



# Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

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November 8, 2024

Mr. Vinn White  
Deputy Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
6th Floor, West Building  
Washington, DC 20590-9898

**RE: Petition for Rulemaking – Amend Title 49 CFR § 392.60 to require written or electronic documentation of authorization for passenger(s) in a CMV**

Dear Deputy Administrator White,

Pursuant to Title 49 Code of Federal Regulations (CFR) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend Title 49 CFR § 392.60 – *Unauthorized persons not to be transported* to require written or electronic documentation of authorization for passenger(s) in a commercial motor vehicle (CMV).

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.

## **Justification**

According to the International Labour Organization, human trafficking enslaves more than 50 million people in both labor and sex trafficking. Traffickers are motivated by greed, exploiting the most vulnerable among us to the tune of \$236 billion annually. This heinous crime is happening throughout North America and has been reported in every U.S. and Mexican state, and in all Canadian provinces. Beyond being trafficked within their own nation's borders, our citizens are being used and exploited across national borders. Human traffickers sell their victims in cities and rural areas, along our nation's roadways, and at numerous locations and events. Because traffickers use our transportation systems, including commercial motor vehicles, to transport victims, it's imperative that the law enforcement community and industry partners be involved in fighting this crime. These stakeholders need to learn to recognize the signs of human trafficking and how to report it, as their involvement is vital in assisting in victim recovery. Beyond enforcement of anti-trafficking laws, law enforcement and all other members of the commercial motor vehicle industry have a critical role to play in educating and equipping industry stakeholders about human trafficking and how to combat it. Recognizing this, the U.S. Department of Transportation (DOT) Advisory

Committee on Human Trafficking issued a report citing the substantial role transportation industries, law enforcement and government agencies can play to close loopholes to traffickers, including forming private/public partnerships. In addition, DOT and FMCSA have increased their efforts to raise awareness and partner with other organizations to combat this global crime.

Roadside inspectors are in a unique position to identify instances of human trafficking when conducting inspections on commercial motor vehicles. Recognizing this, FMCSA has encouraged its Motor Carrier Safety Assistance Program (MCSAP) partners to incorporate human trafficking prevention efforts into their commercial motor vehicle safety programs. All inspectors in North America are trained to identify indicators of human trafficking, as well as to verify all passengers are authorized to be in the vehicle.

The enforcement and industry members of CVSA's Human Trafficking Prevention Program Committee have identified a challenge to enforcement's ability to combat suspected instances of human trafficking roadside due to existing regulatory guidance. Currently, § 392.60 requires that a driver obtain explicit written authorization from the motor carrier to transport passengers. However, due to the DOT Regulatory Guidance to § 392.60 – *Unauthorized persons not to be transported*, drivers are not required to carry and produce the documentation. An inspector's ability to contact and confirm with the carrier that the passenger is authorized is limited by several factors, including the time of inspection being outside normal business hours, poor cell signal and/or being unable to reach the appropriate motor carrier employee with access to the information. Without access to the written authorization document, the inspector may be unable to verify the passenger's status and could potentially miss an opportunity to intervene in a human trafficking incident. As a result, inspectors can have difficulty verifying whether or not a passenger found in a property-carrying CMV is authorized to be there, and therefore whether they may be the victim of human trafficking.

To address this limitation, in February 2023, CVSA submitted a petition to the agency to amend the DOT Regulatory Guidance to Title 49 CFR § 392.60 – *Unauthorized persons not to be transported* to require written or electronic documentation of authorization for passenger(s) in a CMV, arguing that such a requirement would improve enforcement's ability roadside to identify and potentially disrupt instances of human trafficking, a shared goal and priority of U.S. Department of Transportation, FMCSA and the MCSAP state partners.

