

TRUCK CRASH CASES



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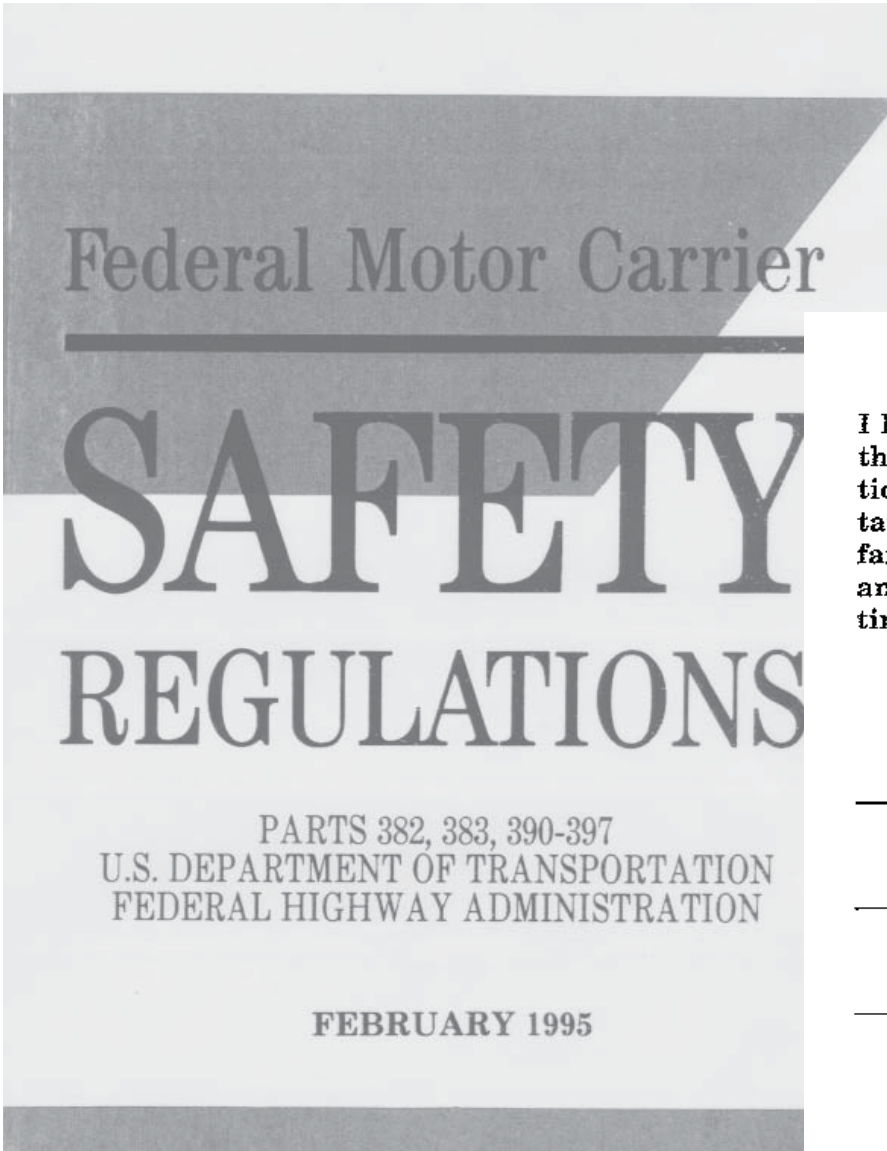
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A Regulated Industry – Title 49

- FMCS reg's apply to all employers, employees and commercial motor vehicles, which transports property or passengers in interstate commerce. (Pa. has adopted the FMCSR for intrastate carriers).
- Every employer must be knowledgeable and comply with all regulations and must require observance. 390.3(e), 390.11
- Every driver and employee shall be instructed regarding and shall comply with all applicable regulations. 390.3(e)



RECEIPT

I hereby acknowledge receipt of a copy of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation (Parts 382, 383, 390-397). I agree to familiarize myself with these regulations and to comply with their provisions at all times on duty as a driver.

(Driver's Signature)

(Motor Carrier Representative) Date

(Name of Motor Carrier)

Instruction: This receipt is to be read and signed by the driver. It should then be countersigned by the motor carrier representative and placed in the driver's qualification file.



