	PA PUBLIC UTILITY COMMISSION BUREAU OF INVESTIGATION & ENFORCEMENT INSPECTION DIVISION	On the web: www.puc.pa.gov Revised May 2016

SAFETY FITNESS REVIEW PROGRAM

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Educational and Technical Assistance Package

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF INVESTIGATION & ENFORCEMENT
INSPECTION DIVISION
PO Box 3265, Harrisburg, Pa 17105-3265

Telephone:
717-772-2254
Fax:
717-787-3114

Dear PUC Carrier:

You have recently applied for a PUC certificate of public convenience. As a result, you have agreed to undergo a Safety Fitness Review by the Motor Carrier Services and Enforcement Division of the Bureau of Investigation and Enforcement. An Enforcement Officer will contact you regarding an appointment to conduct the review. The Commission encourages you to begin transportation operations immediately upon receipt of your Certificate of Public Convenience.

The review will consist of an examination of the following areas: Controlled Substance/Alcohol Testing, General Requirements, Qualifications of Drivers, Driving of Motor Vehicles, Parts and Accessories for Safe Operation, Hours of Service Requirements, and Vehicle Inspection Repair and Maintenance. This review process is designed to assist you to become compliant with regulatory requirements.

Please utilize this package and obtain a current copy of the Federal Motor Carrier Safety Regulations so you can understand the requirements of the review process and become compliant with the applicable regulations. The Federal Motor Carrier Safety Administration and the Public Utility Commission are working to reduce accidents, injuries and most importantly, fatalities. A Safety Fitness Review of carrier operations provides the educational tools necessary for a carrier to develop safe practices.

Once your first review is completed, the Enforcement Officer will provide you with a list of recommendations of practices needed to be in full compliance. The Commission will then notify you of either a Satisfactory or Unsatisfactory rating. If you receive an unsatisfactory rating, a second review will be scheduled. If a satisfactory rating is not obtained after a second review, your certificate will be cancelled, which will require you to reapply. The Safety Fitness Review process and obtaining a satisfactory rating must be accomplished within 180 days from the issuance date of your certificate. Please feel free to contact our Motor Carrier Safety Office at 717-772-2254 with any questions you may have.

Sincerely,

Inspection Division Staff

Bureau of Investigation & Enforcement

PA PUBLIC UTILITY COMMISSION
Safety Fitness Compliance Requirements

General Applicability

The Pennsylvania Public Utility Commission has promulgated motor carrier safety requirements for certificated common carriers at Chapter 37 of 52 Pa. Code. These requirements have been established to reduce the potential for highway accidents. Motor common carriers should possess a working knowledge of these requirements, in order to pursue safe operations, as well as regulatory compliance.

The Commission has generally adopted Parts 382 and 390-396 of the Federal Motor Carrier Safety Regulations (FMCSR). These regulations have been incorporated in order to provide consistency with the Pennsylvania Department of Transportation's Motor Carrier Safety Regulations, as well as with the Federal Motor Carrier Safety Administration.

In adopting the FMCSRs, the Commission has incorporated most provisions verbatim, while revising and deleting a few regulations. Carriers will not find a specific FMCSR regulation rewritten within Chapter 37. Instead, Chapter 37 contains a reference to an adopted part or section of the FMCSR. Therefore, persons must locate the referenced part or section in a copy of the FMCSRs to read the provisions of the regulation. Those regulations, which have been changed in Chapter 37, contain the amended language, while all deleted FMCSR regulations are denoted.

The Commission's Safety Requirements in Chapter 37 are applicable to its certificated common carriers of property and passengers. Specifically, it applies to:

- Property common carriers, operating vehicles with a GVWR in excess of 10,000 lbs.
- Passenger carriers, operating buses with a seating capacity of 16 or more.
- Property carriers operating lightweight vehicles (gross weight rating of 10,000 lbs. or less). These carriers are excepted from some FMCSR driver regulations and must maintain their vehicles in accordance with the Commonwealth's Vehicle Equipment and Inspection Regulations (67 Pa Code, Chapter 175).