Specifically, on behalf of the state and local MCSAP agencies, CVSA requested that FMCSA updated the DOT Regulatory Guidance to § 392.60 – *Unauthorized persons not to be transported* to read:

**§392.60 Unauthorized persons not to be transported.**

**Guidance Q&A**

*Question 1:* Does §392.60 require a driver to carry a copy of the written authorization (required to transport passengers) on board a CMV?

*Guidance:* ~~No~~**Yes**, the authorization, **in either hard copy or electronic format**, must be maintained **on board the CMV as well as** at the carrier's principal place of business. ~~At the discretion of the motor carrier, a driver may also carry a copy of the authorization.~~

However, in October 2023, the agency issued a letter denying CVSA’s petition noting that documents can be falsified by drivers and that the presence of such documents could detract from the inspector’s training/investigation. The denial also notes that such a change, if deemed appropriate, would require the agency to initiate a rulemaking. In this petition CVSA seeks to address each of those items and reiterates the Alliance’s request that FMCSA make the necessary changes to Title 49 CFR § 392.60 – *Unauthorized persons not to be transported* to require written or electronic documentation of authorization for passenger(s) in a CMV. This request is supported not just by the roadside inspector community tasked with helping to combat this heinous crime roadside, but also by the Alliance’s motor carrier members, and the American Trucking Associations, as well as TAT, the leading voice on this issue and a partner with the U.S. Department of Transportation in its efforts to eliminate human trafficking in our transportation systems.

#### *Documents Can Be Falsified*

First, FMCSA notes in their denial that documents such as the letter could be falsified and, as result, would not benefit enforcement roadside in their investigations. While it is true that documents can be falsified, this is an insufficient justification for not requiring the information roadside. In fact, the FMCSR includes dozens of requirements for documentation to be maintained and presented. For example, drivers are required to carry and produce driver’s licenses, medical certificates, bills of lading, lease agreements, load permits, etc. Each of these documents can be falsified, yet the requirement remains, as it provides an opportunity for enforcement to review and verify the document for enforcement purposes.

As noted in our original petition, requiring the letter roadside would be an *additional tool* for the inspectors to use in the course of their investigation to determine if a passenger is authorized to be in the vehicle. Importantly, as noted above and in the Alliance’s previous petition, an inspector’s ability to contact and confirm with the carrier that the passenger is authorized is limited by several factors, including the time of inspection being outside normal business hours, poor cell signal and being unable to reach the appropriate motor carrier employee with access to the information. Without access to the written authorization document, the inspector may be unable to verify the passenger’s status and could potentially miss an opportunity to intervene in a human trafficking incident. Requiring drivers to provide written or electronic documentation of authorization for passenger(s) in a CMV would simply provide inspectors with more information roadside with which to make a determination.

In instances where a driver can provide a letter, inspectors would still have other steps to verify the validity of the letter, including reaching out to the motor carrier, if they are reachable, and visual evaluation of the document itself. Using the information presented, as well as their visual evaluation and interaction with the driver and passenger, the inspector will be able to make a more informed determination regarding the passenger. In instances where the driver cannot provide a letter, this provides the inspector with cause to remove the passenger from the vehicle, in order to conduct an interview separately from the driver, which could result in information that would assist the inspector in identifying human trafficking. Furthermore, in instances where the driver produces a fraudulent document that is identified by the inspector, the document provides an additional piece of evidence should a prosecution result from the interaction. Again, the purpose of requiring the letter roadside is to provide inspectors with more tools to combat this crime.

Finally, it is worth noting that, if both the motor carrier and driver are engaged in human trafficking, then it is likely that the motor carrier would fraudulently verify that the passenger is authorized if contacted by an inspector (in the instances that an inspector can reach the motor carrier). Despite this opportunity for abuse, the regulations require that the motor carrier provide and maintain written authorization when a passenger is permitted to travel with a driver. This is because, while we can all acknowledge that fraud may occur, it is also true that putting these requirements in place help in the course of an investigation to identify bad actors.

