

FILE

PUCO EXHIBIT FILING

12

Date of Hearing: 5/7/15

Case No. 15-359-TR-CUF

PUCO Case Caption: Thomas OUBATON

List of exhibits being filed:

STATE Land 2

Respondent's 1, 2, 3 and 4

Reporter's Signature: Michael O. Spencer
Date Submitted: 5/28/15

PUCO

RECEIVED-DOCKETING DIV
2015 MAY 28 PM 2:51

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Technician SK Date Processed MAY 28 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of :
Thomas Overturf Notice of : Case No.
Apparent Violation and : 15-359-TR-CVF
Intent to Assess Forfeiture :
- - -

PROCEEDINGS

Before Kerry Sheets, Attorney Examiner, held at
the offices of the Public Utilities Commission
of Ohio, 180 East Broad Street, Hearing Room No.
11-C, Columbus, Ohio, on Tuesday, May 7, 2015,
at 10:00 A.M.

- - -

PUCO

2015 MAY 28 PM 2:51

RECEIVED-BOOKETING DIV

Armstrong & Okey, Inc.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724
- - -

DRIVER/VEHICLE EXAMINATION REPORT



Report Number: OH0616002692
 Inspection Date: 10/29/2014 Certification Date:
 Time Started: 13:22 Time Ended: 14:39
 Inspection Level: II - Walk-Around
 HM Inspection Type: No HM Inspection

DOUBLE A WAREHOUSE
 7575 PRESERVE TR
 CONCORD, OH 44077
 USDOT #: 02149003
 MC/MX #:
 State #:

Phone #: (440)344-8444
 Fax #:

Driver: OVERTURF, THOMAS C
 License #: RP917848 State: OH
 Date of Birth: 2/6/1956

Location: ROADSIDE
 Highway: US422
 County: GEAUGA
 Shipper:

MilePost: 15
 Origin: MIDDLEFIELD, OH
 Destination: COLUMBUS, OH

Bill of Lading:
 Cargo: EMPTY

VEHICLE IDENTIFICATION:

Unit	Type	Make	Year	State	License#	Equipment ID	Unit VIN	GVWR	CVSA #	CVSA Issued #	OOS Stkr.#
1	TT	KW	2004	OH	PVY1909	87	1XKWDB9X34J065620	52,000			Y
2	ST	WANC	1998	OH	TQH5668	RDS5230	1JJV532U5VL435893	68,000			Y

BRAKE ADJUSTMENTS: No brake measurements recorded.

VIOLATIONS :

Vio Code	Section	Unit	OOS	State Citation Number	Verify*	Crash	Violation Description
392.2-SLLS3	392.2	D	N	warning	N	N	State/Local Laws - Speeding 11-14 miles per hour over the speed limit.-on US442 WB going 61mph in a 45mph zone
391.41A-F	391.41(a)	D	N		N	N	Operating a property-carrying vehicle without possessing a valid medical certificate.
395.8K2	395.8(k)(2)	D	Y		N	N	Driver failing to retain previous 7 days records of duty status-Driver stated was driving from middlefield to Columbus, and owner told him he did not need.
396.3A1	396.3(a)(1)	1	N		N	N	Inspection, repair and maintenance of parts & accessories=air leaking from air line at firewall.
396.3A1BL	396.3A1BL	1	Y		U	N	Brake system pressure loss=unable to hold pressure at 90psi when brake applied
393.82	393.82	1	N		N	N	Speedometer inoperative / inadequate=driver stated that it stuck at 5mph and owner told him to drive by RPM's that's why he was speeding.
393.75C	393.75(c)	2	N		N	N	Tire-other tread depth less than 2/32 of inch=axle#5 left outside 1/32 0/32 0/32
393.75C	393.75(c)	2	Y		U	N	Tire-other tread depth less than 2/32 of inch=axle#5 left inside 1/32 1/32 0/32
393.75C	393.75(c)	2	N		N	N	Tire-other tread depth less than 2/32 of inch=axle#5 right outside 0/32 1/32 0/32
393.9	393.9(a)	2	N		N	N	Inoperable Required Lamp=plate light
393.60C	393.60(c)	1	N		N	N	Damaged or discolored windshield=webbing cracks on passenger side
390.21A	390.21(a)	1	N		N	N	Not marked in accordance with regulations=Stanley Trucking on side of truck. Arm's trucking on Registration. Owner told me over phone to use this DOT#not displ

