

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5
AMEND ARTICLE 7.5, SECTION 1239

COMMERCIAL VEHICLE SAFETY ALLIANCE, NORTH AMERICAN STANDARD OUT-OF-SERVICE CRITERIA, APRIL 1, 2017 (CHP-R-17-07)

PROBLEM

Major portions of the Commercial Vehicle Safety Alliance (CVSA), North American Standard (NAS) Out-of-Service (OOS) Criteria, April 1, 2016, Edition, are incorporated by reference in current regulations. This criteria outlines conditions by which a commercial vehicle may be placed OOS as a result of an inspection by an authorized representative of the California Highway Patrol (CHP). The CHP personnel utilize these criteria for determining whether a vehicle, the cargo, and/or driver is in an unsafe condition which would likely constitute a hazard on the highways and should be placed OOS. The CVSA OOS Criteria is widely used across North America. The CVSA reviews and updates the criteria annually, and in order to remain consistent with other states, Canada, and Mexico, the CHP must update its regulations to reflect the most current OOS criteria available.

PURPOSE AND NECESSITY OF REGULATIONS

The CHP proposes to update the incorporation, by reference, of the CVSA, NAS OOS Criteria, April 1, 2016, Edition, to the CVSA, NAS OOS Criteria April 1, 2017, Edition, in Title 13, California Code of Regulations (CCR). The intent of this criteria is to maintain specific guidelines for determining whether a vehicle, the cargo, and/or driver is in such an unsafe condition that it would likely constitute a hazard on the highways. Additionally, the criteria includes other non-substantive changes. This criteria provides consistency for California, other states, Canada, and Mexico, and maintains a regulatory basis for enforcement efforts as they relate to commercial vehicle OOS criteria. Most OOS criteria listed are violations of statutes of the California Vehicle Code (CVC) or Title 13, CCR. Updating regulations to reflect the most current edition is necessary to continue to provide the regulatory authority to place a driver and/or vehicle OOS and to issue a citation. Additionally, Title 49, Code of Federal Regulations require states to remain compatible with federal regulations¹. Furthermore, states operating under the Motor Carrier Safety Assistance Program are required to maintain compatibility in order to receive federal funding². State regulations do not incorporate the current CVSA OOS Criteria; therefore, an inconsistency between state and federal regulations exists.

¹ Section 355.25 of Title 49, Code of Federal Regulation (CFR)

² Section 350.331, Title 49, CFR

Section 34501(a)(1) CVC authorizes the CHP to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Sections 34500 and 34500.3 CVC. Additionally, Section 2402 CVC provides the CHP Commissioner with the authority to, “make and enforce such rules and regulations as may be necessary to carry out the duties of the department,” and Section 24004 CVC provides the authority for the CHP to place vehicles OOS (Attorney General’s Opinion NS 2520) in order to ensure safety.

SECTION BY SECTION OVERVIEW

§1239. Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria.

The CHP proposes the CVSA, NAS OOS Criteria, April 1, 2017 Edition, be incorporated by reference into Title 13, CCR. The CVSA, NAS OOS Criteria is a document that is annually reviewed and updated by the CVSA, and encompasses a vast cross section of industry and public safety concerns. The OOS Criteria is an administrative procedure which has been developed to aid the law enforcement officer in determining when a defect or violation has deteriorated to a point where it is likely to result in a breakdown or accident, and must be repaired or corrected before the vehicle and/or driver are allowed to operate on the highways of North America. It is also important to note the CVSA consists of representatives from law enforcement; truck and bus companies; manufacturers; safety product and service providers; and insurance companies. The adoption is necessary to maintain consistency in the inspection processes across North America and to maintain a high level of safety upon the highways.

Changes to the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria (April 1, 2016, Edition):

Existing Text: Times New Roman 12 point font.

Additions: Times New Roman 12 point font with single underline.

Deletions: ~~Times New Roman 12 point font with strikethrough.~~

Part I

NORTH AMERICAN STANDARD DRIVER OUT-OF-SERVICE CRITERIA

POLICY STATEMENT

~~FMCSR code references in the North American Standard Out-of-Service Criteria are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.~~

*4. DRIVER MEDICAL/PHYSICAL REQUIREMENTS

*b. Medical Certificate

- * (4) Operating a non-CDL property-carrying vehicle without a valid medical certificate in possession or on file with the state driver licensing agency. If the driver fails to produce a medical certificate or has an expired medical certificate and has a previous history of failing to produce a medical certificate, or having an expired medical certificate. (391.41(a)) **Declare driver out of service.**

***NOTE:** A Canadian driver operating a CMV in the U.S. presenting a Class 5 license from any jurisdiction, a Class D or G from Ontario, or Class 3 from New Brunswick, shall also possess possessing a valid Provincial or Territorial license of the proper class, other than Class 5 or G, includes a valid Medical Certificate. A Class 5 or G license shall be accompanied by other evidence of compliance with medical requirements (e.g., certificate, endorsement, etc.).

