



# Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

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January 9, 2018

Cathy F. Gautreaux  
Deputy Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE, 6th Floor  
Washington, DC 20590-9898

Dear Deputy Administrator Gautreaux,

On behalf of the Commercial Vehicle Safety Alliance (CVSA), I am writing to withdraw our Feb. 12, 2008 petition requesting amendments to Parts 390, 395 and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) to enable more effective, timely, consistent and reciprocal actions with respect to the enforcement of out of service (OOS) orders issued to drivers, vehicles and motor carriers. The petition is attached for reference.

While CVSA still supports many of the changes outlined in the petition, in discussions with industry stakeholders and subject matter experts, we have determined that the petition needs to be revised, updated and rewritten as several separate requests.

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 301-830-6149 or by email at [collinm@cvsa.org](mailto:collinm@cvsa.org).

Respectfully,

A handwritten signature in black ink, appearing to read "Collin B. Mooney".

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



# Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

February 12, 2008

John H. Hill  
Administrator  
U.S. DOT / FMCSA  
1200 New Jersey Avenue SE, West Bldg., 6th Floor  
Washington, DC 20590

Dear Administrator Hill:

Pursuant to 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 Parts 390, 395 and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) to enable more effective, timely, consistent and reciprocal actions with respect to the enforcement of out of service (OOS) orders issued to drivers, vehicles and motor carriers. Although law enforcement is making progress with respect to focusing more attention on high-risk operators and their employers, more can be accomplished.

CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States, Canada and Mexico. Our mission is to promote commercial motor vehicle safety and security by providing leadership to enforcement, industry and policy makers. In addition, CVSA has several hundred associate members who are committed to helping the Alliance achieve its goals; uniformity, compatibility and reciprocity of commercial motor vehicle inspections, and enforcement activities throughout North America by individuals dedicated to highway safety and security.

The petitioner requests the following:

**Recommendation 1:** Remove 49 CFR 395.13 and 396.9 and move the relevant portions to a new Part 390, Subpart C; Section 390.39.

**Recommendation 2:** In conjunction with the adjustments being suggested to section 395.13, move the current regulatory language [*§395.13 (b)(3) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current*] into the regulatory guidance for Part 395.

**Recommendation 3:** Establish definitions for authorized enforcement personnel, safety inspectors, safety auditors and safety investigators in 49 CFR 390.5.

The petitioner requests to remove the current regulatory language:

**§395.13 Drivers declared out of service.**

*(a) Authority to declare drivers Out of Service. Every special agent of the Federal Motor Carrier Safety Administration (as defined in Appendix B to this subchapter) is authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.*

*(b) Out of Service criteria. (1) No driver shall drive after being on duty in excess of the maximum periods permitted by this part.*

*(b)(2) No driver required to maintain a record of duty status under §395.8 or §395.15 of this part shall fail to have a record of duty status current on the day of examination and for the prior 7 consecutive days.*

*(b)(3) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.*

*(c) Responsibilities of motor carriers. (1) No motor carrier shall:*

*(c)(1)(i) Require or permit a driver who has been declared out of service to operate a commercial motor vehicle until that driver may lawfully do so under the rules in this part.*

*(c)(1)(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section. The appropriate consecutive hours off-duty may include sleeper berth time.*

*(c)(2) A motor carrier shall complete the "Motor Carrier Certification of Action Taken" portion of the form MCS 63 (Driver Vehicle Examination Report) and deliver the copy of the form either personally or by mail to the Division Administrator or State Director, Federal Motor Carrier Safety Administration, at the address specified upon the form within 15 days following the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.*

*(d) Responsibilities of the driver. (1) No driver who has been declared out of service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this Part.*

*(d)(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section.*

*(d)(3) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.*

*(d)(4) §395.13 does not alter the hazardous materials requirements prescribed in §397.5 pertaining to attendance and surveillance of commercial motor vehicles.*

**§396.9 Inspection of motor vehicles in operation.**

*(a) Personnel authorized to perform inspections — Every special agent of the FMCSA (as defined in Appendix B to this subchapter) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation.*

