not apply to the driving of non-exempt local buses.

(e) The provisions of section 723.9(f)(1) and (2) of this Part shall not apply to the driving of school buses.

(f) In the case of a driver of a school bus operated exclusively within a 100 air-mile radius of the place at which the driver normally starts a run, and is not otherwise employed where driving a motor vehicle is required and not working for any other motor carrier, a certificate in the form set forth in Appendix B-17 of this Title may be utilized in place and instead of a driver's log, such certification shall be kept at the school, school district or carrier's principal place of business, and not on the vehicle.

(g) Whenever a driver of a school bus shall have had 10 hours driving time within a period of 15 consecutive hours, even though part of such time shall be outside the State of New York, the driver shall not continue or again go on duty without having at least eight consecutive hours off duty.

(h) Whenever a driver of a non-exempt local bus shall have had 12 hours driving time within a period of 15 consecutive hours, the driver shall not continue on duty or go on duty again without having at least eight consecutive hours off duty. Furthermore, a driver of a non-exempt local bus shall have at least 24 consecutive hours off duty within each consecutive period of 7 days, and in no event shall such driver be on duty more than 75 hours within any consecutive period of 7 days. If the driver reaches the 75 hour limit, the driver is to be placed out-of-service until such time as eligibility to drive is reestablished.

(i) (1) Whenever any driver of a school bus or non-exempt local bus shall have been on duty for 15 hours in any consecutive 24-hour period, even though part of such time shall be outside of the State of New York, the driver shall not continue or again go on duty without having at least eight consecutive hours off duty.

(2) For the purpose of this subdivision only, the term on duty, with regard to the driving of school buses, shall be any time spent performing duties for a motor carrier, whether or not such duty involves driving of a motor vehicle.