Purpose of the Regulations

- Ensure the safety of the public and the industry itself
- The typical semi weighs up to 40 times the weight of a passenger car.
- Trucks have much longer stopping distances.
- Truck drivers work long hours and are subject to fatigue.
- Tractor trailers articulate.

Burke v. Maasen, 904 F.2d 178 (3d Cir. 1990)

Must prove defendant knew or should have known of risk.

“Maassen’s knowledge might have been proved by an admission that he knew the ten hour rule was designed to prevent fatigue and accidents. Another method might have been to ask his employers whether anyone had ever specifically told Maassen that if he drove more than ten hours, he might fall asleep and cause an accident. Obviously, other methods of proof are possible as well.”

WHAT KINDS OF DOCUMENTS CAN YOU GET?

- **Basic qual.** – Age 21, english, CDL
- **Prior empl.** – Much check for prior 3 years
- **Accient History** – prior 3 years but there may be more
- **Past violations** – Must check the state issuing the CDL for past 3 years (Company may have more)
- **Medical exam** – Must have medical certificate by MD.
- **Application** – There is a standard application required by the regs but many employers ask for more info
- **Road Test** – Was it done? By whom?
- **Drug Testing** – Random drug testing program; an elaborate and lengthy part of the regs.
- **Employment contract** – Some will have a K, some will actually be employed by an outside firm
- **Training** – You may find certificate of graduation from truck driving school or courses
- **Written Tests** – even though there is a written test to obtain a CDL, you may find that the employer has their own written test or may have a copy of the actual CDL test.



Company Safety/Regulatory Compliance

- **Manual** – most companies of any size will have one. Some are professionally done, some are a conglomeration of photocopies, articles, internet downloads, notics to employees etc. Most are full or pious sounding words about the importance of safety and setting strict rules for compliance with FMCSR.
- **Maintenance records** – Smaller companies often done off site. Can compare to driver inspections 2 ways. Did driver see things that were not taken care of? Or, did maintenance find things that driver missed? Did a maintenance problem persist indicating the driver either did not know how to do inspections or did not do them.
- **Record of violations** – Annual check required
- **Drug testing program** – privacy questions on the program in general including identity of those tested
- **Log audit** – required, computer programs, electronic logging, comparing to receipts
- **DOT Inspections** – Safety rating, letter explaining results, Was you guy or your truck randomly selected for inspection?
- **Safety meetings**

Driver Generated Information

- **Logs** – Are they relevant?
 - Did fatigue have any role in collision?
 - Can the information in the suggest speeding? Contradict driver's testimony? "I always drive the speed limit? His habit of complying with the regulations?"
- **Receipts** – Food, fuel, anything that sets a time or place
- **Pretrip Inspection form** – Often on back of log sheet or separate tablet of sheets, compare with maintenance, timing of log
- **Accident reports** – Often they is a call in
- **Fuel tax records** – do lies jive with logs?



DO YOU HAVE A LAWSUIT?

If a trucking accident has effected your or a loved one, please contact Anapol Schwartz to discuss your trucking lawsuit. You can start by answering a simple few questions. There is never an obligation to continue and all conversation and information is strictly confidential.

Call (toll-free):

1-866-735-2792

or use the [online consultation form](#).



NOV-16 01 15:28 FROM: THOMAS THOMAS

7172377185

TO: 92326467

PAGE: 01

Form DOT 001-301-01 (Rev. 8/94) **UNITED STATES LONG**
(One Calendar Day - 24 Hours)

Print with 24-Hour
Please Print Clearly Within the Boxes

Date: **7-17-99** Total Mile/Drive Time: **845**
Carrier Name & Address:

Truck Number: **PT9934** Driver's ID/Date: **4018**
Trailer Number: **PRV310 *** Co-Driver's ID/Date:

I clearly have
written my date
and correct
Co-Driver's Name

RECAP

Job	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	Total Hours
1: On Duty																								10.75
2: Sleep																								13.25
3: Driving																								24
4: On Duty (not driving)																								

REMARKS:

1: **POSTVILLE IA**
PT/Switch to TRC

2: **Keating MD**
BR

3: **Amman, VA TR**
OFF

Sheet / Company: **10885**

Total Hours: 10.75
13.25
24

RECAP

1: On Duty

2: Sleep

3: Driving

4: On Duty (not driving)

