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Services, Inc.

DEPARTMENT OF TRANSPORTATION

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Consolidated Safety Services, Inc.

Response To:

**Department of Transportation
Federal Highway Administration**

FHWA Docket No. FHWA-98-3414-12

Submitted To:

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Introduction:

The Out-of-Service Criteria has been an issue of confusion for the transportation industry for many years. Many organizations, specifically the motor carriers, have only a vague understanding of its use and primary purpose. Consolidated Safety Services, Inc., conducting vehicle inspections for the Department of Defense during the last nine years has seen this first hand.

There is a need to promote an awareness of the criteria and a better understanding of its intended purpose. However, CSS strongly believes that changing the process by which the criteria is developed, adopted, and put into practical application, would cause a deterioration in the criteria's value and effectiveness.

The Commercial Vehicle Safety Alliance (CVSA), like any organization of its size and scope, must remain dynamic in order to remain abreast of the ever-changing motor carrier industry. Until just a few years ago, CVSA had the posture of a closed operation, made up of simply the enforcement community. However, in recent years, the organization has moved towards working together with the regulated community to better promote highway safety. This move by itself has helped to better promote the awareness and understanding regarding the real purpose of the organization and its inspection criteria. However, there is a need to stop the application of the CVSA inspection process and its decal to areas for which the inspection process does not meet required standards.

Uniformity and consistency in the application of criteria continues to be of some concern. However, this is a correctable problem, and can be minimized through more training and a broader understanding of the criteria and its actual designed purpose.

Consolidated Safety Services, Inc.:

Consolidated Safety Services, Inc. (CSS), was responsible for introducing CVSA Out-of-Service Criteria as the standard for determining serviceability for vehicles inspected under the Military Traffic Management Command (MTMC) Bus Inspection Program. CSS was, and still is under contract to MTMC, to conduct facility and vehicle/driver inspections on those passenger motor carriers transporting military personnel. The program calls for inspections similar to those conducted by FHWA when conducting on-site compliance audits and state enforcement personnel when conducting "roadside" inspections.

Consolidated Safety Services, Inc. for the last 9 years has been conducting CVSA Level I, II and V vehicle/driver inspections for the Department of Defense, the United States Postal Service, and a wide range of private entities. During this time, CSS has conducted over 15,000 commercial motor vehicle inspections, more than any other private entity.

Understanding the importance of compatibility, consistency, and uniformity, CSS performs these inspections using similar policies, procedures and guidelines established by FHWA and CVSA. FHWA's interest in the vehicle inspection data collected by CSS

prompted FHWA to review CSS's training and inspection process. Once determined compatible, the two agencies, DoD and DOT, established an Memorandum Of Understanding (MOU) to exchange data. CSS now uploads vehicle inspection data to FHWA, in similar fashion to that of the state enforcement agencies. This has offered CSS a unique insight and perspective concerning issues brought forth in FHWA's Advanced Notice of Proposed Rulemaking. As such, CSS is please to offer these comments and suggestions for consideration to FHWA.

ISSUES:

Should the Out-of-Service Criteria be adopted by FHWA into the FMCSR as regulations?

NO. Adopting the criteria into the regulations along with its complicated, bureaucratic process of approval and change would severely damage its effectiveness.

Currently, CVSA meets twice annually to review and discuss changes and issues found during the previous six months. Issues are brought to the organization's committees for resolution. While sometimes burdensome, the organization has demonstrated the willingness and ability to immediately change and/or make corrections to their criteria and/or inspection procedures when necessary. The regulated and regulators come to an agreement with changes incorporated in a timely manner and quickly disseminated.

CVSA has recently taken a more open position to involve the industry and manufacturers regarding the development of the criteria. This, of course, is a major improvement to the acceptance of the criteria and the goals and objectives of CVSA: safer highways.

The Out-of-Service Criteria, is developed by the stakeholders (industry, FHWA, and the enforcement community). It should continue to remain independent of the regulations and only referenced as a guide for the enforcement community for determining the maximum tolerance levels allowed until safety is compromised.

The Out-of-Service Criteria is available to anyone. Additionally, CVSA has embarked upon a campaign to teach the criteria to the industry through a series of training programs. This appears to be successful and should greatly increase its understanding and true purpose.

How is the Out-of-Service Criteria current@ being used?

The Out-of-Service Criteria is not a compliance tool for the motor carrier, but rather a tolerance tool for the enforcement community. It should never be considered by the industry as a measure or standard for determining the maximum level of desired vehicle safety. In our opinion, the criteria has been used incorrectly by the enforcement community to meet a federal standard. Also, the enforcement community is promoting a violation of the federal regulations. Both these issues have only added to the confusion.

