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September 18, 1998

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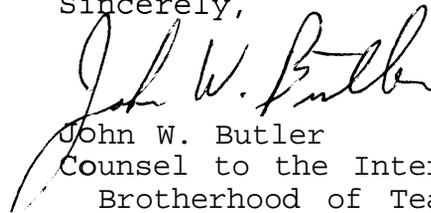
Re: Out-Of-Service Criteria
Docket No. FHWA 98-3414-16

Dear Madam or Sir:

Enclosed herewith please the International Brotherhood of Teamsters' comments in the above-referenced proceeding.

Kindly acknowledge receipt of this filing by date stamping the additional copy of this letter and returning it to our messenger.

Sincerely,


John W. Butler
Counsel to the International
Brotherhood of Teamsters

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UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Docket No. 98-3414
Out-Of-Service Criteria

COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

On July 20, 1998, the Federal Highway Administration published an advance notice of proposed rulemaking (the "Notice") seeking comments on the proper regulatory status of the out-of-service ("OSS") criteria promulgated by the Commercial Vehicle Safety Alliance ("CVSA"). The International Brotherhood of Teamsters ("IBT"), by its undersigned counsel, files these comments in response to the Notice.

The International Brotherhood of Teamsters is a labor organization whose members include hundreds of thousands of workers employed by motor carriers. Because motor carrier safety standards directly affect the daily lives of most of its members, the IBT has a strong interest in ensuring that motor carrier operations meet objective and clearly defined safety standards.

The IBT supports the formal adoption of the CVSA OSS criteria, either as part of or as an appendix to the Federal Motor Carrier Safety Regulations (FMCSRs). The reason why formal adoption of the OSS criteria is necessary is correctly described in the FHWA Notice. Namely, since the OSS criteria are the *de facto* out-of-service enforcement standard, failure to adopt such standards after notice and comment rulemaking may undermine the ability of the FHWA successfully to pursue enforcement actions. See *MST Express v. DOT*, 103 F.3d 401 (D.C. Cir. 1997) (failure to adopt safety fitness rating methodology by notice and comment rulemaking

invalidates enforcement action). Accordingly, if the OSS criteria are to be used in the future (and no viable alternative has been proposed), then the criteria must be formally adopted.

The Notice asks, **among** other things, how future changes to the OSS criteria by CVSA should be handled. The IBT believes that any such changes, before they become part of the FHWA's regulations, must be subject to the same notice and comment procedure that will be applied to the initial adoption of the OSS standards. Thus, OSS criteria changes promulgated by the CVSA and adopted by a state or states would not become a part of the federal regime until the completion of the required rulemaking procedure. Particularly because the CVSA, rather than the FHWA, is likely to initiate any future changes, it is imperative that all interested parties (not just those that participate in the CVSA) be given an opportunity to address any proposed changes.

Respectfully submitted,

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

By: 

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