

# Attachment A



STATE OF WASHINGTON

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-0203

BML Investments LLC  
1724 10th Place NE  
East Wenatchee, WA 98802

April 25, 2012

### Insurance Binder Notification

State law requires you to file and maintain proof of public liability and property damage insurance to keep your permit active with the Washington Utilities and Transportation Commission. We have received an insurance binder that is valid for up to 60 days. You must file a Form E insurance certificate within these 60 days or your permit will be suspended.

#### **What happens if a Form E insurance certificate is not filed within 60 days?**

If your insurance certificate (Form E) is not filed by June 25, 2012 we will send you an order suspending your operating authority.

#### **What happens if my operating authority is suspended?**

If your operating authority is suspended, you must stop your operations until we receive proof of insurance (Form E) and send you an order that removes the suspension. If you do not file proof of insurance within 30 days after the service date of the suspension order **we will cancel your authority without further notice.**

#### **What if I do not agree with the suspension or cancellation of my permit?**

If you do not agree you may file a written request for a hearing within 10 days following the date of this notification. Once we receive your written request we will notify you of the date, time and location of the hearing. **NOTE:** At the hearing the only issues we can address are whether you had proof of insurance on file during the period of suspension, and whether you have proof of insurance on file to avoid cancellation.

#### **Where do I send my request for a hearing?**

Washington Utilities and Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

#### **Who do I contact if I have questions?**

You may call 360-664-1222 or e-mail us at [transportation@utc.wa.gov](mailto:transportation@utc.wa.gov), or fax to 360-586-1181.

Thank You.

**Attachment B**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION  
1-360-664-1222**

In the matter of the suspension of )  
passenger transportation company ) DOCKET TC-121120  
certificate C-64605 held by )  
 ) ORDER 01  
BML INVESTMENTS LLC, d/b/a )  
WENATCHEE VALLEY SHUTTLE, ) ORDER SUSPENDING  
 ) CERTIFICATE C-64605  
for failure of carrier to file proof of )  
liability and property damage insurance )  
covering equipment. )  
..... )

**BACKGROUND**

- 1 Passenger transportation companies operating in intrastate commerce subject to regulation by the Washington Utilities and Transportation Commission (Commission) must file and maintain proof of liability and property damage insurance.
- 2 On April 25, 2012, the Commission notified you by letter that your certificate to operate as a passenger transportation company in Washington would be suspended if your insurance company did not file with the Commission acceptable proof of insurance within 60 days. We also told you that you could contest suspension of your certificate by requesting a hearing within 10 days of receiving the notice.
- 3 The Commission has not received proof of insurance and you have not requested a hearing.

**FINDINGS AND CONCLUSION**

- 4 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington having authority to regulate passenger transportation companies as defined in RCW 81.68.
- 5 (2) BML Investments LLC, d/b/a Wenatchee Valley Shuttle, (BML Investments LLC), is a passenger transportation company operating in Washington State under certificate C-64605.
- 6 (3) On April 25, 2012, the Commission received an insurance binder valid for up to 60 days. The Commission notified you that if a Form E insurance certificate was not received within 60 days your certificate would be suspended.

- 7 (4) The Commission is authorized by WAC 480-30-171(1)(a) to suspend a passenger transportation company's certificate for failure to file and maintain proof of insurance.
- 8 (5) The Commission is authorized by WAC 480-30-171(2)(a) to cancel a passenger transportation company's certificate for failure to correct conditions leading to suspension within the time defined in the order of suspension.

**ORDER**

**THE COMMISSION ORDERS:**

- 9 (1) Certificate C-64605, held by BML Investments LLC, d/b/a Wenatchee Valley Shuttle, is suspended for a period of 30 days effective June 25, 2012.
- 10 (2) BML Investments LLC is directed to **cease** all operations associated with certificate C-64605 until the Commission receives proof of liability and property damage insurance and enters an order lifting the suspension and authorizing you to resume operations.
- 11 (3) If proof of insurance is not filed with the Commission within 30 days, certificate C-64605 will be cancelled. To reinstate this certificate you must submit a new application and acceptable proof of insurance.
- 12 (4) BML Investments LLC, d/b/a Wenatchee Valley Shuttle, may contest cancellation of certificate C-64605 by requesting a hearing within ten (10) days of service of this Order. A hearing request does not affect the suspension status of your certificate.
- 13 The Commission has delegated authority to the Secretary, or to the Secretary's delegate, to enter this Order under RCW 80.01.030 and, WAC 480-07-905(6)(d), and Order 01 in Docket A-090485.

DATED at Olympia, Washington and effective July 2, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID PRATT  
Assistant Director for Transportation Safety

**Attachment C**

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION  
1-360-664-1222**

In the matter of the suspension of passenger	)	
transportation company certificate C-64605	)	DOCKET TC-121120
held by	)	
	)	ORDER 02
BML INVESTMENTS, LLC,	)	
d/b/a WENATCHEE VALLEY SHUTTLE,	)	ORDER LIFTING SUSPENSION
	)	
for failure to file proof of liability and	)	
property damage insurance covering	)	
equipment.	)	
.....	)	

- 1 On July 2, 2012, in Order 02 in this docket, the Washington Utilities and Transportation Commission (Commission) suspended passenger transportation company certificate C-64605 held by BML Investments, LLC, d/b/a Wenatchee Valley Shuttle, for failure to file acceptable proof of liability and property damage insurance.
- 2 The Commission received acceptable proof of liability and property damage insurance on July 17, 2012. The suspension is now lifted and you may resume operations.