5: On Duty (not driving)

6: On Duty (not driving)

7: On Duty (not driving)

8: On Duty (not driving)

9: On Duty (not driving)

10: On Duty (not driving)

11: On Duty (not driving)

12: On Duty (not driving)

13: On Duty (not driving)

14: On Duty (not driving)

15: On Duty (not driving)

16: On Duty (not driving)

17: On Duty (not driving)

18: On Duty (not driving)

19: On Duty (not driving)

20: On Duty (not driving)

21: On Duty (not driving)

22: On Duty (not driving)

23: On Duty (not driving)

24: On Duty (not driving)

Original Copy Remains in Carrier's Possession for 8 Days
USE THIS STAMPED AT HOME TERMINAL
Copyright 1999 - J. KELLER & ASSOCIATES, INC., HANNAH, VA - USA - 800-327-6666 - Printed in the United States



NOV-16 01 15:29 FROM: THOMAS THOMAS

7172377125

TO: 92326467

PAGE: 01

Form 0001-2014-D (Rev. 8/94)

UNITED & LARRY LLOYD
(One Calendar Day - 24 Hours)

Please Print Clearly Within the Boxes

7-17-99
PT 9934
PRV 310 *

845
4018

CARRIER
NAME &
ADDRESS

Company Name
Company Address
Company City/State/Zip
Company Phone

RECAP
Total Hours
10.75
13
2.5
24

Job Report	1	2	3	4	5	6	7	8	9	10	11	MOON	1	2	3	4	5	6	7	8	9	10	11	Total Hours
1: On Duty																								10.75
2: Sleeper																								
3: Driving																								13
4: On Duty (Not Driving)																								2.5

POSTVILLE IA
PT/Smith & TREC

Keating MD
BK

BARNETT IA
OFF

10885

Original Copy Submit to Carrier
Driver's Copy Submit to Processor in 5 Days

USE THIS STAMPING AT HOME REMOVAL
© Copyright 1999 - J. FOLLOM & ASSOCIATES, INC. WARREN, VT - USA - (800) 327-4666 - Printed in the United States



Trip Generated

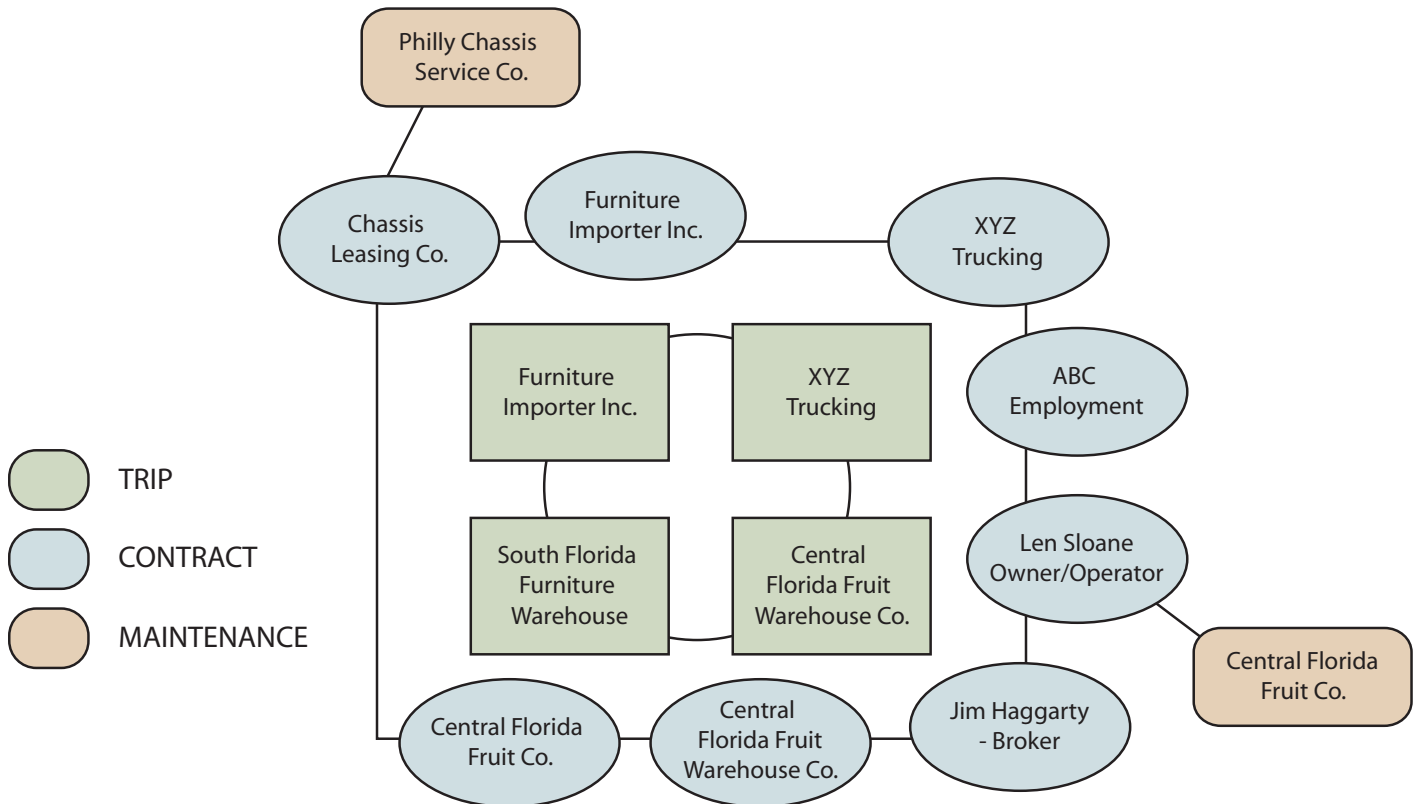
- **Receipts** – Delivery receipt – sets time and place
- **Freight Bill** – Time pace cargo and often weight
- **Lease**
- **Satellite Tracking and Dispatch Systems**
- **Bill of Lading**
- **Freight Bill**
- **Delivery receipts**