Inspection Bulletin 2016-01 – Update: Canadian Driver’s Licenses and Required Proof of Medical Certification

*9. DRIVER’S RECORD OF DUTY STATUS – U.S.

*a. Property-Carrying Vehicles (395.3)

- * (4) No Record of Duty Status (~~Log Book~~ See Footnotes 11, 12, 15, 16 and 17)

No record of duty status in possession when one is required. (395.8(a))
Declare driver out of service for ten (10) consecutive hours.

- * (5) No Previous 7 Days (See Footnotes 2, 10 and 14)

Failing to have in possession a record of duty status for the previous seven (7) consecutive days. (395.8(k)(2), see exception 395.13(b)(3))
Declare driver out of service for ten (10) consecutive hours.

- * (6) False Record of Duty Status (~~Log Book~~ See Footnote 13)

A required record of duty status that does not accurately reflect the driver's actual activities and duty status (including time and location of each duty status change and the time spent in each duty status) in an apparent attempt to conceal a violation of an hours of service limitation. (395.8(e))
Declare driver out of service for ten (10) consecutive hours.

*b. Passenger-Carrying Vehicles (395.5)

- * (4) No Record of Duty Status (~~Log Book~~ See Footnotes 11, 12, 15, 16 and 17)

No record of duty status in possession when one is required. (395.8(a))
Declare driver out of service for eight (8) consecutive hours.

*(5) No Previous 7 Days (See Footnotes 2, 10 and 14)

Failing to have in possession a record of duty status for the previous seven (7) consecutive days. (395.8(k)(2)), see exception 395.13(b)(3))
Declare driver out of service for eight (8) consecutive hours.

*(6) False Record of Duty Status (~~Log Book~~ See Footnote 13)

A required record of duty status that does not accurately reflect the driver's actual activities and duty status (including time and location of each duty status change and the time spent in each duty status) in an apparent attempt to conceal a violation of an hours of service limitation. (395.8(e))
Declare driver out of service for eight (8) consecutive hours.

**Footnotes for driver's record of duty status – U.S.*

*11. Beginning December 18, 2017, if a driver/carrier is using an electronic logging device that is not authorized by the Federal Motor Carrier Safety Administration per 395.22(a), the driver/carrier is considered to have no record of duty status.

*12. Beginning December 18, 2017, if a driver is unable to produce or transfer the data an automatic on-board recording device or electronic logging device to an authorized safety official as required by 395.15(b) or 395.24(d), the driver is considered to have no record of duty status.

*13. Beginning December 18, 2017, if a driver indicates use of a special driving category as defined by 395.28(a) when not involved in that activity, the driver's log is considered to be false.

*14. Beginning December 18, 2017, if a driver with a malfunctioning automatic on-board recording device or electronic logging device fails to reconstruct logs for the current twenty-four (24)-hour period and the previous seven (7) days as required by 395.15(f) or 395.24(a)(2), the driver is considered to not have the previous seven (7) days of logs.

*15. Beginning December 18, 2017, if a carrier does not repair a malfunctioning electronic logging device within eight (8) days, or obtain an extension from the Federal Motor Carrier Safety Administration Division Administrator as required by 395.34(d), the driver is considered to have no record of duty status.

*16. Beginning December 18, 2017, if a driver does not log into the electronic logging device as required (see 395.22(e)), the driver is considered to have no record of duty status.

*17. Beginning December 18, 2017, if a driver is required to have an electronic logging device and the vehicle is not equipped with an electronic logging device (or an

automatic on-board recording device until December 17, 2019), the driver is considered to have no record of duty status.

Part II

NORTH AMERICAN STANDARD VEHICLE OUT-OF-SERVICE CRITERIA

POLICY STATEMENT

~~FMCSR code references in the North American Standard Out-of-Service Criteria are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.~~

***4. DRIVELINE/DRIVESHAFT**

***b. Universal Joint**

~~*(3) Any missing, broken or loose (with hand pressure only) universal joint bearing cap bolt~~ **or retainer bolt.** (396.3(a)(1))

***10. SUSPENSIONS**

***e. Adjustable Axle(s)/Sliding Trailer Suspension System**

~~*(6) The sliding suspension attachment member (undercarriage body rail) attachment fasteners are missing along a 4 foot (1.2 m) continuous length of the body rail.~~ (396.3(a)(1))

~~*(7) The sliding suspension attachment member (undercarriage body rail) on either side exhibits 50 percent or more of attachment fasteners missing.~~ (396.3(a)(1))

***15. BUSES, MOTORCOACHES, PASSENGER VANS OR OTHER PASSENGER CARRYING VEHICLES – EMERGENCY EXITS/ELECTRICAL CABLES AND SYSTEMS IN ENGINE AND BATTERY COMPARTMENTS/SEATING**

***b. Electrical Cables and Systems in Engine and Battery Compartments**

~~(5) Any visible leaking of lubricant (i.e., engine supplied oil pressure) from electrical component such as alternator, auxiliary heater, ect.~~ (396.5(b))