**ORDER**

- 3 **THE COMMISSION ORDERS** the suspension of passenger transportation company certificate C-64605 previously ordered in Order 02, is lifted.
- 1 The Commission has delegated authority to the Secretary, or to the Secretary’s delegate, to enter this Order under RCW 80.01.030 and WAC 480-07-905(6)(e); and Order 01 in Docket A-090485.

DATED at Olympia, Washington and effective July 17, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID PRATT  
Assistant Director for Transportation Safety

**NOTICE:** This is an order delegated to the Secretary, or to the Secretary's delegate, for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site.

The Commission will schedule your request for review by issuing a notice of hearing to be held before an administrative law judge. The Commission, at its discretion, may consider your request for review in an adjudicative proceeding under RCW 34.05 Part IV, or in a brief adjudicative proceeding under RCW 34.05.482 through .494. Following hearing, the administrative law judge will enter an initial order. If you wish to seek review of the initial order, you may file a petition for administrative review under RCW 34.05.464, or if the matter is heard in a brief adjudicative proceeding, under RCW 34.05.491.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3), and WAC 480-07-905, as amended effective September 22, 2008.

# Attachment D

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Notice of Penalties	)	DOCKET TC-121565
Issued to:	)	
	)	
BML INVESTMENTS, LLC DBA	)	Declaration of Richard Smith
WENATCHEE VALLEY SHUTTLE	)	
	)	
_____	)	


I, RICHARD SMITH, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Transportation Safety Auditor - Lead in the Motor Carrier Safety Section. I have been employed at the Commission for four years, holding various positions. As a Lead Transportation Safety Auditor, my responsibilities include performing safety inspections, compliance reviews, and other related motor carrier activities in a Commission program which regulates transportation activities.
3. In its Application for Mitigation of Penalties, Mrs. Lott of BML Investments, LLC d/b/a Wenatchee Valley Shuttle (BML Investments), states that the company was totally unaware that all of its drivers needed a medical examination and a medical examiner's certificate of proof. Mrs. Lott also states that I pointed this requirement out during the September 5, 2012, compliance review inspection.
4. When BML Investments first applied for an auto transportation certificate in April 2012, our staff sent the company a copy of the laws and rules related to auto transportation along with a copy of the commission's safety manual, "Your Guide to Achieving a Satisfactory Safety Record." The commission distributes the manual to assist carriers in understanding applicable rules and preparing for safety compliance reviews. It is the company's responsibility to fully understand and comply with all federal and state laws and rules related to passenger transportation.

5. I first met with BML Investments on April 17, 2012, prior to the commission granting the company authority as an auto transportation provider. At that time, I provided Mrs. Lott with a second copy of the safety manual.
6. During the September 2012 compliance review, Mr. Lott assured me that he had read the safety manual several times and had two copies visible on his desk.
7. In the safety manual, under "Definitions," a commercial motor vehicle includes any self-propelled or towed motor vehicle used on a public highway in commerce, to transport passengers or property, when the vehicle is designed or used to transport more than eight passengers, including the driver, for compensation.<sup>1</sup> BML Investments owns and operates two nine-to-15 passenger vans, which fall under the definition of a commercial motor vehicle.
8. Under "Qualification of Drivers," the safety manual states that drivers must be qualified to operate commercial motor vehicles. All drivers of commercial vehicles must pass a physical examination.<sup>2</sup>
9. The "Driver Qualification File Checklist 391.51" under "Medical Examiner's Certificate" in the safety manual shows that a driver must pass a medical examination conducted by a licensed health care professional. A driver must be issued a medical examiner's certificate, which must be carried at all times, and must be renewed every two years.<sup>3</sup>

In accordance with RCW 9A.72.085, I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated October 18, 2012, at Olympia, Washington.



Richard Smith

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<sup>1</sup> Attachment A – Your Guide to Achieving A Satisfactory Safety Record - Definitions - Page v

<sup>2</sup> Attachment B – Your Guide to Achieving A Satisfactory Safety Record - Qualification of Drivers, Section 2, Page 55.

<sup>3</sup> Attachment C – Your Guide to Achieving A Satisfactory Safety Record – Driver Qualification File Checklist 391.51, Section 3, Page 61.



## Attachment A

### DEFINITIONS

**Accident** means an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce that results in:

- (i) A fatality;
- (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident or
- (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

**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.

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Auto Transportation Vehicle** means any motor-propelled vehicle used in Auto Transportation operations. Charter Bus and Excursion Bus means any vehicle with a seating capacity for seven or more persons, excluding the driver.

**Collection Site** means a place where individuals present themselves for the purpose of providing breath, body fluid, or tissue samples to be analyzed for specific controlled substances.

**Commerce** when used in this document means the exchange or buying and selling of commodities (products and services), involving transportation from place to place

**Commercial Driver's License (CDL)** means a license issued in accordance with the requirements of 49 CFR, Part 383, to an individual that authorizes the individual to drive a class of commercial motor vehicle.

