

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency Transportation		RECEIVED 2009 FEB 10 PM 2:37 INDEPENDENT REGULATORY REVIEW COMMISSION	
(2) I.D. Number (Governor's Office Use) No. 18-413		IRRC Number: 2744	
(3) Short Title Interstate Motor Carrier Safety Requirements			
(4) PA Code Cite 67 Pa. Code, Chapter 229		(5) Agency Contacts & Telephone Numbers Primary Contact: Scott K. Young (717) 787-6899 Secondary Contact: W. James Smith (717) 787-4299	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The Federal Motor Carrier Safety Assistance Program (MCSAP), administered by the Federal Motor Carrier Safety Administration (FMCSA), provides financial assistance to states to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles. As a condition of participating in MCSAP, each state must ensure that its laws and regulations are identical to or have the same effect as the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations (HMR). During a MCSAP National Management and Performance Review in 2007, the FMCSA determined Pennsylvania's Interstate Motor Carrier Safety Regulations do not meet these requirements. Unless these regulations are amended, Pennsylvania will lose federal MCSAP funds. Consequently, the proposed regulations adopt the North American Standard Out-Of-Service Criteria and the applicable federal motor carrier safety regulations.			

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Authority for these amendments is found in sections is found in Sections 4704 and 6103 of the Vehicle Code, 67 Pa.Code §§4704 and 6103.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulations? If yes, cite the specific law, case or regulation, and any deadlines for action.

These regulations are mandated by 49 CFR Part 350 generally, and 49 CFR 350.201 specifically. Failure to adopt these regulations prior to March 1, 2010 may result in a loss of MCSAP funding.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The commercial motor vehicle safety program is designed to reduce commercial motor vehicle involved accidents, fatalities and injuries through consistent, uniform, and effective commercial motor vehicle safety programs.

Implementation of these regulations enhances the safety and operation of commercial motor vehicles and drivers on Commonwealth highways.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Failure to enact these regulations would result in the loss of federal funds to implement and enforce the commercial motor vehicle safety program. Without a commercial motor vehicle safety program there would be an increase in property damage, injuries and death resulting from commercial motor vehicle crashes.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Adoption of these regulations will benefit all users of Commonwealth highways through reduced risk of commercial vehicle crashes. In addition, motor carriers will benefit through uniform and consistent application of these safety regulations throughout the U.S.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There should be no adverse impact to any person or entities through the enactment of these regulations. Interstate motor carriers and drivers are already subject to these regulations as adopted by other state jurisdictions.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

These regulations will affect all motor carriers and drivers who operate in interstate commerce. The department is unable to determine the number of persons or entities that will be required to comply.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

These regulations were developed in accordance and compliance with a MCSAP National Management and Performance Review conducted by the FMCSA. The following persons and/or groups have been involved in the drafting and/or review of the regulation:

Pennsylvania State Police, Pennsylvania Public Utility Commission, Pennsylvania Motor Truck Association, Pennsylvania Farm Bureau and Penn Ag.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The costs and/or savings to the regulated community resulting from these amendments are minimal and cannot be calculated with any precision.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There should be no costs and or savings to local governments resulting from the amendments to the regulations. Local governments are not subject to the regulations.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There should be no costs and or savings to state government resulting from these amendments to the regulation.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY + 1 Year	FY + 1 Year	FY + 3 Year	FY + 4 Year	FY + 5 Year
SAVINGS:	N/A			\$	\$	\$
Regulated Community:	N/A					
Local Government:	N/A					
State Government:	N/A					
Total Savings	N/A					
COSTS:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Costs	N/A					
REVENUE LOSSES:	N/A					
Regulated Community	N/A					
Local Government	N/A					
State Government	N/A					
Total Revenue Losses	N/A					

(20a) Explain how the cost estimates listed above were derived.

N/A

(20b) Provide the three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Appropriation 187	\$ 666,000,000	\$ 651,000,000	\$ 694,000,000	\$ 694,000,000

(21) Using cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives that would satisfy the requirements of the FMCSA mandate.

(23) Describe alternative regulatory schemes and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered due to FMCSA mandates.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions that are more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulations are identical to those enacted by all other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These amendments will not affect other Department regulations or the regulations of any other Commonwealth agency.

(27) Will any public hearings or informal meetings be scheduled? Please provide the dates, times and locations, if available.

No public hearings on these amendments are scheduled at this time.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulations will not change existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

FMCSA mandates the adoption of 49 CFR regulations without modification.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

These amendments will become effective upon publication in final form in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

These regulations will be reviewed periodically as appropriate to ensure continued compliance with FMCSA requirements.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE
LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

INDEPENDENT REGULATORY
BODIES DIVISION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General.