The safety requirements are applicable to all employees of the motor carrier. Therefore, the carrier should ensure that it has instructed all of its employees about the Commission's safety regulations to ensure complete compliance.

Although the Public Utility Commission does not regulate the transportation of hazardous materials, carriers operating motor vehicles which transport hazardous material should ensure they are in compliance with the United States and the Pennsylvania Department of Transportation's Hazardous Material Regulations.

NOTE: If the carrier has a <u>SATISFACTORY</u> safety rating from another state or the federal government within the last <u>twenty-four (24) months</u>, it is not required to submit to the Commission's Safety Fitness Review.

The following information is intended as a brief overview of each of the adopted Parts, but should not be considered a substitute for obtaining and becoming familiar with the Federal Motor Carrier Safety Regulations (49 CFR) and The Public Utility Code, (Title 52, Chapter 37).

Part 382 – Alcohol and Drug Testing Requirements

Applicability: Drivers required to have a commercial drivers license (CDL), are subject to controlled substance and alcohol testing rules. This requirement includes drivers engaged in interstate or intrastate truck and motorcoach operations. Carriers are to have a testing program in place when certificated commercial motor vehicle operations commence.

Types of Alcohol and Controlled Substance Tests:

- **Pre-Employment (382.301)-** No person shall allow a driver to perform a safety sensitive function until they have received a negative controlled substance test result or complied with the exceptions.
- **Post Accident (382.303)-** As soon as practicable following an accident involving a commercial motor vehicle operating on a highway in commerce, but within 8 hours for alcohol and 32 hours for controlled substances, each employer shall test each surviving driver for alcohol and controlled substances:
    - Who was performing a safety sensitive function with respect to the vehicle
    - If the accident involved the loss of human life
    - Who received a citation under state and local law for a moving traffic violation arising from the accident, if the accident involved:
        - Bodily injury to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident.
        - One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other vehicle.
- **Random (382.305)-** Companies are to randomly test a minimum of 10% of its drivers for alcohol, and 25% for controlled substances each year. The random alcohol test shall be performed immediately prior, during, or immediately after a driver is about to or has performed a safety sensitive function as defined in 49 CFR 382.107. All drivers must have an equal chance of being selected. Owner-Operators are required to participate in a consortium of two or more drivers to meet the random testing requirement. DOT and NON-DOT testing programs may not be commingled.

- **Reasonable Suspicion (382.307)-** An employer shall require a driver to submit to an alcohol and/or controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol and/or controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol and/or controlled substance test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. A supervisor or company official who is trained in accordance with 49 CFR 382.603 shall make and record the required observations. Owner-Operators are exempt from Reasonable Suspicion testing requirements.
- **Return to Duty (382.309) -** After engaging in prohibited conduct regarding alcohol or controlled substance misuse, a driver shall undergo a return to duty alcohol test or drug test before performing a safety sensitive function. The alcohol test result must indicate a breath alcohol concentration of less than 0.02. The controlled substance test result must indicate a verified negative result for drug use. In the event that a return to duty test is required, the driver must also be evaluated by a substance abuse professional (SAP).
- **Follow up Testing (382.311)-** A SAP shall schedule six unannounced follow-up tests for controlled substance and/or alcohol testing in the first 12 months for a driver returning to a safety sensitive function.

Retention of Records:

Five years

- Alcohol test of 0.02 or greater
- Verified positive drug test results
- Refusals to submit to required alcohol and drug tests
- Driver evaluation and referrals
- Required calibration of Evidential Breath Testing (EBT) devices
- Records related to the administration of testing programs
- A copy of the annual calendar year summary

Two Years

- Records related to the collection process and required training

One Year

- Negative and cancelled controlled substance test results
- Alcohol tests indicating a Blood Alcohol Concentration (BAC) of less than 0.02%

Indefinite Period

- Educational and Training Materials for drivers and supervisors

All required records shall be maintained in a secure location with limited access, and shall be made available for inspection by an authorized representative of the Federal Motor Carrier Safety Administration, which includes a PUC Enforcement Officer, within two business days of the request.