**Commercial Motor Vehicle (CMV)(General definitions)** means any self-propelled or towed motor vehicle used on a public highway in commerce, to transport passengers or property, when the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers, including the driver, for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver) and is not used to transport passengers for compensation; or
- (4) Is used in transportation of material found by the Secretary of USDOT to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, Chapter I, subchapter C.



## Attachment B

Drivers must be qualified to operate commercial vehicles. Part 391 explains what a carrier must do to qualify drivers.

Generally, a commercial motor vehicle driver must meet the following requirements:

- Be in good health.
- Be at least 18 years of age (if operating exclusively in Washington intrastate commerce). Drivers operating in interstate commerce must be at least 21 years of age.
- Speak and read English well enough to converse with the general public, understand highway traffic signs and signals, do his/her job, respond to official questions, and make legible entries on reports and records.
- Be able to drive the vehicle safely.
- Be able to determine whether the vehicle is safely loaded.
- Know how to block, brace, and tie down cargo.
- Have only one valid commercial driver's license.
- Not be disqualified to drive a commercial motor vehicle.
- Provide an employing motor carrier with a list of all motor vehicle violations or a signed statement that the driver has not been convicted of any motor vehicle violations during the past 12 months. A disqualified driver must not be allowed to drive a commercial motor vehicle for any reason.
- Pass a driver's road test.
- Test negatively for controlled substances.
- Complete an application for employment.

### PHYSICAL QUALIFICATIONS AND EXAMINATIONS

All drivers of commercial vehicles must pass a physical examination. If the driver passes the physical, the doctor will give the driver a medical examiner's certificate that must be carried at all times when driving a commercial vehicle. The certificate must be renewed every 2 years, or sooner if instructed by the medical examiner.

Part 391.43 contains instructions for performing and recording physical examinations. The primary physical requirements are:

- Drivers must have good eyesight. Glasses or contact lenses are permitted.
- Drivers must hear well. Hearing aids are permitted.
- Drivers must not use nor be addicted to amphetamines, narcotics, or other drugs that may keep the driver from driving safely.
- Drivers cannot be clinically diagnosed as an alcoholic.

**NOTE: This publication not intended for sale**

Attachment C

DRIVER QUALIFICATION FILE  
CHECKLIST 391.51

1. _____ Driver's Application for Employment * A person will not be allowed to drive a commercial motor vehicle unless he/she has completed and signed an application for employment. NOTE: The application form must, as a minimum, contain the information specified in 391.21(b).	49 CFR, 391.21
2. _____ Inquiry to Previous Employers – 3 years ** An investigation of the driver's employment record during the preceding 3 years. This investigation must be made within 30 days of the date his/her employment begins.	49 CFR, 391.23(2)
3. _____ Inquiry to State Agencies – 3 years An investigation into the employee's driving record for the preceding three years. This investigation must be made within 30 days of the date his/her employment begins.	49 CFR, 391.21(a) (1)&(b)
4. _____ Annual Review of Driving Record. At least once every 12 months, a motor carrier must review the driving record of each driver. A note stating the results of this review shall be included in the driver's qualification file. At least once every 12 months, a motor carrier must make inquiry into the driving record of each driver.	49 CFR, 391.25
5. _____ Annual Driver's Certification of Violations. At least once every 12 months, a motor carrier must require each driver that it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances during the previous 12 months.	49 CFR, 391.27
6. _____ Driver's Road Test and Certificate (or equivalent). A person must not be allowed to drive a commercial motor vehicle until he/she has successfully completed a road test and has been issued a certificate, or a copy of the license or certificate that the motor carrier accepted as equivalent to the driver's road test, pursuant to section 391.33	49 CFR, 391.31&33
7. _____ Medical Examiner's Certificate. The driver must pass a medical examination conducted by a licensed health care professional. A driver must be issued a Medical Examiner's certificate, which must be carried at all times, and must be renewed every two years.	49 CFR, 391.45
8. _____ LCV Certificate of Training or Certificate of Grandfathering A person must not be allowed to drive a LCV until he/she has been issued a LCV Driver-Training Certificate or a LCV Driver-Training Certificate of Grandfathering.	49 CFR, 380.505 & 380.111 Rev 01-2004
9. _____ Entry-Level Driver-Training Certificate (CDL Drivers only). A person must not be allowed to drive a CMV requiring a CDL without first obtaining the required Entry Level Driver Training Certificate.	49 CFR, 380.500

\*The prospective motor carrier must:

- Inform the applicant that the information provided on the application concerning previous employers may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's safety performance history; and
- Notify the driver in writing of his/her due process rights (see Due Process Rights in 391.23)

\*\* Records must be maintained in secured location with controlled access

# Attachment E

## Federal Motor Carrier Safety Administration, DOT

Pt. 385, App. B

require corrective action in order to avoid having the carrier's new entrant registration revoked, or having the provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

[67 FR 12773, Mar. 19, 2002, as amended at 67 FR 31985, May 13, 2002; 73 FR 76496, Dec. 16, 2008]

### APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

(a) Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Motor Carrier Safety Administration (FMCSA).

