



Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

February 10, 2023

Mr. Shane Kelley
Director, Standard and Rulemaking (PHH-10)
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Interpretation #22-0133 applicable to the recordkeeping requirements for the Pipeline and Hazardous Materials Safety Administration (PHMSA) Certificate of Registration and the Federal Motor Carrier Safety Administration (FMCSA) Hazardous Materials Safety Permit

Dear Mr. Kelley,

On Jan. 17, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued interpretation #22-0133 to Usher Transportation, in response to their Sept. 20, 2022, inquiry requesting clarification regarding the recordkeeping requirements for the PHMSA Certificate of Registration and the Federal Motor Carrier Safety Administration (FMCSA) Hazardous Materials Safety Permit. Specifically, Usher Transportation asked for clarification on whether storing and presenting the PHMSA Certificate of Registration and the FMCSA Hazardous Materials Safety Permit electronically is in compliance with the recordkeeping requirements in 49 Code of Federal Regulations (CFR) §§ 107.620(b) and 385.415. In response, PHMSA provided Usher Transportation with an interpretation confirming both documents may be displayed electronically during a roadside inspection.

The Commercial Vehicle Safety Alliance (CVSA) supports modernizing the hazardous materials (hazmat) transportation processes and applauds the agency's efforts in this regard. However, CVSA has concerns regarding the specific impacts of the interpretation as written and asks the agency to consider revising interpretation #22-0133 to provide an effective date. CVSA is a nonprofit organization comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to prevent commercial motor vehicle crashes, injuries and fatalities and believes that collaboration between government and industry improves road safety and saves lives. Our mission is to improve commercial motor vehicle safety and enforcement by providing guidance, education and advocacy for enforcement and industry across North America.

Explanation

FMCSA has for several years allowed their Hazardous Materials Safety Permit, as well as many other documents, to be displayed electronically. This was codified in 49 CFR § 390.32 and by enforcement guidance issued by FMCSA. However, long standing interpretations and guidance from PHMSA have made it clear that the PHMSA Certificate of Registration may not be stored or displayed electronically. Failure to carry a copy of the PHMSA Certificate of Registration or another document bearing the current registration number is the second most cited hazardous

materials violation. In addition, currently, all curriculum in hazardous materials courses taught to roadside inspector's states that the PHMSA Certificate of Registration may not be stored or displayed electronically. CVSA also currently instructs to the same standard in both the 24 and 40-hour courses developed under the Alliance's Hazardous Materials Instructor Training program for industry hazardous materials employee trainers.

CVSA supports PHMSA's efforts to move to accepting electronic documents and encourages PHMSA to extend this to other documents that may be required during a roadside inspection. However, we request that PHMSA amend, revise or withdraw interpretation #22-0133 and issue enforcement guidance clarifying:

- a clear start date for the new policy,
- guidance on which documents can be displayed during a roadside inspection, and
- that the new interpretation applies to the entire industry, rather than only to the individual motor carrier the original interpretation was issued to, Usher Transportation.

Justification

Failure to amend, revise or withdraw this interpretation will have a negative impact on the roadside inspection community. This interpretation will allow carriers who received a violation for failing to carry a current copy of the registration or another document bearing the current registration number prior to the issuance of the interpretation to file a request (RDR) that prior violations be removed from their FMCSA inspection profile. This will create an unnecessary burden for all U.S. jurisdictions. During the 2022 calendar year a total of 2,753 violations were cited on inspection reports. One state alone has 193 violations in the last three years that would need to be removed. Issuing guidance with an effective date is necessary to give enforcement and industry a start date for the acceptance of PHMSA electronic documents during a roadside inspection and guidance on which documents will be accepted. This will eliminate confusion and provide a seamless transition for all stakeholders.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 202-998-1008 or by email at collin.mooney@cvsa.org.

Respectfully,



Collin B. Mooney, MPA, CAE

Executive Director

Commercial Vehicle Safety Alliance