

47832

DEPARTMENT OF TRANSPORTATION

98 DEC -8 PM 3: 14

DOCKET SECTION

Comments
of the



National Private Truck Council
to the

Federal Highway Administration
on the

Out of Service Criteria
Advanced Notice of Proposed Rulemaking

Published
in the
63 Federal Register 38791
(FHWA Docket No. FHWA-98-3414)" **33**

Submitted by

John McQuaid
President and CEO

Jim York
Director of Safety Programs

December 8, 1998

This page intentionally left blank

Docket Clerk
U.S. DOT Dockets
Room PL-40 1
400 Seventh Street, SW
Washington, D.C. 20590-0001

Re: FHWA Docket No. FHWA-98-3414
Out-of-Service Criteria
63 Federal Register 38791 (July 20, 1998)

BACKGROUND

These comments are submitted on behalf of the members of the National Private Truck Council (NPTC), a national trade organization representing manufacturers, processors, distributors, retailers, construction, mining and service companies that use their own corporate or “private” truck fleets to meet their inbound and outbound transportation requirements. Additionally, at least 35 percent of NPTC’s members have “for-hire” operating authority, which allows them to haul products for other companies and concerns.

According to the most recent Truck Inventory and Use Survey (TIUS 92), published by the Department of Commerce’s Economics and Statistics Administration, private truck fleets include 3.83 million (approximately 75 percent) of the medium and heavy-duty trucks (i.e., over 10,000 pounds GVW) registered in the United States. Additionally, this survey revealed that private truck fleets traveled more than 63 billion miles annually, representing approximately 54 percent of all the U.S. miles traveled for medium and heavy-duty trucks.

The private trucking industry is comprised of many segments which are tailored to best meet the needs and specialized transportation requirements of members’ companies. Some of the predominant segments are:

- **Local/Short Haul Segment:** Trucking operations confined to an area within a 100-air-mile radius of a terminal or the primary place a driver reports to work that provide pick and delivery services to and from customers’ shipping and receiving facilities.
- **Over-the-Road (Linehaul) Solo Driver Segment:** Trucking operations that extend beyond a 100-air-mile radius and provide pick and delivery services to and from customers’ shipping and receiving facilities.
- **Terminal-Terminal Solo Driver Segment:** Trucking operations that extend beyond a 100 Air-Mile radius.
- **Over-the-Road (Linehaul) Team Driver Segment:** Two-driver trucking operations that extend beyond a 100-air-mile radius and provide pick and delivery services to and from customers’ shipping and receiving facilities.

Safety Mission and Guiding Principles

Protecting the safety of the public and their employees on our nation's highways is of utmost importance to NPTC members. Our goal is zero accidents, injuries, and incidents. The safety of employees, customers, and the public is our top priority. Our members believe safety fitness measures should provide a known level of safety assurance to the traveling public and view safety fitness measures as standards to ensure that the corporate safety culture is mirrored by the on-road safety performance of its fleets.

We are proud that a recently published study of 75,577 firms audited by Office of Motor Carriers officials over a five-year period determined that private carriers had reportable accident rates nearly 20 percent lower than those of for-hire carriers.¹ The commitment of private fleets to highway safety is self-evident.

This following sections provide NPTC's comments and concerns regarding the questions posed in the Federal Register Notice.

The OOSC Should Remain The Property Of The CVSA

The Out of Service Criteria (OOSC) have been in place since truck safety was federally enforced by the Interstate Commerce Commission's Bureau of Motor Carrier Safety. However, it was the Commercial Vehicle Safety Alliance (CVSA) who took the lead to achieve uniformity in the criteria as truck safety enforcement was shifted from federal to state governments in the early 1980's. Although the CVSA partnership was initially limited to a few western states and Maine, it has evolved and now includes representatives from all 50 states, Mexico, Canada, the Federal Highway Administration (FHWA), and the motor carrier industry.

With the expansion of the partnership, CVSA has developed an efficient process for reviewing and amending the OOSC as new technologies emerge or as new issues arise regarding driver and vehicle safety. The organization meets twice annually to review and discuss issues raised and the need for potential changes in the OOSC regulations. As one might expect, not all members of the CVSA partnership agree with the elements included in the OOSC. However, the CVSA partnership provides a unique forum to resolve the issues that arise among its members. For example, using a CVSA sponsored study that was conducted by the University of Oregon, CVSA members recently refined the OOSC pertaining to windshield wipers. Previous to that revision, inoperative wipers were listed a general out-of-service defect. As a result of CVSA discussions, the OOSC pertaining were more closely defined to include only the drivers side window and "weather requiring wipers."