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled "Safety Fitness Procedures," which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a "safety fitness standard" that a motor carrier must meet to obtain a "Satisfactory" safety rating. FMCSA later amended the safety fitness standard to add a distinct requirement that motor carriers also be in compliance with applicable remedial directives.

(c) To meet the safety fitness standard, a motor carrier must meet two requirements. First, the carrier must demonstrate to FMCSA it has adequate safety management controls in place that function effectively to ensure acceptable compliance with the applicable safety requirements. (See §385.5(a)). A "safety fitness rating methodology" (SFRM) developed by FMCSA uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers. Second, a motor carrier must also be in compliance with any applicable remedial directives issued in accordance with subpart J. This second requirement is set forth in §385.5(b).

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate the first component of the safety fitness standard, under §385.5(a), and assign one of three safety ratings (Satisfactory, Conditional, or Unsatisfactory) to motor carriers operating in interstate commerce. This process conforms to §385.5(a), Safety fitness standard, and §385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated Unsatisfactory or Conditional.

(e) The hazardous materials safety permit requirements of part 385, subpart E apply to intrastate motor carriers. Intrastate motor carriers that are subject to the hazardous materials safety permit requirements in subpart E will be rated using equivalent State requirements whenever the FMCSRs are referenced in this appendix.

(f) The safety rating will be determined by applying the SFRM equally to all of a company's motor carrier operations in commerce, including if applicable its operations in Canada and/or Mexico.

#### I. SOURCE OF DATA FOR RATING METHODOLOGY

(a) The FMCSA's rating process is built upon the operational tool known as the CR. This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

(b) The CR is an in-depth examination of a motor carrier's operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory* or *conditional* as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

#### II. CONVERTING CR INFORMATION INTO A SAFETY RATING

(a) The FMCSA gathers information through an in-depth examination of the motor carrier's compliance with identified "acute" or "critical" regulations of the FMCSRs and HMRs.

(b) Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. An example of an acute regulation is §383.37(b), allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with §383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have such knowledge or could not reasonably be expected to have such knowledge, then a violation would not be cited.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

(d) The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

(e) Noncompliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in § 385.5.

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are (1) Parts 387 and 390; (2) Parts 382, 383 and 391; (3) Parts 392 and 395; (4) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (5) Parts 397, 171, 177 and 180.

(g) For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR, one point will be assessed. A pattern is more than one violation. When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

(h) However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

#### A. Vehicle Factor

(a) When a total of three or more inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review, the Vehicle Factor (Parts 393 and 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34 percent or greater, the initial factor rating will be *conditional*. The requirements of Part 396, Inspection, Repair, and Maintenance, will be

examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of the Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *conditional*.

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

(b) Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

#### B. Accident Factor

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate for the past 12 months. A recordable accident, consistent with the definition for "accident" in 49 CFR 390.5, means an occurrence involving a commercial motor vehicle on a highway in motor carrier operations in commerce or within Canada or Mexico (if the motor carrier also operates in the United States) that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Recordable accidents per million miles were computed for each CR performed in Fiscal Years 1994, 1995 and 1996. The national average for all carriers rated was 0.747, and .839 for carriers operating entirely within the 100 air mile radius.

(c) Experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(d) The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents occurred within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable accident rate greater than 1.7 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.5 will receive an *unsatisfactory* factor rating. The rates are a result of roughly doubling the national average accident rate for each type of carrier rated in Fiscal Years 1994, 1995 and 1996.

(e) The FMCSA will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

*C. Factor Ratings*

(a) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called "factors."

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Factor Ratings are determined as follows:

**FACTORS**

- Factor 1 General=Parts 387 and 390
  - Factor 2 Driver=Parts 382, 383 and 391
  - Factor 3 Operational=Parts 392 and 395
  - Factor 4 Vehicle=Parts 393 and 396
  - Factor 5 Haz. Mat.=Parts 397, 171, 177 and 180
  - Factor 6 Accident Factor=Recordable Rate
- "Satisfactory"—if the acute and/or critical=0 points  
 "Conditional"—if the acute and/or critical=1 point  
 "Unsatisfactory"—if the acute and/or critical=2 or more points

**III. SAFETY RATING**

*A. Rating Table*

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

(b) The FMCSA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

**MOTOR CARRIER SAFETY RATING TABLE**

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0 .....	2 or fewer .....	Satisfactory
0 .....	more than 2 .....	Conditional
1 .....	2 or fewer .....	Conditional
1 .....	more than 2 .....	Unsatisfactory
2 or more .....	0 or more .....	Unsatisfactory

*B. Proposed Safety Rating*

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS-151, part E.

"Your proposed safety rating is **SATISFACTORY**."

OR

"Your proposed safety rating is **CONDITIONAL**." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

"Your proposed safety rating is **UNSATISFACTORY**." The proposed safety rating will become the final safety rating 45 days after you receive this notice

(b) Proposed safety ratings of *conditional* or *unsatisfactory* will list the deficiencies discovered during the CR for which corrective actions must be taken.

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of §385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials requiring placarding or more than 15 passengers, including the driver.