*(b) Prescribed inspection report — The Driver Vehicle Examination Report shall be used to record results of motor vehicle inspections conducted by authorized FMCSA personnel.*

*(c) Motor vehicles declared "out of service".*

*(c)(1) Authorized personnel shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. An "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service".*

*(c)(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked "out of service" until all repairs required by the "out of service notice" have been satisfactorily completed. The term "operate" as used in this section shall include towing the vehicle, except that vehicles marked "out of service" may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an "out of service" vehicle shall not be operated unless such combination meets the performance requirements of this subchapter except for those conditions noted on the Driver Vehicle Examination Report.*

*(c)(3) No person shall remove the "Out of Service Vehicle" sticker from any motor vehicle prior to completion of all repairs, required by the "out of service notice".*

*(d) Motor carrier disposition.*

*(d)(1) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier operating the vehicle upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle within 24 hours, the driver shall immediately mail the report to the motor carrier.*

*(d)(2) Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.*

*(d)(3) Within 15 days following the date of the inspection, the motor carrier shall —*

*(d)(3)(i) Certify that all violations noted have been corrected by completing the "Signature of Carrier Official, Title, and Date Signed" portions of the form; and*

*(d)(3)(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business or where the vehicle is housed for 12 months from the date of the inspection.*

To read the following:

**Part 390: General**

**§390.5 Definitions.**

***Authorized Enforcement Personnel*** means Federal, State, Canadian, Mexican or local government employees certified as safety inspectors, safety auditors or safety investigators under 49 CFR Part 385, Subpart C or who maintain a current Commercial Vehicle Safety Alliance (CVSA) Inspector Certification, as well as every special agent of the FMCSA (as defined in Appendix B to this subchapter).

***Safety Inspectors*** means Federal, State, Canadian, Mexican or local government employees or private contractors certified as safety inspectors under 49 CFR Part 385, Subpart C or who maintain a current Commercial Vehicle Safety Alliance (CVSA) Inspector Certification are authorized to perform inspections of commercial motor vehicles.

***Safety Auditors*** means Federal, State, Canadian, Mexican or local government employees or private contractors certified as safety auditors under 49 CFR Part 385, Subpart C.

***Safety Investigators*** means Federal, State, Canadian, Mexican or local government employees or private contractors certified as safety investigators under 49 CFR Part 385, Subpart C.

**Subpart C — Out of Service Orders.**

**§390.39 Inspection of commercial motor vehicles in operation.**

**(a) Out of Service Order** — The term out of service as used in this Part is as defined in 49 CFR §390.5. Authorized enforcement personnel are able to declare drivers, vehicles and/or motor carriers out of service under this chapter and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver, vehicle and/or motor carrier has violated the *out of service order*.

**(a)(1) Drivers.** Authorized enforcement personnel shall declare out of service any driver by reason of his or her condition, as prescribed by regulations in this chapter or compatible laws and/or by the *North American Standard Out-of-Service Criteria*, would likely cause an accident or a breakdown. An *out of service order* shall be used to declare drivers out of service.

(a)(1)(i) No commercial motor vehicle driver declared out of service shall operate any commercial motor vehicle until the conditions required by the *out of service order* have been satisfactorily completed and until that driver may lawfully do so under the rules of this chapter.

(a)(1)(ii) No motor carrier shall require or permit any commercial motor vehicle driver declared out of service to operate any commercial motor vehicle until the conditions required by the *out of service order* have been satisfactorily completed and until that driver may lawfully do so under the rules in this chapter.

(a)(1)(iii) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.

(a)(1)(iv) Drivers who are declared out of service does not alter the hazardous materials requirements prescribed in §397.5 pertaining to attendance and surveillance of commercial motor vehicles.

**(a)(2) Vehicles.** Authorized enforcement personnel shall declare and mark out of service any commercial motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown as prescribed by regulations in this chapter or compatible laws and/or by the *North American Standard Out-of-Service Criteria*. An *out of service order* shall be used to mark vehicles out of service.