* N - Non-OOS or Driver OOS Violation; U - Unknown

HazMat: No HM Transported.

Placard: NA **Cargo Tank:**

Special Checks:

- | | | |
|---|---|--|
| <input type="checkbox"/> Alcohol/Controlled Substance Check | <input checked="" type="checkbox"/> Traffic Enforcement | <input type="checkbox"/> Post Crash Inspection |
| <input type="checkbox"/> Conducted by Local Jurisdiction | <input type="checkbox"/> PASA Conducted Inspection | <input type="checkbox"/> PBTT Inspection |
| <input type="checkbox"/> Size and Weight Enforcement | <input type="checkbox"/> Drug Interdiction Search | Arrests: |
| <input type="checkbox"/> EScreening | | |

Report Prepared By:
 J.D HUGHES

Badge #:
 0616

Copy Received By:
 OVERTURF, THOMAS C

Page 1 of 2



OH0616002692

Staff ex 1

DRIVER/VEHICLE EXAMINATION REPORT



Report Number: OH0616002692
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DOUBLE A WAREHOUSE
 7575 PRESERVE TR
 CONCORD, OH 44077
 USDOT #: 02149003
 MC/MX #:
 State #:

Phone #: (440)344-8444
 Fax #:

Driver: OVERTURF, THOMAS C
 License #: RP917848 State: OH
 Date of Birth: 2/6/1956

Inspection Notes: Owner (Antonio R Dejesus) talked to me on the phone and wanted me to let driver get a log book fill it out and continue on his way.

Owner told the driver he was going to fill out a log book and bring it to him and he was to tell me he forgot it in his vehicle.

Special Study Fields:

Special Study1:	Special Study6:
Special Study2:	Special Study7:
Special Study3:	Special Study8:
Special Study4:	Special Study9:
Special Study5:	Special Study10:

Locally Defined Fields:

For-Hire Carrier: Y	Driver Address: 5162 E 112 TH ST
Driver City: GARFIELD	Driver State: OH
Driver Zip: 44125	Photos Taken (Y/N): Y
Reason Code: TRAF	FMCSA Credentials Verified-Y/N: Y
CDL Verified (Y/N): Y	FMCSA OOS Order Issued(Y/N): N

* Pursuant to authority contained in Title 49, Code of Federal Regulations, Section 396.9, I hereby declare vehicles with defects followed by an "Y" in the "Out of Service" column in the violations discovered section of this report OUT OF SERVICE. No person shall remove the out of service stickers applied to these vehicles, or operate such vehicles until the out of service defects have been repaired and the vehicles have been restored to safe operating condition.

All violations of the FHMR and FMCSR or Title 49 of the Ohio Revised Code will be reviewed by the PUCO's Transportation Department to determine whether civil forfeitures should be assessed against any responsible parties in accordance with the penalty provisions of Title 49 of the Ohio Revised Code. If civil forfeitures are assessed, you will receive a separate notice by mail. These penalties may be assessed to motor carriers, shippers, and/or drivers.

ATTENTION DRIVER: This report must be sent to the motor carrier whose name appears at the top of this inspection report within 24 hours. If the inspection report cannot be delivered within 24 hours the driver must mail or fax the inspection report to the motor carrier.

