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DEPARTMENT OF TRANSPORTATION

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FHWA Docket No. FHWA-98-3414 -25
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Washington, DC 20590-0001

This will respond to the FHWA request for comments on the Advance notice of proposed rulemaking concerning the CVSA Out-of-Service Criteria (OOSC)

The Florida Department of Transportation, Motor Carrier Compliance Office (MCCO) opposes the concept of incorporating the OOSC into the Federal Motor Carrier Safety Regulations. The following comments restates and expands upon our response to CVSA when queried on the subject.

We agree with the FHWA and the Commercial Vehicle Safety Alliance in regarding the OOSC as "enforcement guidelines or tolerances". We do not consider the OOSC to be an FHWA regulation, nor do we feel that it should be. We consider it to be the standard by which we allow vehicles to continue in operation, or not continue, as a result of roadside enforcement activities through our agreement with CVSA. **Without** the uniformity such an agreement provides, any violation of the regulations could be used to place a driver or vehicle "out-of-service" at the discretion of the individual or agency conducting the inspection. Furthermore, if the OOSC was given status as a regulation, the regulations would then contain two standards for carriers to follow in maintaining vehicles, transporting hazardous materials and setting driver requirements.

In our view, the OOSC is merely a mechanism, apart from the regulations, that provides uniformity of action in roadside enforcement. Associate members of CVSA have voting privileges at the committee level to effect changes to the OOSC. All members have the opportunity to provide input and have an impact on the contents of the OOSC through discussion at the committee level. Making the OOSC a regulation would remove it from the realm of CVSA, where direct, face to face discussion of the issues surrounding its relevance and application is possible, and place it into the ponderous realm of federal rulemaking procedures. Additionally, it appears that separate criteria would have to be placed in the Federal Motor Carrier Safety Regulations and the Hazardous Materials Transportation Regulations due to the different applicability provisions of each. RSPA would then be responsible for HM criteria and FHWA would be responsible for driver and vehicle criteria, making the process even more complicated and less accessible.

Incorporation by reference would appear to have little impact on alleviating problems apparently perceived by NTTC since any change to the OOSC would still be dependant upon CVSA action rather than federal rulemaking. We would have no strong objection to

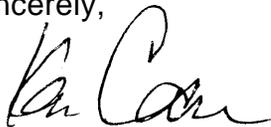
incorporation by reference. However, we assume incorporation by reference would require the regulation to be updated yearly, incorporating the latest version of the OOSC. This would compound the problem that currently exists with many states concerning the date of applicability of the safety regulations and would cause different versions of the OOSC to be in use. Also, the regulations are published as of October 1 and the OOSC is published as of April 1, creating a 6 month delay for use of the most current OOSC unless CVSA changed the date of applicability of the OOSC to coincide with the latest versions of the regulations.

We believe that the OOSC should not be used in determining a carrier's safety fitness. References to the CVSA OOSC should probably be removed from the federal regulations. FHWA should treat roadside violations in the same manner as violations found during a compliance review and categorized according to severity individually (i.e., critical/acute violations), when determining safety fitness. This would leave the OOSC as a stand alone document, utilized only as an enforcement tolerance for roadside determination of whether a vehicle should be allowed to continue in operation from the point of the inspection. It could then continue to be reviewed and updated within the CVSA process.

Current Florida law does make reference to the OOSC in determining civil penalties (fines) for driver and hazardous materials violations. Vehicle defects are not assessed civil penalties. The application of civil penalties to driver and haz mat violations based on the OOSC was more a convenience to writing the statute, than a judgement that the specific violations contained therein were more deserving of a fine than other violations. This situation does lead to the possibility of new penalties being added based solely on additions to the OOSC. (Based on OOSC activity in the last few years, removal of a penalty has been more likely.) To be consistent with our views stated above, our statute should probably be rewritten to remove references to the OOSC in the penalty provisions and cite specific violations deemed "worthy" of the application of a fine.

It is the view of the Florida Department of Transportation, Motor Carrier Compliance Office that the CVSA Out of Service Criteria should not be elevated to regulation status; should probably not be referenced in the regulations at all; and should be utilized only as a roadside enforcement tolerance guideline, as originally intended.

Sincerely,



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