THE RELEVANCY CONNECTION

- The specific negligence that caused the collision
- The relationship between the negligence and a specific section of the regs, CDL manual, company manual, etc.
- The failure of the company to enforce the regs, manual etc.
- The general failures of the company regarding safety (pattern and practice)

Who can you sue?

- Negligent hiring
- Negligent entrustment
- Loading – Driver 392.9; 393.100, or Shipper
- Insurance on the Trailer 40 CFR 387.15
- Aiding or Abetting 40 CFR 390.13



Mustang Transp. Co. v. Ryder Truck Lines Inc., 523 F.Supp. 1097 (1981)

- Crowder driver and owner of tractor
- Mustang Transp. Owner of trailer. There was a lease agreement between Mustang and Crowder. Lease says Crowder is an independent contractor.
- Ryder set up one way lease with Crowder
- While carrying Ryder load, Crowder hits plaintiff.

WHO PAYS?

Mustang(owner of trailer) pays!



Occidental Fire and Casualty v. Westport, 2004 WL 2028616 (ED Pa. 2004)

- Simpkins driving a tractor owned by F.O.
- Simpkins picked up a BK trailer in Wilmington
- Stopped in Philly to rest then disengaged the tractor and drove tractor only to get cash
- Hit a pedestrian while bob-tailing
- BK – trailer insurance covers specifically listed autos, “hired autos”, and “nonowned autos”
- FO – Tractor policy covered only specifically listed autos and tractor was not listed
- BK(trailer) argued they had no lease under 49 CFR 376.11-12 therefore no control so actually a broker under 371.2.
- Ct. ruled that since not a safety issue, policy not CFR controls.
- Under the BK policy, the FO tractor is not a “hired vehicle” because BK does not meet the test of having control, so BK does not cover Simpkins the driver.
- FO - tractor policy covered only specifically listed vehicles and tractor involved was not listed.
- But MCS-90 endorsement makes tractor policy responsible so it has coverage
- However policy had a reimbursement clause, requiring FO to pay back its carrier for any payments. Carolina Cas. V. Insurance Co. of N. Amer., 595 F.2d 128 (3d Cir. 1979)

Tractor policy pays plaintiff. Tractor owner pays back its insurer!

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Vigilant Ins. Co. v. Fireman's Fund, 2004 WL 963960 (ED Pa.)