Consider the following:

Prior to March 25, 1994, a vehicle found during a roadside inspection with safety-related defects (Part 393, and/or Part 396) that exceeded the tolerance levels of the out-of-service criteria would be placed out-of-service and not allowed to continue until ALL safety related defects were repaired. This was consistent with the requirements of Section 393.1 that states; “No employer shall operate a commercial motor vehicle or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part”. This is further supported in Part 396, under Section 396.3(a)(1) that states; “Parts and accessories shall be in safe and proper operating condition at ALL TIMES.” However, another vehicle going through the same inspection could be found with mechanical defects, and if none were such that they exceeded the tolerance levels of the Out-of-Service Criteria, the driver and vehicle was allowed to continue in operation without necessarily making repairs to the defects found. This, of course, was a double standard being applied by the enforcement community and in direct violation of the requirements of Section 393.1 and Section 396.3(a)(1). The industry opposed this double standard, and on March 25, 1994, OMC changed its policy. The change required that only repairs to defects of critical items that exceeded the tolerance levels of the Out-of-Service Criteria had to be made. Once repaired, the vehicle could continue on its trip, although still in violation of Section 393.1. This is clearly a contradiction of the requirements of the FMCSR.

A similar contradiction also exists regarding the CVSA decal. Currently, if a vehicle passes either a CVSA Level I or V inspection, the vehicle is issued a CVSA decal, which according to regulations meets the required periodic inspection. However, the inspection conducted by the enforcement officer is not to the standards of Appendix G. In fact, the standards of Appendix G do not even meet the requirements specified in Part 393. Consequently, a sticker is being issued incorrectly to meet an inspection standard for which the inspection process does not. This might explain the desire of the motor carrier industry to seek the less stringent CVSA inspection and decal to meet the periodic inspection.

The enforcement community has always been suspect of the quality of the “self inspection” that a motor carrier would perform to meet the periodic inspection requirement. It has often been described as “the fox guarding the hen house.” And yet, the enforcement community permits itself to conduct an inspection, which is substandard to Appendix G and the FMCSR (the North American Inspection Standard, focusing on critical items and not all those required by the FMCSR). This is a clear contradiction, or at least a double standard.

Further, CVSA promotes the idea of enforcement personnel performing vehicle inspections for a fee on their “off hours,” which also presents at least the perception of a conflict of interest.

CSS is not advocating placing additional burdens on the industry nor anything that would place restrictions on commerce. We do however, support better consistency in the

application of the Out-of-Service Criteria, its purpose, and a more realistic approach to its use. This includes eliminating the double standard just mentioned and keeping the Out-of-Service Criteria out of the federal regulations.

On September 8, 1992, FHWA issued a final rule in the federal register Vol. 57, No. 174, page 40946. This final rule required a substantial change to Part 350 and the addition of Part 355. The primary purpose of the new rule was to enhance the consistency and uniformity of the inspection process and fines imposed by those states participating in the Motor Carrier Safety Assistance Program (MCSAP). Included in this effort was the establishment of some reciprocity between the states regarding any issued stickers noting vehicle inspections. This would eliminate repetitive inspections conducted on the same vehicle as it traveled between the various states.

As an interesting note were the comments on the above issue submitted from the Idaho and the Washington State Patrols (September 8, 1992). Both entities expressed that the CVSA decal should not be considered as evidence that the vehicle met the periodic inspection requirement. In response to these comments, FHWA indicated that this issue was outside the scope of the rulemaking and decided that it would not be addressed at that time.

CSS believes this issue is now relevant and should be discussed in this request for comments. Especially considering the contradiction that the CVSA inspection and decal present with regard to the federal regulations. The CVSA decal should identify only a vehicle that has been found to meet the North American Inspection Standard and not those criteria specified in Appendix G as meeting the Periodic Inspection. Even the enforcement community does not recognize its own decal beyond three months. Why then should the decal represent the more comprehensive annual inspection criteria specified in Appendix G? Even FHWA points out the differences between the Out-of-Service Criteria and those specified by their regulations. If CVSA wants their decal to represent meeting the Appendix G periodic inspection standards, then the training and inspection process should be as comprehensive as that imposed on the motor carrier and its personnel when they perform the annual inspection. CSS, therefore, agrees with the position taken by the States of Idaho and Washington regarding the CVSA decal and the periodic inspection requirement.