ATTENTION MOTOR CARRIER: The motor carrier must examine this report and repair all the vehicle defects/violations noted above -AND- The motor carrier must sign the Certification of Repairs below and return the signed form to: Public Utilities Commission of Ohio, TASD - 4th floor, 180 E Broad St, Columbus, OH 43215-3793 -OR- Fax (614) 752-9274 within 15 days of the inspection. If "No Violations Were Discovered" then you do not need to return this report. Failure to return this report with the required certification can result in penalties up to \$1,000 per day for each day the violation continues, up to a total of \$10,000. If you have any questions, please contact (614) 466-0429.

MOTOR CARRIER CERTIFICATION OF COMPLETED REPAIRS: The undersigned certifies that all violations noted on this report have been corrected and action taken to assure compliance with the Federal Motor Carrier Safety & Hazardous Materials Regulations insofar as they are applicable to motor carriers and drivers. A false certification of repairs is required to be prosecuted with penalties up to \$10,000.

Signature of Carrier Official: X Title: _____ Date: _____

Failure to return this report with the required certification can result in penalties up to \$1,000 per day for each day the violation continues, up to a total of \$10,000.

Signature of Repairer: X Facility: _____ Date: _____

Report Prepared By:
 J.D HUGHES

Badge #:
 0616

Copy Received By:
 OVERTURF, THOMAS C

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OH0616002692



Public Utilities Commission

John R. Kasich, Governor
Thomas W. Johnson, Chairman

Commissioners

Steven D. Lesser
Asim Z. Haque
Lynn Slaby
M. Beth Trombold

01/22/2015

OH0616002692D
THOMAS OVERTURF
5162 E 112 TH ST
GARFIELD, OH 44125

RE: **NOTICE OF PRELIMINARY
DETERMINATION**
Case No. OH0616002692D

Dear Sir or Madam:

On 10/29/2014, a vehicle operated by ANTONIO DEJESUS, and driven by THOMAS C OVERTURF, was inspected within the State of Ohio. As the result of discovery of the following violations of the Commission's rules, Staff of the Commission timely notified THOMAS C OVERTURF (Respondent) pursuant to rule 4901:2-7-07, Ohio Administrative Code (O.A.C.), that it intended to assess a civil forfeiture against the Respondent in the following amount:

CODE	GROUP	VIOLATION	FORFEITURE
395.8K2	1	Driver failing to retain previous 7 days records of duty status-Driver stated was driving from middlefield to Columbus, and owner told him he did not need.	
391.41A-F	4	Operating a property-carrying vehicle without possessing a valid medical certificate.	100.00
		Total of Group 1	100.00
		Total of Group 4	100.00

TOTAL AMOUNT DUE: \$200.00

A conference was conducted pursuant to rule 4901:2-7-10, O.A.C., at which the Respondent had a full opportunity to present any reasons why the violation did not occur as alleged, mitigating circumstances regarding the amount of any forfeiture, and any other information relevant to the action proposed to be taken by Staff.

As a result of the conference, Staff has made a Preliminary Determination that the Commission should assess a civil forfeiture against THOMAS C OVERTURF in the following amount:

CODE	GROUP	VIOLATION	FORFEITURE
------	-------	-----------	------------

180 East Broad Street
Columbus, Ohio 43215-3793

(614) 466-3016
www.PUCO.ohio.gov

An equal opportunity employer and service provider

Staff Ex 2



Public Utilities Commission

John R. Kasich, Governor
Thomas W. Johnson, Chairman

Commissioners

Steven D. Lesser
Asim Z. Haque
Lynn Slaby
M. Beth Trombold

395.8K2	1	Driver failing to retain previous 7 days records of duty status-Driver stated was driving from middlefield to Columbus, and owner told him he did not need.	
391.41A-F	4	Operating a property-carrying vehicle without possessing a valid medical certificate.	100.00
		Total of Group 1	100.00
		Total of Group 4	100.00

TOTAL AMOUNT DUE: \$200.00

Within 30 days of this notice, you must either: (1) pay the assessed civil forfeiture or (2) file a written request for an administrative hearing pursuant to rule 4901:2-7-13, O.A.C. Failure to file a written request for an administrative hearing within 30 days shall constitute a waiver of your right to further contest the violations and will conclusively establish the occurrence of the violations. Such failure shall also constitute a waiver of your right to further contest liability to the state of Ohio for the civil forfeiture described in the notice and will result in the forfeiture amount being referred to the Ohio Attorney General's office for collection.