(a)(2)(i) No motor carrier shall require or permit any person to operate nor shall any person operate any commercial motor vehicle declared and marked out of service until all repairs required by the *out of service order* have been satisfactorily completed. The term operate as used in this section shall include towing the vehicle, except that vehicles marked out of service may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an out of service vehicle shall not be operated unless such combination meets the performance requirements of this chapter except for those conditions noted on the Driver Vehicle Examination Report.

(a)(2)(ii) No person shall remove the *out of service order* from any commercial motor vehicle prior to completion of all repairs, required by the *out of service order*.

**(a)(3) Motor Carriers.** Authorized enforcement personnel shall declare and mark out of service any commercial motor vehicle operating under the registration and/or operating authority of a motor carrier who has been issued an *out of service order* pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the *North American Standard Out-of-Service Criteria*.

(a)(3)(i) No motor carrier shall require or permit any person to operate nor shall any person operate any commercial motor vehicle operating under the registration and/or operating authority of a motor carrier who has been issued an *out of service order* pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the *North American Standard Out-of-Service Criteria*

until all conditions required by the *out of service order* have been satisfactorily completed. The term operate as used in this section shall include towing the vehicle, except that vehicles marked out of service may be towed away by means of a vehicle using a crane or hoist.

(a)(3)(ii) No person shall remove the *out of service order* from any commercial motor vehicle prior to satisfactory completion of all conditions required by the *out of service order*.

**(b) Personnel authorized to perform commercial motor vehicle inspections** — Safety Inspectors are authorized to perform inspections of commercial motor vehicles.

(b)(1) Commercial Motor Vehicle Inspections are to be conducted in accordance with the *North American Standard Inspection Procedures* and *North American Standard Out-of-Service Criteria*, which are incorporated by reference.

(b)(2) CVSA Inspector Certification policies and procedures are incorporated by reference.

(b)(3) The Director of the *Federal Register* has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information and copies may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036. Phone number (202) 775-1623. All materials incorporated by reference are available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1220 New Jersey Avenue, SE, Washington, DC 20590; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to:

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**(c) Prescribed inspection report** — The Driver Vehicle Examination Report shall be used to record results of driver/vehicle inspections conducted by Safety Inspectors authorized in paragraph (b) of this section.

**(d) Disposition of Driver Vehicle Examination Report.**

(d)(1) The driver of any motor vehicle receiving a Driver Vehicle Examination Report under paragraph (c) of this section shall deliver it to the motor carrier operating the vehicle upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle within 24 hours, the driver shall immediately mail the report to the motor carrier.

(d)(2) Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.

(d)(3) Within 15 days following the date of the inspection, the motor carrier shall

(d)(3)(i) Certify that all violations noted have been corrected by completing the "Signature of Carrier Official, Title, and Date Signed" portions of the form; and

(d)(3)(ii) Return the completed Driver Vehicle Examination report by mail, fax or e-mail to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business or where the driver/vehicle is housed for 12 months from the date of the inspection. If the motor carrier mails the form, delivery is made on the date it is postmarked.

### **Justification**

Currently the term "out of service" and its applicability is used in several locations in the FMCSRs and is used in different contexts in terms of what "entity" it applies to and how – driver, vehicle or motor carrier. In addition, there are limitations in the regulations in terms of what enforcement authority exists relative to this issue, and who is authorized to take action on drivers and/or motor carriers who choose to violate the terms and conditions of an out of service order, declaration or notice prior to the conditions of the order being rectified/satisfied.

There is also some confusion in the field in terms of what types of "orders" apply to what entity(ies) and under what conditions the out of service order(s) can be honored/enforced by others. An aspect of this that continues to cause some confusion in the field is the difference between the terms out of service "orders", out of service "declarations" and an out of service "notice". The "orders" are typically issued to *motor carriers* for being ordered to cease operations due to findings from a Compliance Review, Safety Audit, Enforcement Case or some other administrative action. The "declarations" are typically issued roadside due to findings discovered during a roadside inspection conducted by law enforcement on a *driver and/or vehicle*. In this petition we attempt to clear this confusion up by using common terminology. On September 4, 2003 CVSA Petitioned the Agency on a similar issue as it relates to the enforcement of Operating Authority.