**IV. ASSIGNMENT OF FINAL RATING/MOTOR CARRIER NOTIFICATION**

When the official rating is determined in Washington, D.C., the FMCSA notifies the motor carrier in writing of its safety rating as prescribed in §385.11. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* rating) becomes effective as soon as the official safety rating from Washington, D.C. is issued, and the carrier may also avail itself of relief

under the § 385.15, Administrative Review and § 385.17, Change to safety rating based on corrective actions.

#### V. MOTOR CARRIER RIGHTS TO A CHANGE IN THE SAFETY RATING

Under §§ 385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes*, and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier which believes its safety rating to be in error may exercise, and the means to request another review after corrective action has been taken.

#### VI. CONCLUSION

(a) FMCSA believes this "safety fitness rating methodology" is a reasonable approach to assignment of a safety rating, as required by the safety fitness regulations (§ 385.9), that most closely reflects the motor carrier's current level of compliance with the safety fitness standard in § 385.5(a). This methodology has the capability to incorporate regulatory changes as they occur.

(b) Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

#### VII. LIST OF ACUTE AND CRITICAL REGULATIONS.

- § 382.115(a) Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).
- § 382.115(b) Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier) (acute).
- § 382.301 Using a driver known to have an alcohol concentration of 0.04 or greater (acute).
- § 382.311 Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).
- § 382.313(b) Using a driver known to have used a controlled substance (acute).
- § 382.315 Using a driver known to have tested positive for a controlled substance (acute).
- § 382.301(a) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).
- § 382.303(a) Failing to conduct post accident testing on driver for alcohol (critical).
- § 382.303(b) Failing to conduct post accident testing on driver for controlled substances (critical).
- § 382.305 Failing to implement a random controlled substances and/or an alcohol testing program (acute).
- § 382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).
- § 382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).
- § 382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 (acute).
- § 382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances (acute).
- § 382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by § 382.605 (critical).
- § 382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).
- § 382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B (acute).
- § 382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty (critical).
- § 383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license (critical).
- § 383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute).
- § 383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute).
- § 383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).
- § 387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).
- § 387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (critical).
- § 387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).

- §387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).
- §390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).
- §390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records (acute).
- §391.11(b)(4) Using a physically unqualified driver (acute).
- §391.15(a) Using a disqualified driver (acute).
- §391.45(a) Using a driver not medically examined and certified (critical).
- §391.45(b)(1) Using a driver not medically examined and certified during the preceding 24 months (critical).
- §391.51(a) Failing to maintain driver qualification file on each driver employed (critical).
- §391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).
- §391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file (critical).
- §392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).
- §392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).
- §392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).
- §392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).
- §392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).
- §392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).
- §395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).
- §395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).
- §395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).
- §395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).
- §395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).
- §395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).
- §395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).
- §395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).
- §395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).
- §395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).
- §395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty (critical).
- §395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).
- §395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).
- §395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours (critical).
- §395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours (critical).
- §395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours (critical).
- §395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours (critical).
- §395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle



- driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).
- § 395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).
- § 395.8(a) Failing to require driver to make a record of duty status (critical).
- § 395.8(e) False reports of records of duty status (critical).
- § 395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status (critical).
- § 395.8(k)(1) Failing to preserve driver's record of duty status for 6 months (critical).
- § 395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months (critical).
- § 396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).
- § 396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made (acute).
- § 396.11(a) Failing to require driver to prepare driver vehicle inspection report (critical).
- § 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute).
- § 396.17(a) Using a commercial motor vehicle not periodically inspected (critical).
- § 396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).
- § 397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).
- § 397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
- § 397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).
- § 397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).
- § 397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).
- § 397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).
- § 397.101(d) Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in § 173.403, of radioactive materials that is not accompanied by a written route plan.
- § 171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).
- § 171.16 Carrier failing to make a written report of an incident involving hazardous materials (critical).
- § 172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard" (acute).
- § 172.704(a)(4) Failing to provide security awareness training (critical).
- § 172.704(a)(5) Failing to provide in-depth security awareness training (critical).
- § 172.800(b) Transporting HM without a security plan (acute).
- § 172.800(b) Transporting HM without a security plan that conforms to Subpart I requirements (acute).
- § 172.800(b) Failure to adhere to a required security plan (acute).
- § 172.802(b) Failure to make copies of security plan available to hazmat employees (critical).
- § 173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).
- § 173.421(a) Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).
- § 173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).
- § 173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).
- § 173.441(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).
- § 173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 °C (122 °F) in other than an exclusive use shipment, or 85 °C (185 °F) in an exclusive use shipment (acute).
- § 173.443(a) Accepting for transportation or transporting a package containing Class 7

- (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).
- §177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).
- §177.801 Accepting for transportation or transporting a forbidden material (acute).
- §177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).
- §177.835(c) Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).
- §177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).
- §177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).
- §177.817(e) Failing to maintain proper accessibility of shipping papers (critical).
- §177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).
- §177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in §177.841(e)(i) or (ii) is met (acute).
- §180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with §180.407 (critical).
- §180.407(c) Failing to periodically test and inspect a cargo tank (critical).
- §180.415 Failing to mark a cargo tank which passed an inspection or test required by §180.407 (critical).
- §180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).
- §180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).
- [63 FR 60043, Nov. 6, 1997, as amended at 63 FR 62959, Nov. 10, 1998; 65 FR 11907, Mar. 7, 2000; 68 FR 22513, Apr. 23, 2003; 70 FR 50070, Aug. 25, 2005; 72 FR 36789, July 5, 2007; 72 FR 71269, Dec. 17, 2007; 75 FR 17244, Apr. 5, 2010]
- APPENDIX C TO PART 385—REGULATIONS PERTAINING TO REMEDIAL DIRECTIVES IN PART 385, SUBPART J**
- §395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).
- §395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).
- §395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).
- §395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).
- §395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska).
- §395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska).
- §395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).
- §395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).
- §395.1(c) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours.
- §395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.
- §395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty.
- §395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days.
- §395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days.
- §395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.
- §395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.
- §395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours.
- §395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle

## Attachment F

### PART I

#### NORTH AMERICAN STANDARD DRIVER OUT-OF-SERVICE CRITERIA

##### POLICY STATEMENT

The purpose of this part is to identify violations that render the commercial motor vehicle operator unqualified to drive or out-of-service. The necessity for all enforcement personnel to implement and adhere to these standards is: (1) a matter of law; (2) perceived as necessary by the society we are charged with protecting, and (3) a professional obligation if substantial enhancement in the safety of commercial motor vehicle operators is to be achieved.

Except where state, provincial, territorial, or federal laws preclude enforcement of a named item, motor carrier safety enforcement personnel and their jurisdictions shall comply with these out-of-service violation standards.

**OUT-OF-SERVICE VIOLATION:** Violations under this category preclude further operation of a commercial motor vehicle by its driver for a specified period of time or for some violations until a required condition is met. An example of the former standard is hours of service violations.

FMCSR code references in the *North American Standard Out-of-Service Criteria* are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.

**\*4. DRIVER MEDICAL/PHYSICAL REQUIREMENTS**

a. Skill Performance Evaluation Certificate

No skill performance evaluation in possession, when required.  
(391.49(j)) **Declare driver out-of-service.**

b. Medical Certificate

(1) Operating a commercial vehicle without corrective lenses or hearing aid as indicated on the driver's medical certificate.  
(391.11(b)(4)) **Declare driver out-of-service.**

(2) When an inspector has knowledge and/or evidence that a driver is/is not in possession of a valid medical certificate, and is not in possession of any and all required exemptions for the following conditions: vision, hearing, insulin-using diabetes, epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle. (391.41(a)(1)) **Declare driver out-of-service.**

(3) Operating a passenger-carrying vehicle without possessing a valid medical certificate. (391.41(a)) **Declare driver out-of-service.**

NOTE: Canadian operators possessing a valid Provincial or Territorial license of the proper class includes a valid Medical Certificate.

NOTE: Mexican operators possessing a valid Licencia Federal de Conductor of the proper class includes a valid Medical Certificate.

**\*5. SICKNESS**

When so impaired that the driver should not continue the trip.  
(392.3) **Declare driver out-of-service until no longer impaired.**

**\*6. FATIGUE**

\*a. When so fatigued that the driver of a property-carrying vehicle should not continue the trip. (392.3) **Declare driver out-of-service for ten (10) consecutive hours.**

# Attachment G

## § 385.1

### Subpart A—General

#### § 385.1 Purpose and scope.

(a) This part establishes FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers determined to be unfit from operating a CMV.

(b) This part establishes the safety assurance program for a new entrant motor carrier initially seeking to register with FMCSA to conduct interstate operations. It also describes the consequences that will occur if the new entrant fails to maintain adequate basic safety management controls.

(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403.

(d) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

(e) Subpart F of this part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

[65 FR 50934, Aug. 22, 2000, as amended at 67 FR 31962, May 13, 2002; 69 FR 39366, June 30, 2004; 73 FR 76818, Dec. 17, 2008; 75 FR 17240, Apr. 5, 2010]

#### § 385.3 Definitions and acronyms.

*Applicable safety regulations or requirements* means 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of this part, the equivalent State standards; and 49 CFR chapter I, subchapter C—Hazardous Materials Regulations.

*CMV* means a commercial motor vehicle as defined in § 390.5 of this subchapter.

*Commercial motor vehicle* shall have the same meaning as described in § 390.5 of this subchapter, except that this definition will also apply to intrastate motor vehicles subject to the haz-

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ardous materials safety permit requirements of subpart E of this part.

*FMCSA* means the Federal Motor Carrier Safety Administration.

*FMCSRs* mean Federal Motor Carrier Safety Regulations (49 CFR parts 350–399).

*HMRs* means the Hazardous Materials Regulations (49 CFR parts 100–178).

*Motor carrier operations in commerce* means commercial motor vehicle transportation operations either—

- (1) In interstate commerce, or
- (2) Affecting interstate commerce.

*New entrant* is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

*New entrant registration* is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 18 months after receipt of its US DOT number and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

*Preventable accident* on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

*Reviews*. For the purposes of this part:

(1) *Compliance review* means an on-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of

safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety audit* means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

(3) *Safety management controls* means the systems, policies, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

(4) *Roadability review* means an on-site examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

*RSPA* means the Research and Special Programs Administration.

*Safety fitness determination* means the final determination by FMCSA that a motor carrier meets the safety fitness standard under § 385.5.