Supervisor Training: Except for owner/operators, employers must designate a person to receive training on alcohol/controlled substance misuse awareness and document such training.

Designated Employer Representative (DER): Employer representative authorized to receive tests results from service agents, remove employees from safety sensitive functions, and make required decisions in the testing and evaluation process.

Driver Awareness: Every motor carrier shall provide educational materials explaining the requirements of the regulations as well as the employer's policies regarding alcohol misuse and controlled substance abuse. Carrier's Drug Policy should conform to 49 CFR 382.601.

Inquiries to Previous Employers: A motor carrier, with a driver's written authorization, shall inquire about the following information on a driver from a driver's previous employers for a period of two years preceding the driver's date of application:

- Alcohol tests with a result of 0.04 alcohol concentration or greater
- Verified positive controlled substances test results
- Refusals to be tested
- Violations of DOT testing regulations
- Documentation of successful completion of a return to duty and follow-up testing program

Part 390 – General Regulatory Requirements

Definitions Title 52, Chapter 37.202

Bus—A motor vehicle designed, constructed and used for the transportation of passengers under certificates of public convenience and necessity issued by the Commission in scheduled route, airport transfer, or in group or party service. For the purpose of this chapter, the designed seating capacity of the bus shall be 16 or more passengers.

Driver — A person who drives or is in actual physical control of a vehicle.

Employer — A common or contract motor carrier as regulated by the Commission.

Lightweight vehicle—A motor vehicle, other than a vehicle that is being used to transport passengers for hire; or a vehicle that is being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded under 49 CFR 177.823 (relating to marking and placarding motor vehicles) that are either:

(i) Manufactured on or after January 1, 1972, and has a manufacturer's gross vehicle weight rating of 10,000 pounds or less, in the case of a single vehicle, or a manufacturer's gross combination weight rating of 10,000 pounds or less, in the case of an articulated vehicle.

Or

(ii) Manufactured before January 1, 1972, and has a gross weight including its load and the gross weight of a vehicle being towed by the motor vehicle of 10,000 pounds or less.

Motor carrier—includes the following:

(i) *Common carrier by motor vehicle*—Persons or corporations holding out or undertaking, directly or indirectly, to transport property, or a class of property or passengers between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of the vehicle; or providing or furnishing a motor vehicle with or without driver for transportation or for use in transportation of property as described in this definition, and including common carriers by rail, water or air and express or forwarding public utilities insofar as the common carrier or the public utilities are engaged in the motor vehicle operation, except as expressly exempted by the act.

(ii) *Contract carrier by motor vehicle*—A person or corporation who or which provides or furnishes transportation of property, or a class of property or passengers, between points within this Commonwealth by motor vehicles for compensation whether or not the owner or operator of the motor vehicle, or who or which provides or furnishes with or without driver a motor vehicle for the transportation or for use in the transportation other than as a common carrier by motor vehicle, except as expressly exempted by the act.

Motor vehicle – A vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or a combination thereof. The term includes a truck, truck tractor or combination having a gross vehicle weight rating or registered gross weight in excess of 10,000 pounds, and a vehicle defined as a bus in this section.

Part 391 – Qualifications of Drivers.

Motor Carriers must assure that all drivers meet the minimum qualifications specified in Part 391, meet the Physical Qualifications and Examinations required in Part 391.41 and possess a valid medical certificate.