Please consult the enclosed instruction sheet for additional information regarding this Notice of Preliminary Determination.

Sincerely,

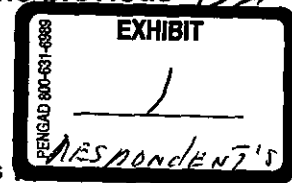
Milan Orbovich, Director
Transportation Department

Compliance Officer: Wanda Williams

EXB 1

Question 16: Are drivers required to include their total on-duty time for the previous 7 to 8 days (as applicable) on the driver's record of duty status?

Guidance: No.



Question 17: Can military time be used on the grid portion of the driver's duty status?

Guidance: Yes. The references to 9:00 A.M., 3:00 P.M., etc. in §395.8(d)(6) are examples only. Military time is also acceptable.

Question 18: Section 395.8(d)(4) requires that the name of the motor carrier be shown on the driver's record of duty status. If a company owns more than one motor carrier subject to the Federal Motor Carrier Safety Regulations (FMCSRs), may the company use logs listing the names of all such motor carrier employers and require the driver to identify the carrier for which he or she drives?

Guidance:

Yes, provided three conditions are met. First, the driver must identify his or her motor carrier employer by a method that would be visible on a photocopy of the log. A dark check mark by the carrier's name would be acceptable. However, a colored highlight of the name would not be acceptable, since these colors are often transparent to photocopiers.

Second, the driver may check off the name of the motor carrier employer only if he or she works for a single carrier during the 24 hour period covered by the log.

Third, if the parent company uses Multi day Logs (Form 139 or 139A), the log for each day must list all motor carrier employers and the driver must identify his or her carrier each day.

Question 19: Regulatory guidance issued by the Office of Motor Carriers states that a driver's record-of-duty-status (RODS) may be used as the 100 air-mile radius time record "provided the form contains the mandatory information." Is this "mandatory information" that required of a normal RODS under section 395.8(d) or that of the 100 air-mile radius exemption under section 395.1(e)(5)?

Guidance: The "mandatory information" referred to is the time records specified by §395.1(e)(5) which must show: (1) the time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) ~~the total time for the preceding 7 days in accordance with §395.8(i)(2) for drivers used for the first time or intermittently.~~

Using the RODS to comply with §395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 20: When a driver fails to meet the provisions of the 100 air-mile radius exemption (section 395.1(e)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

NO

7 DAY
EXEMPTION

E 1 1-

PG 2

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100 air-mile exemption.

Question 21: What is the carrier's liability when its drivers falsify records of duty status?

Guidance: A carrier is liable both for the actions of its drivers in submitting false documents and for its own actions in accepting false documents. Motor carriers have a duty to require drivers to observe the Federal Motor Carrier Safety Regulations (FMCSRs).

Question 22: If a driver logs his/her duty status as "driving" but makes multiple short stops (each less than 15 minutes) for on-duty or off-duty activities, marks a vertical line on the grid for each stop, and records the elapsed time for each in the remarks section of the grid, would the aggregate time spent on those non-driving activities be counted against the 10-hour driving limit?

Guidance: No. On-duty not driving time or off-duty time is not counted against the 10-hour driving limit.

Question 23: When the driver's duty status changes, do §§395.8(c) or 395.8(h)(5) require a description of on-duty not driving activities ("fueling," "pre-trip," "loading," "unloading," etc.) in the remarks section in addition to the name of the nearest city, town or village followed by the State abbreviation?

Guidance: No. Many motor carriers require drivers to identify work performed during a change of duty status. Part 395 neither requires nor prohibits this practice.