*Safety rating or rating* means a rating of "Satisfactory," "Conditional" or "Unsatisfactory," which the FMCSA assigns to a motor carrier using the factors prescribed in § 385.7, as computed under the Safety Fitness Rating Methodology (SFRM) set forth in Appendix B to this part and based on the carrier's demonstration of adequate safety management controls under § 385.5(a). A safety rating of "Satisfactory" or "Conditional" is necessary, but not sufficient, to meet the overall safety fitness standard under § 385.5.

(1) *Satisfactory safety rating* means that a motor carrier has in place and functioning safety management controls adequate to meet that portion of the safety fitness standard prescribed in § 385.5(a). Safety management controls are adequate for this purpose if they are appropriate for the size and

type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), which could result in occurrences listed in § 385.5(a)(1) through (a)(11).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with that portion of the safety fitness standard prescribed in § 385.5(a), and this has resulted in occurrences listed in § 385.5(a)(1) through (a)(11).

(4) *Unrated carrier* means that the FMCSA has not assigned a safety rating to the motor carrier.

[58 FR 50968, Dec. 19, 1993, as amended at 56 FR 40805, Aug. 16, 1991; 62 FR 60042, Nov. 6, 1997; 67 FR 12779, Mar. 19, 2002; 67 FR 31983, May 13, 2002; 69 FR 39367, June 30, 2004; 72 FR 36788, July 5, 2007; 73 FR 76818, Dec. 17, 2008; 75 FR 17240, Apr. 5, 2010]

#### § 385.4 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 385 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 385. The materials are hereby made a part of the regulations in part 385. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version in the regulation is incorporated. Material is incorporated as it exists on the date of the approval and a notice of any changes in these materials will be published in the FEDERAL REGISTER.

(b) *Matter or materials referenced in part 385.* The matter or materials in this paragraph are incorporated by reference in the corresponding sections noted.

(1) "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities



# Attachment H



STATE OF WASHINGTON  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

October 4, 2012

Byron Lott  
BML Investments, LLC  
1724 10<sup>th</sup> Place NE  
East Wenatchee, WA 98802

**RE: Safety Violations – Follow-up Inspection – Action Plan**

Dear Mr. Lott:

Between September 13 and 21, 2012, Washington Utilities and Transportation Commission (commission) staff conducted a compliance review inspection of BML Investments, LLC d/b/a Wenatchee Valley Shuttle (BML Investments). During that inspection, Motor Carrier Safety Inspector Rick Smith found numerous violations, resulting in an unsatisfactory safety rating for BML Investments.

**Violations of Commission Order**

Mr. Smith determined that BML Investments operated on 13 occasions during a period of time that the company's auto transportation certificate was suspended. On July 2, 2012, in Docket TC-121120, the commission ordered BML Investments' auto transportation certificate (C-64605) suspended for a period of 30 days effective June 25, 2012, for the company's failure to file proof of the required liability and property damage insurance. The commission received proof of the required insurance on July 17, 2012, and lifted the suspension.

Mr. Smith found that three BML Investments employees transported passengers on the following dates, in violation of the commission's suspension order:

- Mike Price: June 28, July 1, July 3, July 8, July 14, July 15
- Michael Webley: June 27, July 2, July 12
- Stacia Zintz: June 30, July 4, July 7, July 14

We have recommended that the commission assess penalties against BML Investments for these violations. If the commission decides to assess penalties, you will receive notice under separate cover.





### **Safety Violations**

The commission's rules require passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR)<sup>1</sup>. During the compliance review, Mr. Smith found **377 specific violations** of WAC 480-30-221, as follows:

- **7 violations** of CFR Part 391.11(b)(6) – Failing to require driver to furnish list of motor vehicle traffic violations each 12 months.
- **7 violations** of CFR Part 391.11(b)(8) – Using a driver who has not taken a road test or who has not been issued a certificate of driver's road test or presented an operator's license, or certificate of road test which the motor carrier accepted as equivalent.
- **1 violation** of CFR Part 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months.
- **114 violations** of CFR Part 391.45(a) – Using a driver not medically examined and certified. (*Critical violations*)
- **2 violations** of CFR Part 391.51(a) – Failing to maintain driver qualification file on each driver employed. (*Critical violations*)
- **114 violations** of CFR Part 392.7 – Requiring or permitting a driver to drive without assuring himself that the safety parts and accessories are in good working order (pre-trip inspection).
- **13 violations** of CFR Part 392.9a(a) – Operating a motor vehicle providing transportation requiring operating authority without the required operating authority.
- **114 violations** of CFR Part 395.8(a) – Failing to require driver to make a record of duty status. (*Critical violations*)
- **2 violations** of CFR Part 396.3(b)(1) – Failing to keep a maintenance record which identifies the vehicle, including make, serial number, year, and tire size.
- **2 violations** of CFR Part 396.3(b)(2) – Failing to have a means of indicating the nature and due date of the various inspection and maintenance operations to be performed.
- **1 violation** of CFR Part 396.19(b) – Failing to maintain evidence of inspector's qualifications.

We have recommended that the commission penalize BML Investments for utilizing seven drivers who were not medically examined or certified. If the commission decides to issue penalties, you will receive notice under separate cover.