Driver Qualification File Checklist- Every motor carrier must have a qualification file for each regularly employed driver. (Owner/Operators **MUST** comply with the provisions of this part.)
The file must include:

- Driver's Application for Employment
- Inquiry to previous employers – 3 years
- Inquiry to state agencies – 3 years
- Annual review of driving record-every 12 months
- Annual driver's certification of violations – every 12 months
- Driver's road test certificate or equivalent
- Medical Examiner's Certificate
- Any medical waivers
- Inquiry of positive alcohol/controlled substance results
- Previous 7 days on duty status record for first time drivers and/or intermittent drivers

Part 392 – Driving of Motor Vehicles.

Motor Carrier shall ensure that drivers abide by the applicable sections in relation to the operation of vehicles on the highway. Some of the requirements include:

- Prohibitions on driving a Motor Vehicle while the driver is ill or fatigued
- Prohibitions regarding the possession and use of controlled substances
- Prohibitions regarding the possession of non-manifested alcohol or its use
- Schedules are to conform with speed limits
- Drivers satisfy themselves that the parts and accessories are in proper working order
- Emergency equipment is in place and ready for use
- Cargo is properly distributed and adequately secured
- Stopping requirements at railroad crossings for Motor Vehicles transporting certain Hazardous Materials or bus transporting passengers
- Prohibitions against transporting unauthorized passengers
- Prohibition against the use or possession of any radar detector

Part 393 – Parts and Accessories Necessary for Safe Operation.

Motor Carriers shall ensure that vehicles used in the carrier's operations meet the minimum requirements for parts and accessories necessary for safe operation. These include:

- Lamps, Reflective devices and electrical lighting
- Brake systems
- Glazing and Window Construction
- Fuel Systems
- Coupling Devices and Towing methods
- Misc. Parts and Accessories, tires, horns, heaters, speedometers, rear protection
- Emergency Equipment
- Protection against shifting and falling cargo
- Frames, Cab & Body, Wheels, Suspension, Steering wheel systems

Part 395 – Hours of Service of Drivers.

Motor Carrier drivers are required to complete a record of duty status or time records, when authorized, for each 24 hour period. Drivers are prohibited from exceeding the established hours of service limitations. The aforementioned records must be maintained for a period of six months. Drivers of lightweight vehicles are authorized to utilize time records to maintain records of hours of service in lieu of a Record of Duty Status (Log Book).

Applicability- All property certificated carriers are subject to the hours of service requirements with some exceptions for lightweight vehicle operators.

Property Carriers-

These provisions apply to property carriers and drivers as follows:

- Driver shall not drive more than 11 cumulative hours, following 10 consecutive hours off duty.
- Driver shall not drive after the 14th hour after coming on duty, following 10 consecutive hours off duty.
- Driver shall not drive after being on duty 60/70 hours in 7/8 consecutive days. A driver may restart a 7/8 day consecutive period after taking 34 or more consecutive hours off duty.

Passenger Carriers-

These provisions apply to passenger carriers and drivers as follows:

- Driver shall not drive more than 10 hours following 8 consecutive hours off duty.
- Driver shall not drive for any period after having been on duty 15 hours following 8 consecutive hours off duty.
- Driver shall not drive after having been on duty 60/70 hours in 7/8 consecutive days.

Short Haul Operations-

100 Air mile radius driver-

Is exempt from the requirements of 395.8 (Requirement to prepare a logbook) if:

- The driver operates within 100 air mile radius of the normal work reporting location (115.08 statute miles).
- The driver, returns to his normal work reporting location and is released from work within 12 consecutive hours.
- A property-carrying motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty.
- A passenger-carrying motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty.
- A property-carrying motor vehicle driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty.
- A passenger-carrying motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty.
- The motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time records showing:
    - The time the driver reports for duty each day
    - The total number of hours the driver is on duty each day
    - The time the driver is released from duty each day
    - The total hours in the preceding 7 days for first time or intermittent drivers

Property-carrying Motor Vehicle drivers that do not require a CDL-

Except as provided below, are exempt from 395.3 (Maximum driving time) and 395.8 (Requirement to complete a log book), and are not allowed to utilize the provisions of 395.1(e) (1) (100 air mile radius exception), 395.1 (g) (Sleeper berth operations), and 395.1 (o) (14 hour rule exception).