There currently exists differences between what is required under Appendix G; those contained in Part 393; and the Out-of-Service Criteria. For example, a motor vehicle can pass the Periodic Inspection, provided it meets the minimums specified in Appendix G. Thus, a vehicle which does not have an operable fire extinguisher can pass the inspection, yet is prohibited from operating under Section 391 .1, 392.8, and 396.3(a)(1) if the fire extinguisher is not present and fully charged. The same thing applies to non-operable emergency push-out windows on a motorcoach. While the windows are not mentioned in the minimum inspection criteria of Appendix G, a vehicle could pass the annual inspection requirement, yet be prohibited from operating unless there is sufficient escape area specified by Part 393. CVSA includes this as part of their Out-of-Service Criteria, however, it is only applicable if passengers are on board. While CSS believes the

emergency exit windows are critical items, and should be included as part of CVSA's Out-of-Service Criteria. However, there needs to be some consistency for the motor carrier. Just how many different standards should the carrier be required to follow, and under what circumstances will the different standards apply?

FHWA, has for a while, approved various state inspection programs as meeting their requirements and also the annual inspection or periodic inspection specified under Section 396.17. The question now is, how many differences are there in the state inspection programs? Do they all include those parts and accessories listed in Part 393? If they don't include all the parts and accessories listed in Part 393 then there exists a double standard that continues to fuel the confusion.

There needs to be only two standards imposed: one for the motor carrier and the other for the enforcement community. For the motor carrier, the annual inspection criteria should be stipulated by FHWA. However, the Appendix G criteria needs to be completely revised to meet the standards of, or at least include those parts and accessories listed in Part 393.

The second standard (for the enforcement community) should be the North American Inspection Standard and specific levels of tolerance to determine serviceability. This standard should remain focused on only those items considered critical to the safety of operation of a commercial motor vehicle and the levels of tolerance. This then becomes the Out-of-Service Criteria used by the enforcement community. Thus, those items, and only those items are used when making a decision to place a vehicle out of service.

It has long been understood that a vehicle can be inspected just prior to being dispatched but encounter a mechanical problem within five miles of travel (i.e., a tail light, brake light, wiper, etc). Commercial motor vehicles involve a wide variety of mechanical operations and the likelihood of a mechanical problem developing is normal. However, operating on a bald tire is not something that happens overnight. This is one of the reasons the Out-of-Service Criteria was developed in the first place. Some of the confusion regarding the Out-of-Service Criteria and other issues surrounding this request for comments can be remedied by changes in the regulatory language.

There even exists contradictions associated with how the regulations address defects found during the course of operation by a driver. Section 396.3(a)(1) requires that all parts and accessories shall be in safe and proper operating condition at all times. Section 396.13(a) requires the driver to conduct an inspection before driving a motor vehicle to ensure it is in safe operating condition. One would assume that if 396.3(a)(1) requires all parts and accessories to be in safe and proper operating condition at all times, the inspection required under Section 396.13 would include all parts and accessories. Section 393.1 states that no commercial motor vehicle shall be operated unless it is equipped in accordance with the requirements of this part. However, Section 392.7 states that no commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, and then goes on to list several items such things as the brakes, lighting devices, tires, horn, etc. Because there is

no guidance which clarifies if only those items listed under Section 392.7 are the ones that must be in good working order, then the question is which regulation does the motor carrier and the driver follow, Section 392.7, Section 393.1, or Section 396.3(a)(1)? Let's assume the driver conducts a "pre-trip" inspection as prescribed by Section 396.13 and all parts and accessories are in proper working order as prescribed by Section 396.3(a)(1) and Section 393.1. He drives for several hours and stops for a break. When he returns to his vehicle, is he not required to again ensure that all parts and accessories are in proper working order as prescribed by Section 396.3(a)(1)? Or does Section 392.7 indicate that he can conduct an inspection and need only ensure that the items listed there are in "good" working order. If he conducts the inspection according to Section 392.7, and then operates the vehicle is he not then in violation of Section 396.3(a)(1) and Section 393.1? What if after his break he conducts his inspection according to Section 392.7 and the crossover fuel line between the two side mounted fuel tanks is not secured and dragging on the ground, and one of the metal straps on the side mounted fuel tank is broke? These are serious safety defects, but not mentioned under Section 392.7. If Section 392.7 is removed, and the driver takes a break and then returns to his vehicle and conducts an inspection as required by Section 396.13, and finds a defect, doesn't Section 393.1 and Section 396.3(a)(1) prohibit the vehicles use? If the driver was subject to a roadside inspection by a state enforcement officer, and these two defects were found, wouldn't the drive and the carrier be subject to fines? What's the difference between "good" working order as mention under Section 392.7 and "proper" working condition mentioned under Section 396.3(a)(1)?