- Presendieu drove for employer Fifty Fiddles (FF)
- Tractor was owned by Taz Trans.
- Taz leased to Movie Movers (MM) who had an agreement stating equipment owner shall be responsible for having insurance coverage on their vehicle and that MM shall assure there is a cert. of ins. naming MM as Add'l insured.
- MM then leased the tractor and trailer to FF, with agreement saying all risk to lessee (FF) and lessee (FF) agrees to insure.
- Taz, tractor owner, insured by Vigilant
- MM, Lessor of tractor and trailer, insured by Travelers
- FF, the lessee, insured by Fireman's Fund
- Presendieu, an FF employee driving the Taz truck, wanted UM coverage from somebody!
- A clause in the Vigilant (Taz, tractor owner and lessor to MM) which limits coverage for leased situations did not apply because it was limited to the general policy and there was a separate UM clause defining any occupant as an insured. So, Vigilant was Primary
- Fireman's Fund policy (FF, employer of driver and lessee from MM) provided excess UM coverage.
- Travelers (MM, owner of trailer, lessee from Taz and lessor to FF) had UM excess coverage also because Presendieu was determined to be occupying the trailer

Theories You May Not Have Considered

- Negligent hiring
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- Loading – Driver 392.9; 393.100, or Shipper
- Insurance on the Trailer 40 CFR 387.15
- Aiding or Abetting 40 CFR 390.13

R.R. Donnelley and Sons v. Fireman's Fund Ins., 2004 WL 2810065 (ED Pa.)

- Taylor, a driver for Harris Trucking was struck by a bale of paper while a Donnelley employee was loading his truck.
- Harris was insured by Fireman's Fund
- Donnelley was insured by Zurich.
- Donnelley was an additional insured on the Harris policy.
- Fireman's Fund argued only covered Donnelley for negligence of Harris but add'l insured clause did not specifically limit to Harris. See Harbor Insurance v. Lewis, 562 F. Supp. 800 (ED Pa. 1983).
- Zurich, Donnelley's actual carrier, was excess because it's other insurance clause was more specific in making it excess to any policy for which "you have been added as an additional insured."



ID/Operations | Inspections/Crashes | Safety Rating | Insurance

Carriers: If you would like to update the following ID/Operations information complete and submit form MCS-150 which can be obtained from your State FHWA office or you may download it by clicking [here](#).

Carriers and other users: If you would like to request more detailed information in the form of a MCMIS Carrier Profile please call (800) 832-5660 (Fee Required).

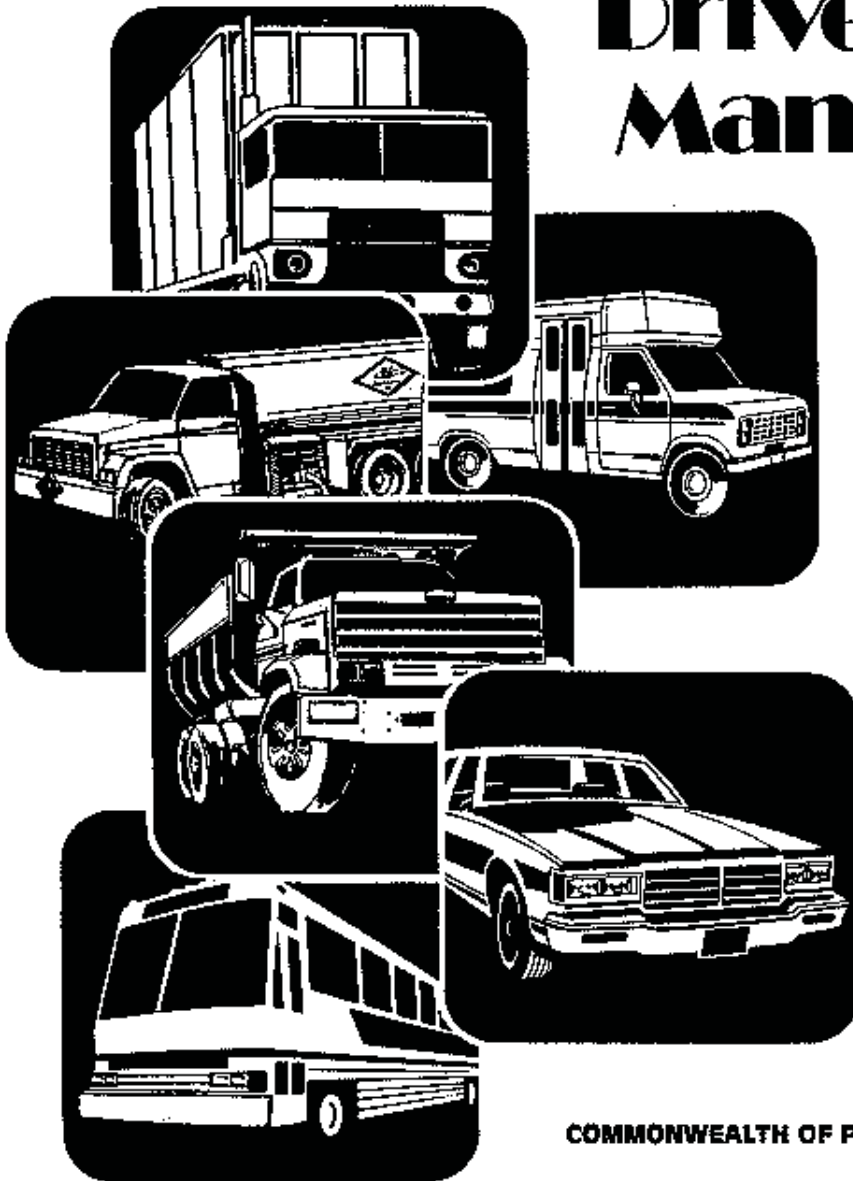
For help on the explanation of individual data fields, click on any underscored field name or for help of a general nature click [here](#).