Question 24: When must a driver complete the signature/certification of the driver's record of duty status?

Guidance: In general, the driver must sign the record of duty status immediately after all required entries have been made for the 24-hour period. However, if the driver is driving at the end of the 24-hour period, he/she must sign during the next stop. A driver may also sign the record of duty status upon going off duty if he/she expects to remain off duty until the end of the 24-hour period.

Question 25: Is a driver (United States or foreign) required to maintain a record of duty status(log book)in a foreign country before entering the U.S.?

Guidance: No. The Federal Highway Administration FHWA does not require drivers to prepare records of duty status while operating outside the jurisdiction of the United States. However, it may be advantageous for any driver (U.S. or foreign) to prepare records of duty status for short-term foreign trips. Upon entering the U.S., each driver must either: (a) Have in his/her possession a record of duty status current on the day of the examination showing

or is it okay to only fill out a log sheet on the days I go past the air mile radius and the days I stay with in the air mile radius just a daily load sheet with my hours and miles thank you

61. Eric Arnold on October 6th, 2014 6:34 pm

EXEMPTION INTERPRETATION
OF LOG BOOK

Good question. You only need to fill out the logbook on the days you do not meet the exception... ie, the ones where you go outside the 100 air mile circle, or work more than 12 hours. On the days you meet the exception, you do not need to carry a logbook. Yes, this is true. It is in Question 21 of the interpretations to 395.1. I specify this because many drivers say, "no way!" Also, many drivers say "no way!" because there are more than a fair number of cops out there who continually get this rule wrong. It's very frustrating when the cops don't know their own rules. Anyway, you need to log when you don't meet the exception, and only on those days.

62. Eric Arnold on October 6th, 2014 6:35 pm

Good question. You only need to fill out the logbook on the days you do not meet the exception... ie, the ones where you go outside the 100 air mile circle, or work more than 12 hours. On the days you meet the exception, you do not need to carry a logbook. Yes, this is true. It is in Question 21 of the interpretations to 395.1. I specify this because many drivers say, "no way!" Also, many drivers say "no way!" because there are more than a fair number of cops out there who continually get this rule wrong. It's very frustrating when the cops don't know their own rules. Anyway, you need to log when you don't meet the exception, and only on those days.

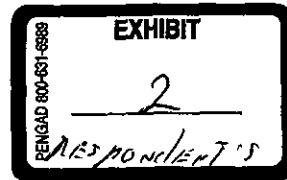
Leave a Reply

Name (required)

Email Address(required)

Website

EXB. 2

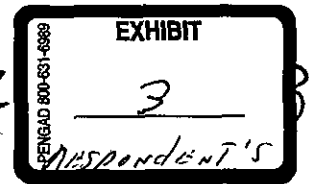


2nd box in postbox

F m CSP
FED MOTOR
CPRR SAFETY PSS
DO 1

Submit Comment

Notify me of followup comments via e-mail



100 Air Mile Radius Interpretations

Question 12: What constitutes the 100-air-mile radius exemption?

Guidance: The term "air mile" is internationally defined as a "nautical mile" which is equivalent to 6,076 feet or 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers.

Question 13: What documentation must a driver claiming the 100-air-mile radius exemption [§395.1(e)] have in his/her possession?

Guidance: None.

Question 14: Must a motor carrier retain 100-air-mile driver time records at its principal place of business?

Guidance: No. However, upon request by an authorized representative of the FHWA or State official, the records must be produced within a reasonable period of time (2 working days) at the location where the review takes place.

Question 15: May an operation that changes its normal work-reporting location on an intermittent basis utilize the 100-air-mile radius exemption?

Guidance: Yes. However, when the motor carrier changes the normal reporting location to a new reporting location, that trip (from the old location to the new location) must be recorded on the record of duty status because the driver has not returned to his/her normal work reporting location.

Question 16: May a driver use a record of duty status form as a time record to meet the requirement contained in the 100-air-mile radius exemption?