Some individuals and organizations maintain that the process of developing and revising the OOSC is tarnished because the partnership includes industry representatives and could, therefore, be subject to a conflict of interest. However, the OOSC are not, and never were, intended to be equated with the Federal Motor Carrier Safety Regulations (FMCSRs). They are guidelines to be

¹ Leon M. Moses and Ian Savage. "The Effect of Firm Characteristics on Truck Accidents." *Accident Analysis and Prevention*. Vol. 26. No. 2. Elsevier Science Ltd. 1994. pp. 173-179.

relied upon in identifying those conditions or regulatory violations that are so severe that an imminent hazard or risk of accident would occur if the vehicle or driver were allowed to proceed. As a result, the CVSA partnership is greatly enhanced by technical expertise of industry representatives of organizations such as:

- Brake component manufacturers
- Tire and wheel manufacturers
- Insurance and risk management companies
- Brake testing device managers
- Vehicle manufacturers

The OOSC Should Be Incorporated Into the FMCSRs by Reference

Some organizations have suggested that the OOSC should be formally adopted into FMCSRs through notice and comment rulemaking procedures. Their argument is that the OOSC are treated as substantive rules by roadside inspectors and, therefore, have become binding norms.

NPTC disagrees with this argument. When vehicle or driver defects are found during roadside inspections, state enforcement officials cite the FMCSRs, not the OOSC on written inspection reports. Additionally, both federal and state regulations include provisions to implement immediate out-of-service orders.² The OOSC were developed and should be applied as enforcement guidelines. They provide inspectors with information on deciding when vehicle or driver defects should be corrected before being allowed to proceed.

NPTC, however, agrees that the OOSC should be readily available to private fleet managers and drivers. Unfortunately, that is not currently the case. To obtain the OOSC, individuals must contact CVSA headquarters in Bethesda, Maryland, and place a written order. Upon receiving an order, CVSA mails the OOSC to the individual along with an invoice for the amount of \$27.00. A more efficient process is needed to allow drivers and fleet managers more timely access to the o o s c .

Incorporating the OOSC into the FMCSRs by reference would accomplish this goal. For example, a Federal Register notice could be published that included the most current version of the criteria. That notice would also provide limited time for comment and review and also specify an effective date. The notice could direct individuals to submit written comments to FHWA. Comments could then be forwarded to CVSA for review and discussion at their next regularly scheduled meeting. Revisions or refinement of the OOSC could still be conducted according to the current committee procedures. Following initial Federal Register publication, the most current OOSC, reflecting the previous year's revisions or refinements would be republished annually.

² 49 CFR part 393.1 specifies that "No employer shall operate a commercial vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part." States also have similar power. "Michigan asserts that, under the law, a vehicle can be prevented from further operation for any violation (e.g., "a person shall not operate")." Ref: FHWA-98-3414-20.

Using this approach, the OOSC would be more readily available. For example, companies such as J.J. Keller and Associates or LabelMaster could include the OOSC in “pocket size” booklets. The booklets, similar to the versions currently used to provide drivers with copies of the FMCSRs, could then be distributed by employers on an annual basis.

The OOSC Should Remain an Integral Element of the Safety Fitness Determination Process

Currently, the OOSC are part of the Safety Fitness Rating Methodology (SFRM). Carriers with an out-of-service rating greater than 34 percent can achieve no greater than a conditional rating in the Vehicle factor area. Additionally, the OOSC play a major role in SafeStat and the Inspection Selection System (ISS) because out-of-service rates are used in both algorithms in determining which carriers to target for further enforcement efforts. However, some organizations state the OOSC were never intended for this use.

NPTC disagrees and recommends continued OOSC inclusion in the SFRM. A carrier’s out-of-service rate has become an accepted benchmark in both the vehicle and driver components of safety fitness. Out-of-service rates are one of the few legitimate tools available to examine a very important component of truck safety. Additionally, if the OOSC are incorporated into the FMCSR’s by reference, they gain the statutory standing needed to be a bona fide component of the safety fitness process.

Summary

The NPTC supports FHWA’s efforts to resolve issues pertaining to the OOSC and appreciates the opportunity to comment on this rulemaking. The OOSC have become a respected set of uniform international guidelines applied to ensure that “imminent hazard” vehicle or driver defects are remedied prior resuming operation. NPTC supports refinements which will provide timely OOSC information to commercial vehicle drivers, motor carrier managers, and truck safety enforcement officials. Therefore, in response to this NPRM, the NPTC reiterates:

- The OOSC should remain the property of the CVSA
- The OOSC should be incorporated into the FMCSRs by reference
- The OOSC should remain an integral element of the safety fitness determination process

The NPTC looks forward to working with the FHWA in creating Out of Service Criteria that achieves the goal of enhancing highway safety while creating a regulatory environment that recognizes the complexities of today’s trucking environment.

Any follow-up and/or questions should be directed to:

John McQuaid
President and CEO
National Private Truck Council
66 Canal Center Plaza, Suite 600
Alexandria, VA 223 14
Phone: (703) 683-1300 ext. 221
Fax: (703) 683-1217

Signed: John McQuaid
Date: 12/8/98

Jim York
Director of Safety Programs
National Private Truck Council
66 Canal Center Plaza, Suite 600
Alexandria, VA 223 14
Phone: (703) 683-1300 ext. 208
Fax: (703) 683-1217

Signed: Jim York
Date: 12/8/98