Amy M. Elliott
By: _____

(Deputy Attorney General)

FEB 04 2009

Date of Approval

Copy of below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department
of
Transportation
(Agency)

DOCUMENT/FISCAL NOTE NO. 18-413

DATE OF ADOPTION _____

BY *Allen D. Bieker*

Secretary of Transportation

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby approved as to
form and legality. Executive or
Independent Agencies.

Andrew C. Clark
BY _____

Andrew C. Clark
JAN 7 2009

(Date of Approval)

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike Inapplicable Title)

Check if applicable. No attorney
General Approval or Objection within
30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

Title 67. Transportation

Part I. Department of Transportation

Subpart A. Vehicle Code Provisions

Article VIII. Administration and Enforcement

Chapter 229. Interstate Motor Carrier Safety Requirements

Title 67. Transportation
Part I. Department of Transportation
Subpart A. Vehicle Code Provisions
Article VIII. Administration and Enforcement
Chapter 229. Interstate Motor Carrier Safety Requirements

Notice of Proposed Rulemaking

Preamble

Notice is hereby given that the Department of Transportation, pursuant to the authority contained in Sections 4704 and 6103 of the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, *as amended* (75 Pa.C.S. §§ 4704 and 6103), proposes to amend Chapter 229 of the Department of Transportation Regulations, Title 67, as set forth in Annex A to this Notice.

Purpose of Chapter

The purpose of Chapter 229 is to prescribe the minimum requirements and qualifications for drivers, vehicles, and other matters relating to the interstate operation of commercial vehicles.

Purpose of the Proposed Amendments

The purpose of these amendments to Chapter 229 is to ensure that Pennsylvania's regulations are identical to, or have the same effect as, the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations as required to participate in the Motor Carrier Safety Assistance Program, a federal funding source administered by the Federal Motor Carrier Safety Administration.

Summary of Significant Amendments

These amendments will incorporate by reference into 67 PA Code, Chapter 229 the following provisions of 49 CFR. Part 382 Controlled Substances and Alcohol Use and Testing, Part 385 Safety Fitness Procedures, Part 387 Minimum Levels of Financial Responsibility, Part 390 Federal Motor Carrier Safety Regulations General, Part 391 Qualifications of Drivers and Longer Combination Vehicle Driver Instructors, Part 392 Driving of Commercial Motor Vehicles, Part 393 Parts and Accessories Necessary for Safe Operation, Part 395 Hours of Service of Drivers and Part 396 Inspection Repair and Maintenance.

Persons and Entities Affected

These regulations will affect all motor carriers and drivers who operate in interstate commerce.

Fiscal Impact

Implementation of these regulations will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These regulations will not impose any additional costs on the regulated community.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), *as amended*, 71 P.S. § 745.5(a), the agency submitted a copy of these proposed regulations, on February 10, 2009 to the Independent Regulatory Review

Commission and to the Chairpersons of the House and Senate Transportation Committees. In addition to submitting the regulations, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments recommendation, or objections.

Sunset Provisions

The Department of Transportation will make these regulations effective upon publication in final form following appropriate evaluation of any comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these regulations, since these regulations are required to participate in the federal Motor Carrier Safety Assistance Program. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendments to the regulations to Scott K. Young within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about the proposed amendments to the regulations is Scott K. Young, Bureau of Maintenance and Operations, 400 North St., 6th Floor, Commonwealth Keystone Building, Harrisburg, Pennsylvania 17120, telephone number: 717-787-6899.

Allen D. Biehler, P.E.

Secretary of Transportation

ANNEX A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

SUBPART A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 229. INTERSTATE MOTOR CARRIER SAFETY REQUIREMENTS

Subch.

- A. GENERAL.....229.1**
- B. [QUALIFICATION OF DRIVERS 229.21] Reserved.**
- C. [DRIVING OF MOTOR VEHICLES 229.101] Reserved.**
- D. [PARTS AND ACCESSORIES NECESSARY FOR SAFE
OPERATION 229.191] Reserved.**
- E. [HOURS OF SERVICE OF DRIVERS 229.331] Reserved.**
- F. [INSPECTION, REPAIR AND MAINTENANCE 229.361] Reserved.**
- G. [TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND
PARKING RULES 229.381] Reserved.**
- H. [STATEMENTS OF POLICY 229.411] Reserved.**
- I. [DRIVER OUT-OF-SERVICE CRITERIA 229.431] Reserved.**
- J. [VEHICLE OUT-OF-SERVICE CRITERIA 229.451] Reserved.**

Subchapter A. GENERAL

Sec.