Guidance: Yes, provided the form contains the mandatory information.

Question 17: Is the "mandatory information" referred to in the previous guidance that required of a normal RODS under §395.8(d) or that of the 100-air-mile radius exemption under §395.1(e)(5)?

Guidance: The "mandatory information" referred to is the time records specified by §395.1(e)(5) which must show: (1) The time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) ~~the total time for the preceding 7 days in accordance with §395.8(j)(2) for drivers used for the first time or intermittently.~~

Using the RODS to comply with §395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 18: Must the driver's name and each date worked appear on the time record prepared to comply with §395.1(e), 100-air-mile radius driver?

Guidance: Yes. The driver's name or other identification and date worked must be shown on the time record.

Question 19: May drivers who work split shifts take advantage of the 100-air-mile radius exemption found at §395.1(e)? **NOTE* Question #19 has not been updated to match with the regulations that became effective on Oct. 1 2005.**

Guidance: Yes. Drivers who work split shifts may take advantage of the 100-air-mile radius exemption if: 1. The drivers operate within a 100-air-mile radius of their normal work-reporting locations; 2. The drivers return to their work-reporting locations and are released from work at the end of each shift and each shift is less than 12 consecutive hours; 3. The drivers are off-duty for more than 8 consecutive hours before reporting for their first shift of the day and spend less than 12 hours, in the aggregate, on-duty each day; 4. The drivers do not exceed a total of 10 hours driving time and are afforded 8 or more consecutive hours off-duty prior to their first shift of the day; and 5. The employing motor carriers maintain and retain the time records required by 395.1(e)(5).

Question 20: May a driver who is taking advantage of the 100-air-mile radius exemption in §395.1(e) be intermittently off-duty during the period away from the work-reporting location?

Guidance: Yes, a driver may be intermittently off-duty during the period away from the work-reporting location provided the driver meets all requirements for being off-duty. If the driver's period away from the work-reporting location includes periods of off-duty time, the time record must show both total on-duty time and total off-duty time during his/her tour of duty. In any event, the driver must return to the work-reporting location and be released from work within 12 consecutive hours.

Question 21: When a driver fails to meet the provisions of the 100-air-mile radius exemption (§395.1(e)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

*INTERPRETATION OF 395.1
ROAS*

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. A driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the exemption cannot be met. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100-air-mile exemption.

EX 4

purposes of §§ 395.8 and 395.15, with remarks or annotations to indicate the specific off-duty periods that are waiting time, or on a separate "waiting time" line on the record of duty status to show that off-duty time is also waiting time. Waiting time shall not be included in calculating the 14-hour period in § 395.3(a)(2). Specially trained drivers of such commercial motor vehicles are not eligible to use the provisions of § 395.1(e)(1).

EXEMPT REQUIREMENTS

(e) **Short-haul operations** —(1) **100 air-mile radius driver**. A driver is exempt from the requirements of § 395.8 if:

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

(ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty;

~~(B) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;~~

(iv)(A) A property-carrying commercial motor vehicle driver does not exceed the maximum driving time specified in § 395.3(a)(3) following 10 consecutive hours off duty; or

~~(B) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and~~

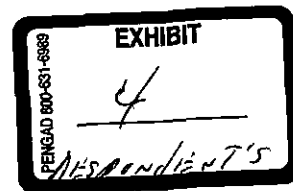
(v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

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

(C) The time the driver is released from duty each day; and

~~(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.~~ ONLY IF FIRST TIME



~~(2) Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license.~~ Except as provided in this paragraph, a driver is exempt from the requirements of § 395.3(a)(2) and § 395.8 and ineligible to use the provisions of § 395.1(e)(1), (g), and (o) if:

~~(i) The driver operates a property-carrying commercial motor vehicle for which a commercial driver's license is not required under part 383 of this subchapter;~~

~~(ii) The driver operates within a 150 air-mile radius of the location where the driver~~