There has to be some give and take between the industry, FHWA, and the enforcement community. The commercial motor vehicle is a collection of mechanical components, which is going to incur mechanical defects and/or problems. It seems unrealistic to require a vehicle to have virtually everything working properly at all times. It makes more sense to focus on those critical items, much like CVSA has done, that are likely to present a safety hazard on the public highway and prevent the operation of the vehicle if the tolerance levels of safety are exceeded.

The other question is, why is there so much focus on the mechanical condition of a commercial motor vehicle in the first place? Statistics clearly support that 95 percent of all accidents are the result of driver error, not a mechanical problem. It certainly makes more sense that the enforcement community can better serve highway safety if they focus their inspection efforts on the driver (which is 95% of the problem), and not the vehicle. This would require less training by the states, make better use of limited resources, and truly assist the motor carrier industry in controlling the driver and his actions. Perhaps the basis for MCSAP funding should be better directed so that the states do not risk losing monies due to a lack of vehicle inspections. If there is truly concern for highway safety, then CSS believes a major change in thinking, regulations, and budget justification is required.

CSS suggest that a new fresh approach to the requirements of the regulations, the use of the Out-of-Service Criteria, and the purpose of the CVSA decal be seriously considered.

Suggested Changes:

If it is intended that the enforcement community continue to conduct roadside inspections, noting mechanical defects which are not necessarily critical items and allowing the vehicle to continue in operation (in violation), then the regulations should be changed to reflect this practice. This would require the elimination of the fines and penalties associated with all noted “minor” (non-critical items) mechanical defects.

Suggested Language Section 393.1: Every employer and employee shall comply and be conversant with the requirements and specifications of this part. *Each employer shall ensure that each vehicle under its control is equipped in accordance with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated with critical mechanical defects which exceed the tolerance levels established by the Out-of-Service Criteria.*

Suggested Language Section 396.(a)(l): *The motor carrier shall ensure that all parts and accessories, including those listed in part 393 are in safe and proper operating condition prior to dispatching the vehicle from their facility, terminal or any other repair facility.*

Suggested Language Section 396.7(a): General. *A motor vehicle shall not be operated with any defective critical item that exceeds the tolerance levels established by the Out-of-Service Criteria.*

Suggested Language Section 396.7(c)(1): *Authorized personnel shall declare and mark “out-of-service ” any motor vehicle which has a defective critical item(s) which exceeds the tolerance levels of the Out-of-Service Criteria.*

Suggested Language Section 396.7(c)(2): No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked “out-of-service” until *repairs to all critical items listed on the out-of-service notice have been satisfactorily completed.*

Suggested Language Section 396.7(c)(3): No person shall remove the “Out-of-Service Vehicle” sticker from any motor vehicle prior to completion of *repairs to the critical items listed* on the “out-of-service notice”.

Suggested Change to Section 396.17: Language can remain the same except subparagraph (f). In this paragraph, the language that allows a roadside inspection to meet the periodic inspection requirements should be removed. **The minimum standards listed in Appendix G should be consistent with those parts and accessories listed in Part 393.**

Suggested Change to Section 396.23: Remove any reference to the roadside inspection meeting the annual or periodic inspection requirement.

In that the inspection procedures and methods prescribed under the North American Inspection Standard used by the enforcement community do not actually involve the more comprehensive requirements of the periodic inspection requirements, some consideration should be given removing this as a qualification standard to perform the annual or periodic inspection.

Under Section 396.17(e) the motor carrier is allowed to employ the services of a commercial garage, fleet leasing company, truck stop, or other similar business to perform the annual or periodic inspection, PROVIDED the business operates and maintains facilities appropriate for commercial motor vehicle inspections. CSS believes that an inspection conducted along the roadside DOES NOT meet the requirement imposed on the motor carrier for ensuring APPROPRIATE FACILITIES for commercial vehicle inspections. It is certain that any federal investigator would question the ability of a motor carrier to perform routine maintenance and the annual inspection if the facility was along the side of the road and did not employ the use of power tools or lifts. Even when a personal automobile is inspected by the state, the wheels are removed to ensure the brake linings, rotors and/or drums, and other braking components are functioning. Therefore: What does a roadside inspecting officer do when the brake linings and other brake components are concealed by a dust cover? How are the rims inspected for cracks on a motorocoach when they are covered with wheel covers? The annual or periodic inspection is suppose to be a complete and comprehensive inspection designed to ensure the vehicle is in the most optimum condition for safety of operation at least once a year. Allowing an inspection, which is far less comprehensive, to meet this requirement does not speak well for highway safety.

While the question of whether or not to make the Out-of-Service Criteria part of the regulations is important, CSS believes there are far more critical issues surrounding the Out-of-Service Criteria and its purpose and application that need to be corrected prior to making this decision.

Regards,

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