



THOMPSON TRUCKING, INC.

State Highway 460 East
Post Office Box 969 • Concord, Virginia 24538

Phone: (804) 993-2195

Fax: (804) 993-2243

43025

Sept 10, 1998

Docket Clerk
U. S. DOT DOCKETS
Rm PL-401
400 Seventh St., SW
Washington, DC
20590-0001

98 SEP 15 PM 2:33

DEPARTMENT OF TRANSPORTATION

Re: Docket No. FHWA 98-3414-10

Dear Docket Clerk

I am responding to the Federal Register /
Vol. 63, No 138 / Monday July 20, 1998 /
Proposed Rules on "Out-of-Service Criteria".

There are some problems with the current
process, uniformity of application, who monitors
the process and the fact that CRSA only
represents the enforcement community from
a rating standpoint.

The definition for OOS as outlined
in this federal register is much different
than what CRSA has in there manual.

The federal register states "The OOS Criteria is a reference guide developed and maintained by the Commercial Vehicle Safety Alliance (CVSA) to assist enforcement personnel in deciding whether to allow a CMV or driver, found in violation of law, to continue in commerce".

further the register states "the agency believes that the OOS criteria serve as guides for enforcement personnel in the exercise of discretion. However the CVSA policy statement does not offer or provide any discretion nor does it state that these policies are guidelines.

The CVSA policy statement on OOS is "The necessity for all enforcement personnel to implement and adhere to these standards is: (1) a matter of law;

(2) perceived as necessary by 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."

There is no mention of "discretion" or that the "OOS criteria" is a reference guide. Therefore the assumptions made by FHWA is clearly different than what CVSA believes them to be.

FHWA is not a voting member in CVSA, nor is industry and until CVSA is neutralized, there positions are not going to change.

The question asked in the federal register about whether the OOS Criteria should be regulatory has already been answered by CVSA as they now state

in there policy statement "A matter of law." Further the statement in the federal register "Thus, the OOS criteria take on the character of enforcement tolerances" is also an incorrect assumption.

These are some of the reasons FHWA needs to get more involved in the process, CRSA and the states are not being held accountable.

If FHWA believes the OOS criteria should be treated as "enforcement tolerances" and as "guidelines" then FHWA assumptions should be enforced possibly thru the FMCSRs.

The states have found a revenue source on two sides, one from the FHWA with MCSAP and the other from the public by writing summons for violations of the OOS rules.

This has created a double standard for CMV's versus private vehicles. MCSAP has allowed the states to fund officers solely for CMV enforcement which has reduced the attention given to private vehicles. CMV's are subjected to more inspections and greater scrutiny versus private vehicles.

However according to current statistics private vehicles are the cause of most accidents. There is no program in place where private vehicles are pulled over and subjected to the kind of inspections that CMV's are exposed.

These inequalities will continue unless FHWA makes some changes or the public at large gets the laws corrected through respective legislator's.

I believe the best solutions could be achieved with meetings attended by FHWA, CVSA and industry. However unless FHWA provides a forum for these meetings, I don't believe they will happen.

The substance of OOS criteria also needs to be addressed as there are many areas that need to be changed and updated.

I would be happy to assist in getting the OOS criteria in a more workable and equitable system.

Tom Gutz
Bureau Director
Safety