#### *Requiring Documentation Roadside Could Undermine Investigative Training*

FMCSA also noted in the denial letter that “if the motor carrier and its driver are engaged in trafficking, a requirement for a letter about the passenger could have the effect of undermining an inspector’s assessment.” CVSA simply disagrees. Inspectors are taught to conduct their inspections as investigations and rely on a number of documents and other information to enforce the FMCSR roadside. Giving the inspector an additional tool to help verify compliance roadside would not cause those inspectors to disregard their investigative process entirely. When a driver presents a CDL roadside, the inspector does not then assume all is well and move on with their inspection. They verify that credential through a number of channels. When a driver produces their record of duty status documentation, the inspector still reviews the information and investigates, using required supporting documentation, to ensure the information is accurate. The same would apply if a letter was presented roadside. The inspector would include it as a piece of information in the investigation.

Further, if FMCSA granted CVSA’s petition and moved forward with establishing a requirement that drivers provide written or electronic documentation of authorization for passenger(s) in a CMV, FMCSA’s concern about the impact on the inspector’s assessment could be addressed by updating existing training on identifying human trafficking to ensure that inspectors understand the role of the letter and to ensure they use it as part of their investigation, not in place of one.

#### *Necessity of Initiating a Rulemaking to Effect the Requested Change*

Finally, in the agency’s denial of CVSA’s request, FMCSA notes that because § 392.60 does not state where the document must be maintained, the agency must default to “the overarching requirement for certain records to be maintained at the principal place of business” and that requiring the document be maintained by the driver as well would necessitate the agency initiating a rulemaking to change the regulation itself.

If upon consideration of this petition, the agency confirms that such a rulemaking is necessary to implement the requested change, then CVSA, on behalf of its state and local enforcement and industry members, requests that the agency move forward with a rulemaking to make the necessary changes to the regulation itself. CVSA has engaged with its motor carrier members on this concept and do not anticipate that the requested change would have a significant impact financially on motor carriers, nor would it present an undue hardship on motor carriers or drivers. This conclusion is reinforced by the letter of support from the American Trucking Associations. CVSA’s members strongly believe that the benefits of being better equipped to identify and interrupt instances of human trafficking occurring within our transportation system far outweigh the costs associated with conducting a rulemaking and implementing this change.

### *Additional Benefits of Requiring the Letter Be Provided Roadside*

In speaking with our industry partners, CVSA has identified another potential benefit to the motor carrier community associated with making the requested change. Under the current requirements, if a driver is stopped outside of a motor carrier's business hours or if the appropriate point of contact cannot be reached to verify whether or not a passenger is authorized, barring any other indicators, the inspector has no choice but to allow the driver to proceed with the passenger. The motor carrier is not made aware of the presence of a passenger in these instances. However, if the driver were required to have documentation with them roadside, electronically or physically, and they were unable to produce the document, then the inspector can document the violation, which will alert the motor carrier to unauthorized passengers traveling with their drivers.

During the Alliance's Human Trafficking Prevention Program Committee and Driver-Traffic Enforcement Committee discussions on this topic, members also suggested that violations of § 392.60 be assigned zero points within the Safety Management System methodology. This would allow for more effective enforcement of the documentation requirement, without penalizing motor carriers when drivers are not compliant with the regulation.

### **Conclusion**

The roadside enforcement community has been asked by U.S. DOT and FMCSA to assist in combatting instances of human trafficking on our roadways because they are the 'boots on the ground' interacting with drivers every day. They are asking the agency to provide them with a tool that will assist them in that effort. CVSA strongly encourages FMCSA to reconsider their initial denial of this request and move forward with a rulemaking to make the necessary changes to the FMCSR and associated guidance to require drivers to provide written or electronic documentation of authorization for passenger(s) in a CMV at the request of enforcement.

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](mailto:collin.mooney@cvsa.org).

Respectfully,



Collin B. Mooney, MPA, CAE  
Executive Director  
Commercial Vehicle Safety Alliance