The information below reflects the content of the FHWA Office of Motor Carriers management information systems as of 04/17/1999.

Legal Name:	ABF FREIGHT SYSTEM INC		
DBA Name:			
Physical Address:	3801 OLD GREENWOOD RD FORT SMITH, AR 72903-5937		
Phone:	(501) 785-6000		
Mailing Address:	P O BOX 10048 FORT SMITH, AR 72917-0048		
USDOT #:	82866	State Carrier ID#:	
MC or MX Numbers:	29910	DUNS Number:	00-690-2977
Entity Type:	Carrier	Status:	Active
Power Units:	4276	Drivers:	7668
Operation Classification:	<input checked="" type="checkbox"/> Auth. For Hire <input type="checkbox"/> Priv. Pass. (Business) <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Local Gov't	<input type="checkbox"/> Exempt For Hire <input type="checkbox"/> Priv. Pass.(Non-business) <input type="checkbox"/> Fed. Gov't <input type="checkbox"/> Indian Tribe	<input type="checkbox"/> Private(Property) <input type="checkbox"/> Migrant <input type="checkbox"/> State Gov't
Carrier Op.	<input checked="" type="checkbox"/> Interstate	<input type="checkbox"/> Intrastate (Non-HM)	<input type="checkbox"/> Intrastate (HM)
HM Shipper Op.	<input type="checkbox"/> Interstate	<input type="checkbox"/> Intrastate	
Cargo Carried:	<input checked="" type="checkbox"/> General Freight <input type="checkbox"/> Motor Vehicles <input type="checkbox"/> Building Materials <input type="checkbox"/> Fresh Produce <input type="checkbox"/> Passengers <input type="checkbox"/> Grain, Food, Hay <input type="checkbox"/> Garbage/Refuse <input type="checkbox"/> Commodities Dry Bulk	<input type="checkbox"/> Household Goods <input type="checkbox"/> Drive/Tow away <input type="checkbox"/> Mobile Homes <input type="checkbox"/> Liquids/Gases <input type="checkbox"/> Oilfield Equipment <input type="checkbox"/> Coal/Coke <input type="checkbox"/> US Mail <input type="checkbox"/> Refrigerated Food	<input type="checkbox"/> Metal: sheets, coils, rolls <input type="checkbox"/> Logs,Poles,Beams,Lumber <input type="checkbox"/> Machinery, Large Objects <input type="checkbox"/> Intermodal Cont. <input type="checkbox"/> Livestock <input type="checkbox"/> Meat <input type="checkbox"/> Chemicals <input type="checkbox"/> Beverages <input type="checkbox"/> Agricultural/Farm



Commercial Driver's Manual



COMMONWEALTH OF PENNSYLVANIA

PUB. 223 (12-91)