### **Safety Action Plan**

BML Investments received an unsatisfactory safety rating during this inspection. An unsatisfactory safety rating means a motor carrier does not have adequate safety management

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<sup>1</sup> WAC 480-30-221, Vehicle and driver safety requirements, enclosed.

controls in place to ensure compliance with safety fitness standards.<sup>2</sup> We are very concerned about BML Investments' operations and safety practices and believe commission staff has provided more than adequate information and assistance to you on how to comply with commission rules.

**No later than October 19, 2012**, you must provide a written safety action plan addressing each violation discovered during the compliance review. The safety action plan must include:

- Specific information about the actions BML Investments has taken to correct the violations noted, with added attention and documentation given to the critical violations. Please include copies of current medical certifications for all drivers.
- Specific actions taken to ensure the violations do not reoccur and long term goals of continuing efforts to stay in compliance in the future.
- A written statement that BML Investments will operate in compliance with the commission rules.

Commission staff will schedule a follow-up inspection with BML Investments within the next 120 days. Be advised that if our staff finds repeat critical violations or if BML Investments receives a conditional or unsatisfactory safety rating, we will recommend the commission take additional enforcement action. This could include additional penalties and a possible suspension of BML Investments' authority.

Please send your written safety action plan to Betty Young, Compliance Investigator, Transportation Safety, Washington State Utilities and Transportation Commission, by email to [byoung@utc.wa.gov](mailto:byoung@utc.wa.gov) or by regular mail to P.O. Box 47250, Olympia, WA 98504. If you have questions, Ms. Young can be reached at 360-664-1202, or by e-mail at the address listed above.

Sincerely,



David Pratt  
Assistant Director, Transportation Safety

Enclosure

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<sup>2</sup> 49 CFR Part 385—Safety Fitness Procedures – 385.3 – Definitions and acronyms.

**WAC 480-30-221 Vehicle and driver safety requirements.**

(1) Companies must comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 C.F.R.), adopted by reference, that are shown in the following chart. Information about 49 C.F.R., including the version adopted by the commission and where to obtain copies is set out in WAC 480-30-999.

49 C.F.R. Part:		Notes:
Part 40 -	Procedures For Transportation Workplace Drug and Alcohol Testing Programs	Entire Part 40 is adopted and applies to Washington intrastate operations.
Part 382 -	Controlled Substance and Alcohol Use and Testing	Entire Part 382, including definition of commercial motor vehicle, is adopted and applies to Washington intrastate operations.
Part 383 -	Commercial Driver's License Standards; Requirements and Penalties	Entire Part 383, including definition of commercial motor vehicle, is adopted and applies to Washington intrastate operations.
Part 379 -	Preservation of Records	Entire Part 379 is adopted and applies to Washington intrastate operations.
Part 380 -	Special Training Requirements	Entire Part 380 is adopted and applies to Washington intrastate operations.
Part 385 -	Safety Fitness Procedures	Entire Part 385 is adopted and applies to Washington intrastate operations.
Part 390 -	Safety Regulations, General	Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions:  (1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to them in WAC <u>480-30-036</u> (Motor vehicle and private vehicle) and WAC <u>480-30-211</u> (Commercial motor vehicle).
		(2) Whenever the term "director" is used in Title 49 C.F.R., it means the commission.
Part 391 -	Qualification of Drivers	Entire Part 391 is adopted, with the following exceptions:
		(1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively within Washington state. Instead refer to WAC <u>480-</u>

		<u>30-226</u> for intrastate medical waivers.
Part 392 -	Driving of Motor Vehicles	Entire Part 392 is adopted and applies to Washington intrastate operations.
Part 393 -	Parts and Accessories Necessary for Safe Operation	Entire Part 393 is adopted and applies to Washington intrastate operations.
Part 395 -	Hours of Service of Drivers	Entire Part 395 is adopted and applies to Washington intrastate operations.
Part 396 -	Inspection, Repair, and Maintenance	Entire Part 396 is adopted and applies to Washington intrastate operations.
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	Entire Part 397 is adopted and applies to Washington intrastate operations.

(2) Companies must:

(a) Maintain all motor vehicles in a safe and sanitary condition; and

(b) Ensure that vehicles are free of defects likely to result in an accident or breakdown.

(3) No company, its agents, officers, or employees, will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to transport passengers that is dangerous to the lives and safety of passengers.

(4) No company, its agents, officers, or employees will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to transport passengers that is prohibited by the hazardous materials rules in Title 49 C.F.R. from being transported on passenger-carrying vehicles.

(5) All motor vehicles operated under the provisions of this chapter are at all times subject to inspection by the commission or its duly authorized representatives.

(6) The commission will place out-of-service any motor vehicle having safety defects identified in the *North American Uniform Out-Of-Service Criteria*. Information about the *North American Uniform Out-Of-Service Criteria* including the version adopted and where to obtain copies is set out in WAC 480-30-999. A company must not operate any vehicle placed out-of-service until proper repairs have been completed.

(7) The commission will place out-of-service any driver meeting criteria identified in the *North American Uniform Out-Of-Service Criteria*. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. 11-04-041 (Docket A-101466, General Order R-562), § 480-30-221, filed 1/25/11, effective 2/25/11. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-221, filed 6/8/06, effective 7/9/06.]