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JOHN ENGLER, GOVERNOR
DEPARTMENT OF STATE POLICE
COL. MICHAEL D. ROBINSON, **DIRECTOR**

September 8, 1998

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To Whom It May Concern:

This correspondence is in response to the proposed rulemaking regarding the incorporation of the CVSA Out of Service Criteria (OOSC) into the Federal Motor Carrier Safety Regulations (FMCSR.) **The Michigan State Police is opposed.**

The OOSC is not the "end all and be all" to commercial motor vehicle safety, nor was it ever meant to be. The OOSC is an inspection standard, designed to prevent the loss of life. It is used as a last chance, stop-gap measure when all other preventative maintenance and safety education programs have failed. It has absolutely nothing to do with enforcement, and it should NEVER be used in place of a citation or be associated with a fine structure. It is NOT a regulation and should not be used as such.

Michigan asserts that, under the law, a vehicle can be prevented from further operation for any violation (e.g., "a person shall not operate.. .".) The OOSC is simply an agreement that all CVSA member jurisdictions have agreed to abide by under a Memorandum of Understanding (MOU.) To employ the OOSC as an enforcement tool is to move beyond its original intent.

We have heard the OOSC referred to as an "enforcement strategy," a "substantive regulation," and even as "our rules." The OOSC is none of these. It is merely a guideline for field inspectors for identifying driver and vehicle safety defects and determining whether the vehicle or driver can safely proceed at the time. The OOSC should not be associated with any type of enforcement effort.

FHWA has made the OOSC a major portion of their current Safety Rating process. Much of the controversy surrounding the OOSC is due to this action. The Safety Rating process has a huge financial impact on motor carriers, and not all motor carriers have equal input into the OOSC. The OOSC was NEVER developed as a program for the Safety Rating process, and it does not belong in it. If FHWA wants to use the OOSC as a basis for their safety rating process, they should take the information *from* the OOSC and remove all references to CVSA and OOSC.



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Placing the OOSC in the FMCSR will cause the OOSC to be changed continually, due to constant petitions. Confusion over the current status of the OOSC could result in inspectors ignoring it or refusing to use it, thus decreasing its effectiveness in promoting consistency and uniformity.

Many of the comments industry has made about the OOSC are actually related to Safetynet. They are being charged with inappropriate or nonexistent violations, and often are unable to have violations removed from their profile. The biggest complaint seems to be the easy accessibility of a profile of a carrier to shippers, insurance companies, and the general public. Industry has some valid concerns in this area, and the states have been wrestling with Safetynet problems for some time. The report from the Federal Bar Association clearly indicates that the entire safety rating process requires a thorough review. And while these are 'problems and issues that should be addressed, placing the OOSC in the FMCSR will do nothing to correct them, and may actually make some of them worse.

Michigan does not oppose offering the OOSC as a "Notice and Opportunity to Comment", provided the document has been removed from the various enforcement processes that it is currently used in, and it is clear that the OOSC is a roadside inspection guideline.

Let me reiterate that Michigan is opposed to incorporating the OOSC into the FMCSR. Thank you for affording us the opportunity to state our concerns regarding this very important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "R.R. Powers".

ROBERT R. POWERS, CAPTAIN
Commanding Officer
Motor Carrier Division

RRP:DF:ds