- 229.1. General information and requirements.
- 229.2. Scope.
- 229.3. Definitions.
- 229.4. [General applicability.] **Reserved.**
- 229.5. [Vehicles used for purposes other than as defined.] **Reserved.**
- 229.6. [Motor carrier to require observance of driver regulations.] **Reserved.**
- 229.7. [Aiding or abetting violations.] **Reserved.**
- 229.8. [Additional equipment and accessories.] **Reserved.**
- 229.9. [Marking of motor vehicles.] **Reserved.**
- 229.10. [Relief from hours-of-service regulations—disasters.] **Reserved.**
- 229.11. [Copies of records or documents.] **Reserved.**
- 229.12. [Certificates, reports and records: falsification, reproduction or alteration.] **Reserved.**
- 229.13. [Violation and penalty.] **Reserved.**
- 229.14. Adoption of portions of 49 CFR by reference.**
- 229.15. Additions or modifications to 49 CFR.**
- 229.16. Adoptions of out-of-service criteria.**
- 229.17. Adoption of interpretation of Federal Motor Carrier Regulations.**

§ 229.1. General information and requirements.

(a) *Purpose.* This chapter prescribes the minimum requirements and qualifications for drivers, vehicles and other matters relating to the interstate operation of commercial motor vehicles. Much of this chapter incorporates by reference provisions of 49 CFR Parts [390—397] 382, 385, 387 and 390—396. Appropriate parts may be obtained from the following:

(1) United States Government Printing Office, Book Store, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, (412) 644-2721.

(2) United States Government Printing Office, Book Store, 100 North 7th Street, Robert Morris Building, Philadelphia, Pennsylvania 19103, (215) 597-0677.

(3) United States Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) 655-4000.

(4) **Commercial Vehicle Safety Alliance, 1101 17th Street NW, Suite 803, Washington, DC 20036.**

* * * * *

(c) [*Title and name changes.* In order to reconcile differences between this chapter and the incorporated sections of Federal regulations and to effectuate their joint enforcement, the following words and phrases will be substituted for the language of the Federal regulations as follows:

A reference to the Department of Transportation means the Pennsylvania Department of Transportation.] **Reserved.**

(d) *Forms and documents.* References to forms in the Federal regulations incorporated by reference will be replaced by the appropriate forms prescribed by the Department of Transportation.

§ 229.2. Scope.

(a) Except as otherwise provided, this chapter applies to [vehicles, including motor vehicles and combinations of vehicles, and drivers of motor vehicles engaged in interstate commerce if the registered gross weight of the vehicle or combination of vehicles exceeds 17,000 pounds] **commercial motor vehicles engaged in interstate commerce.**

(b) This chapter applies to motor carriers of property or passengers, whether common carriers, contract carriers or private carriers, involved in interstate commerce.

[(c) This chapter does not apply to systematic inspections of drivers of or vehicle types as follows:

- (1) Farm trucks not required to be registered.
- (2) Special mobile equipment.
- (3) Implements of husbandry.]

§ 229.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Bus—A motor vehicle as defined in 75 Pa.C.S. § 102 (relating to definitions).

* * * * *

Pole trailer—49 CFR 390.5 incorporated by reference.]

Qualified Commonwealth employe—[A Commonwealth employe designated by the Department who is authorized to inspect vehicles, drivers, documents, equipment and loads,

or cargo as provided in 75 Pa.C.S. § § 4704 and 8302 (relating to inspection by police or department personnel; and powers and duties of department).] **The term as it is defined in**

75 Pa.C.S. §102.

[*Radar detector*—49 CFR 390.5 (relating to definitions) incorporated by reference.

Vehicle—The term as defined in 75 Pa.C.S. § 102.]

§ 229.4. [General applicability.

49 CFR 390.3 (relating to general applicability) incorporated by reference.] **Reserved.**

§ 229.5. [Vehicles used for purposes other than as defined.

49 CFR 390.33 (relating to vehicles used for purposes other than as defined) incorporated by reference.] **Reserved.**

§ 229.6. [Motor carrier to require observance of driver regulations.

49 CFR 390.11 (relating to motor carrier to require observance of driver regulations) incorporated by reference.] **Reserved.**

§ 229.7. [Aiding or abetting violations.

49 CFR 390.13 (relating to aiding or abetting violations) incorporated by reference.]

Reserved.

§ 229.8. [Additional equipment and accessories.

49 CFR 390.19 (relating to additional equipment and accessories) incorporated by reference.]

Reserved.

§ 229.9. [Marking of motor vehicles.