There are also redundancies in several locations of the FMCSRs as they relate to the applicability and handling of OOS Orders. In particular, Parts 386, 390, 392, 395 and 396 all address this issue in various ways, shapes and forms.

Complicating this issue somewhat is the fact that the FMCSRs apply to operations and operators in the United States, while the *North American Standard Out-of-Service Criteria* (OOSC) are enforcement guidelines that apply across all of North America.

As it related to drivers, one of the concerns leading to this need for change is if a driver violates a roadside out of service order for a record of duty status violation and is stopped locally or in another state by another inspector prior to the completion of the time required to be out of service, the new inspector cannot place the driver out of service if the violation no longer exists. For example: A driver is placed out of service for not having 7 days of records of duty in his/her possession – he/she is missing three days of log sheets and placed out of service for 10 hours. The driver takes two hours off, catches the log book up and drives off. When the new inspector stops the driver, an inspector can cite the driver for 395.13(d)(1), but cannot place the driver out of service as the original violation has been corrected, but the driver did not comply with the out of service order requirements. We believe making the changes suggested here will help close this loophole and help enable enforcement to take action to enforce the OOS order.



CVSA recently made a change to the OOSC that will help to enhance enforcement on this specific issue in the future. This change will take effect April 1, 2008 and will align the OOSC with [existing] 49 CFR §395.13(d):

***Part I, Item 10. Driver's Record of Duty Status – U.S.***

***c. Hours of Service Out-of-Service Order (See footnote 9)***

*Driver violating any roadside out-of-service order regarding hours of service. 395.13(d)  
Place driver Out-of-Service for ten (10) consecutive hours.*

***FOOTNOTES FOR DRIVER'S RECORD OF DUTY STATUS – U.S.***

*9. The driver would not be placed out of service, if the driver has taken time off equivalent to the original out-of-service order.*

While CVSA believes we have made some progress on this issue in terms of establishing the authority to take enforcement action (i.e. Operating Authority) on some of these administrative actions, we acknowledge more needs to be done to further these activities, both in terms of providing awareness to law enforcement to encourage these actions as well as making accommodations in the *North American Standard Out of Service Criteria*.

We believe FMCSA can provide a measure of assistance in this matter by making some changes to the FMCSRs to bring more clarity to this issue in terms of who has the authority to enforce OOSC Orders, under what conditions and to what entities. In most cases, the regulatory framework already exists to enable this, but this petition attempts to bring the disparate, disconnected and redundant sections together in one location in an attempt to simplify the regulations and make them more clear to law enforcement. We are also taking action on this issue to close loopholes in the regulations and to strengthen law enforcement's ability to take action on gross violators of the safety regulations and those who choose to disregard the law.

We also believe the changes being suggested herein will help to further uniformity and reciprocity between law enforcement personnel at the federal, state and local levels in the U.S., Canada and Mexico.

The Alliance 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.

CVSA appreciates your attention to this matter and are ready, able and willing to provide any assistance necessary. We value the dedication and commitment of our partner organizations such as FMCSA in the activities of CVSA and your assistance in supporting our mission of *Promoting Commercial Motor Vehicle Safety and Security*.

If you have further questions or comments, please do not hesitate to contact me by phone at 202-775-1623, ext. 109 or by e-mail at [stephenc@cvsa.org](mailto:stephenc@cvsa.org).

Sincerely,

A handwritten signature in black ink that reads "Stephen F. Campbell". The signature is written in a cursive style with a large initial 'S'.

Stephen F. Campbell  
Executive Director

Cc: John E. Harrison, President, CVSA  
Peter Hurst, Program Initiatives Chair, CVSA  
Gerry F. Krolikowski, Driver Committee Chair, CVSA  
Kerri Wirachowsky, Vehicle Committee Chair, CVSA  
Randy J. West, Training Committee Chair, CVSA