- The driver operates a vehicle for which a CDL is not required.
- The driver operates within 150 air miles of his normal work reporting location.
- The driver returns to his normal work reporting location at the end of his duty tour.

- The driver has 10 consecutive hours off duty separating each on duty period.
- The driver does not drive more than 11 hours following at least 10 consecutive hours off duty
- The driver does not drive:
    - After the 14th hour after coming on duty on 5 days of any period of 7 consecutive days
    - After the 16th hour after coming on duty on 2 days of any period of 7 consecutive days
    - After having been on duty 60 hours in 7 days or 70 hours in 8 days.
- Any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours
- The motor carrier that employs the driver maintains and retains for a period of 6 months, true and accurate time records showing:
    - The time the driver reports for duty each day
    - The total number of hours the driver is on duty each day
    - The time the driver is released from duty each day
    - The total time for the preceding 7 days for drivers used the first time or intermittently

Sleeper Berths- A driver of a property-carrying motor vehicle equipped with a sleeper-berth must, before driving, accumulate:

- At least 10 consecutive hours off duty.
- At least 10 consecutive hours of sleeper-berth time.
- A combination of consecutive sleeper-berth and off-duty time amounting to at least 10 consecutive hours.
- The equivalent of at least 10 consecutive hours off duty if the driver has not already complied with the three previous mentioned methods of obtaining 10 consecutive hours.
  The equivalent includes:
    - A period of at least 8 but less than 10 consecutive hours in a sleeper berth, and
    - A separate period of at least 2 but less than 10 consecutive hours either in the sleeper berth or off duty, or any combination thereof.
- Driver may not drive more than 11 hours following one of the four methods of obtaining 10 consecutive hours off duty.
- Driver may not drive after the 14th hour after coming on duty following one of the four methods of obtaining 10 consecutive hours off duty.
    - Excluded from the 14 hour limit calculation is any sleeper period of at least 8 hours but less than 10 consecutive hours.

Property-Carrying Driver- A property carrying driver is exempt from the requirements of 395.3(a) (2) (14 hour rule) if:

- The driver has returned to the normal work reporting location and the carrier released the driver from duty at that location for the previous 5 duty tours the driver has worked,
- The driver returns to the normal work reporting location and the carrier releases the driver from duty within 16 hours after coming on duty, following 10 consecutive hours off duty, **and**
- 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.

Retention of Record of Duty Status/Time Records and supporting documents- The driver must submit the original log sheet to the employing motor carrier within 13 days after completion.

Records of duty status or time records and supporting documents are required to be maintained for six months at the carriers' principal place of business. Supporting Documents may include; but are not limited to:

- Shipping papers and delivery receipts
- Toll Receipts
- Fuel Receipts
- EZ PASS logs
- Weigh Bills
- Phone Records
- Hotel Receipts
- Payroll Records

Part 396 - Vehicle Inspection, Repair, and Maintenance

Requirements- Motor carriers must ensure that the vehicles under its control are systematically inspected, repaired and maintained.

Maintenance Records - Records containing due dates and completion dates of inspections, repairs, and maintenance must be maintained for each vehicle under the carrier's control for at least one year. Records shall include:

- Vehicle Identification, company number, make, serial number, year and tire size
- A schedule of inspections to include type and due date
- Records of inspections, repairs and maintenance procedures
- Records of test of push out windows and doors on buses

Inspection Reports- Carriers must ensure that its drivers complete vehicle inspection reports at the completion of the workday for each vehicle the driver operates. The driver of a passenger-carrying CMV must prepare and submit a report even if no defect or deficiency is discovered by the driver; the drivers of all other commercial motor vehicles are not required to prepare or submit a report if no defect or deficiency is discovered by the driver. These reports must be retained for 90 days. Carriers operating only one motor vehicle are exempt from this requirement.