49 CFR 390.21 (relating to marking of commercial motor vehicles) incorporated by reference.] **Reserved.**

§ 229.10. [Relief from hours-of-service regulations—disasters.

49 CFR 390.23 (relating to relief from hours-of-service regulations—disasters) incorporated by reference.] **Reserved.**

§ 229.11. [Copies of records or documents.

49 CFR 390.31 (relating to copies of records or documents) incorporated by reference.]

Reserved.

§ 229.12. [Certificates, reports and records: falsification, reproduction or alteration.

49 CFR 390.35 (relating to certificates, reports, and records: falsification, reproduction, or alteration) incorporated by reference.] **Reserved.**

§ 229.13. [Violation and penalty.

49 CFR 390.37 (relating to violation and penalty) incorporated by reference.] **Reserved.**

§ 229.14. Adoption of portions of 49 CFR by reference.

The Department incorporates by reference the following portions of 49 CFR (relating to transportation), subject to § 229.3 (relating to definitions) and § 229.15 (relating to additions or modifications to 49 CFR).

(1) Part 382 (relating to driver drug and alcohol testing).

(2) Part 385 (relating to safety fitness procedures).

(3) Part 387 (relating to minimum levels of financial responsibility for motor carriers).

(4) Part 390 (relating to Federal motor carrier safety regulations; general).

(5) Part 391 (relating to qualifications of drivers).

(6) Part 392 (relating to driving of motor vehicles).

(7) Part 393 (relating to parts and accessories necessary for safe operation).

(8) Part 395 (relating to hours of service for drivers).

(9) Part 396 (relating to inspection, repair and maintenance).

§ 229.15. Additions or modifications to 49 CFR.

A reference to special agent shall include a police officer or a Qualified Commonwealth Employee.

§ 229.16. Adoption of Out-of-Service Criteria.

The out-of-service criteria contained in the North American Standard Out-Of-Service Criteria is incorporated by reference.

§ 229.17 Adoption of Interpretation of Federal Motor Carrier Safety Regulations.

The Department hereby adopts, as statements of policy, interpretations of the Federal Motor Carrier Safety Regulations as published by the Federal Motor Carrier Safety Administration for those Parts enumerated in § 229.14 (relating to adoption of portions of 49 CFR by reference).

EDITOR'S NOTE

Subchapters B through J, §§ 229.21 through 229.453, are deleted in their entirety.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

OFFICE OF CHIEF COUNSEL
GENERAL LAW DIVISION
POST OFFICE BOX 8212
HARRISBURG, PA 17105-8212
TELEPHONE: (717) 787-5299
FACSIMILE: (717) 772-2741



February 10, 2009

Kim Kaufman
Executive Director
14th Floor Harristown 2
333 Market Street
Harrisburg, PA 17101

**Re: Proposed Rulemaking(s)
Regulation # 18-413, # 18-414, 67 Pa. Code Chapters 229 and 231 —
Interstate and Intrastate Motor Carrier Safety Requirements**

Dear Mr. Kaufman:

Enclosed please find a copy of the Face Sheet, Preamble, Annex A and Regulatory Analysis Form for amendment to Chapters 229 and 231 of Department regulations which the Department of Transportation intends to adopt in accordance with the provisions of Section 204 of the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, 45 P.S. § 1204.

Copies of these materials were also delivered today to the majority and minority chairpersons of the Pennsylvania House and Senate Transportation Committees.

The Department of Transportation will provide you with any assistance you require to facilitate a thorough review of this regulation. Thank you for your attention.

Very truly yours,

Stephen F. J. Martin
Regulatory Counsel

cc: Danielle J. Guyer, Governor's Office of the Budget w/o attachments
Judith Bailets, Staff Assistant, Governor's Policy Office w/o attachments
Danielle K. Spila, Director, Department of Transportation Policy Office w/o
attachments

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

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2009 FEB 10 PM 2:38

INDEPENDENT REGULATORY
REVIEW COMMISSION

I.D. NUMBER: #18-413

SUBJECT: Interstate Motor Carrier Safety Requirements, 67 Pa. Code,
Chapter 229

AGENCY: Department of Transportation

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/10	<u>Scott J. Schuch</u> for Majority Chair	SENATE COMMITTEE ON TRANSPORTATION
2/10	<u>Mary E. Flaherty</u> for Minority Chair	
2.10.09	<u>Amanda T. Wolfe</u> for Majority Chair	HOUSE COMMITTEE ON TRANSPORTATION
2/10	<u>Walter Yunker</u> for Minority Chair	
2/10/09	<u>Dr. Belmont</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
2/10	<u>Nicole Lathrop</u>	LEGISLATIVE REFERENCE BUREAU

Date: February 10, 2009