Annual Inspection- Carriers must ensure that each vehicle under its control successfully completes an annual inspection in accordance with Appendix G of Part 396.

Out-of-service Criteria - The Commission has established out-of-service criteria for drivers and vehicles. This criterion has been developed by the Commercial Vehicle Safety Alliance, and it lists the violations and defects which have been determined to be so imminently hazardous to require immediate correction. Drivers found to be in violation of the out-of-service criteria may have to be replaced, or be required to obtain a specified amount of rest prior to driving. Vehicles found to have defects listed in the out-of-service criteria must be repaired prior to continued operation.

LIGHTWEIGHT VEHICLE COMPLIANCE

Lightweight Vehicles - Carriers operating lightweight vehicles (GVWR 10,000 lbs. or less) are generally subject to the same safety regulations as other property carriers.

- Part 390- General regulations
- Part 391- Qualifications of Drivers (see exceptions below)
- Part 392- Driving of Motor Vehicles
- Part 395-Hours of Service for Drivers (see exceptions below)
- Part 396-Inspection Repair and Maintenance

Lightweight Vehicles are excepted from the following requirements:

- Alcohol and Controlled Substance Testing (Part 382)
- Parts and Accessories Necessary for Safe Operation (Part 393)
  (Lightweight vehicles must be in compliance with Pennsylvania's Vehicle and Equipment Standards; 67 Pa. Code, Chapter 175)
- Driver's Record of Duty Status (395.8) Lightweight vehicle carriers are not required to maintain log books but must keep accurate time records for its drivers listing: starting time and total on duty time.

SAFETY FITNESS COMPLIANCE REVIEWS

The Pennsylvania Public Utility Commission evaluates the safety fitness of each motor carrier who has received approval of their application for Pennsylvania intrastate operating authority. The Commission conducts this evaluation through a safety fitness review. This review is an evaluation of a carrier's safety management procedures to determine whether the carrier is prepared to comply with the Commission's driver and vehicle safety requirements. It consists of a brief interview with a carrier representative and a sampling of required carrier safety records.

Applicants from outside the Commonwealth of Pennsylvania will be requested to have a carrier representative come to one of our district office locations (Harrisburg, Harmarville, Scranton, and Philadelphia) and bring a sampling of the required safety records for review.

As a result of the review, a rating of either satisfactory or unsatisfactory is determined. Regardless of the rating, the carrier is required to correct all deficiencies noted on the review report. An unsatisfactory rating achieved on the first review requires the carrier to submit to a second review in approximately 60 days. An unsatisfactory rating earned on a second review subjects the carrier to the Commission's complaint process and cancellation of its certificate of public convenience.

The goal of the Safety Fitness Review is to identify carrier deficiencies and potential problems, and to provide recommendations to establish correct management controls to ensure future compliance.

The following is a list of items and records the motor carrier should have available for the safety fitness review, however, it is **not** a comprehensive list of records required to be maintained by the carrier:

1. Copy of Federal Motor Carrier Safety Regulations
2. Accident Records for preceding 365 days
3. Alcohol and Controlled Substance Testing Records
4. Driver Qualification Files
5. Vehicle Maintenance Files
6. Record of Duty Status or Time Records
7. Supporting Documents for Record of Duty Status
8. Written Policies for Drivers regarding prohibited use of alcohol and controlled substances, speeding and transportation of passengers

Copies of the Federal Motor Carrier Safety Regulations, as well as other required safety record forms, can be obtained from the following sources:

- American Trucking Association (800) 282-5463 http://www.truckline.com
- J.J. Keller & Associates (877) 564-2333 http://www.jjkeller.com
- Labelmaster (800) 621-5808 http://labelmaster.com
- Pennsylvania Motor Truck Association (717)761-7122 www.pmta.org
- A local truck stop in your area or any other service you wish to use.