Part IV

NORTH AMERICAN STANDARD ADMINISTRATIVE OUT-OF-SERVICE CRITERIA

POLICY STATEMENT

~~FMCSR code references in the North American Standard Out of Service Criteria are simply recommendations to help inspectors find an appropriate citation. Other violation codes may be more suitable for a specific condition.~~

***2. INACTIVE/NO USDOT NUMBER**

*a. Inactive USDOT Number

When required to have a USDOT number, operating a commercial motor vehicle with a “de-activated” or “inactive” USDOT number. (392.9(b)) **Declare vehicle out of service until USDOT number is “active.”**

*b. No USDOT Number

Operating a commercial motor vehicle with no USDOT number when required and a history of operating a commercial motor vehicle with no USDOT number when required. (392.9(b)) **Declare the vehicle out of service until a USDOT has been obtained.**

***Inspection Bulletins**

***2601-01 – Update: Canadian Driver’s Licenses and Required Proof of Medical Certification (Created 09-22-16)**

HISTORY/BACKGROUND

In 1980, the Western States CVSA was established when agencies from seven western states and two Canadian provinces met to discuss common needs and ways to create uniformity of inspection standards, procedures, and practices with the intent of improving commercial vehicle safety. The Western States CVSA brought together representatives from federal, state, and provincial governmental agencies, as well as the private industry, to develop common standards and practices. As a result, the organization established the following initial goals:

- Avoid duplication of inspection efforts by the various jurisdictions;
- Improve the safety of equipment being operated on all highways;
- Minimize inspection delays for the operating industry;
- Increase the number of on-highway inspections;

- Bring about an overall improvement in commercial vehicle and hazardous materials transportation safety;
- Improve commercial driver safety performance;
- Improve compliance with the hazardous materials transportation regulations; and
- Bring about improvements in the collection, dissemination, and use of operational motor carrier safety data and research findings.

In July 1981, the CHP entered into a Memorandum of Understanding (MOU) with the Western States CVSA. The purpose of the MOU was to maximize the use of commercial motor vehicle driver and cargo inspection resources, avoid duplication of efforts in expanding the number of inspections performed in a region, advance uniformity of inspections, and minimize delays incurred by industry as a result of this type of enforcement activity. As a Western States CVSA member, California agreed to implement procedures pursuant to minimum inspection criteria and OOS criteria. Shortly thereafter, in 1982, the Western States CVSA became the CVSA. In an effort to maintain consistency and uniformity among the member states, the CVSA established the following:

- The Uniform North American Commercial Vehicle Standard Inspection Procedures;
- The adoption of the uniform OOS criteria;
- The adoption of the uniform severity rating of OOS violations and maximum fine schedules;
- The development of uniform training curriculum for certified CVSA inspectors;
- The development of uniform inspection procedures for vehicles transporting spent nuclear fuel, high-level radioactive waste, and transuranics (commonly known as the Enhanced Inspection Procedure);
- The adoption of uniform bus inspection procedures; and
- The development of uniform cargo tank inspection procedures.

The OOS criteria is developed through the CVSA with participation from federal, state, and provincial officials, as well as industry representatives, including appropriate manufacturers and other interested parties. Before revisions to the OOS criteria are presented for adoption, a need for the change must be established by accompanying documentation, such as:

- Accident experience/statistics;
- Recommendations, including technical analysis;
- A description showing a new technology; and

- A need for redefinition or clarification of existing criteria.

Any modification to the criteria requires ratification by the general membership at the annual CVSA conference held each fall. Approved modifications are published and become effective on April 1st of each year, with the exception of 2004, when the modifications became effective January 1st.

The CVSA, NAS OOS Criteria is not contained in federal safety regulations. It is an administrative procedure which has been developed to aid the law enforcement officer in determining when a defect or violation has deteriorated to a point where it is likely to result in a breakdown or accident, and must be repaired or corrected before the vehicle and driver are allowed to operate on the highways of North America. It is also important to note the CVSA consists of representatives from law enforcement; truck and bus companies; manufacturers; safety product and service providers; and insurance companies.

DOCUMENT INCORPORATED BY REFERENCE

The CHP has determined it would be cumbersome, unduly expensive, or otherwise impractical to publish the CVSA, NAS OOS Criteria, April 1, 2017, Edition, within the CCR.

The documents listed below lend support or are otherwise related to this proposed rulemaking. Copies of these documents, or relevant portions thereof, can be obtained from the CHP by contacting the Commercial Vehicle Section (CVS) at (916) 843-3400, 1-800-735-2929 (TT/TDD), 1-800-735-2922 (Voice), or via facsimile at (916) 322-3154. The rulemaking file is available for inspection at CHP, CVS, 601 North 7th Street, Sacramento, CA 95811. Interested parties are advised to call for an appointment.

- CVSA, NAS OOS Criteria; April 1, 2016, Edition.
- CVSA, NAS OOS Criteria; April 1, 2017, Edition.

Documents Relied Upon:

- Attorney General Opinion NS 2520 (Authority to place vehicles OOS).
- Memorandum of Understanding between the CVSA and CHP.

Copies of the CVSA, NAS OOS Criteria April 1, 2017, Edition, are also made available to the public through the CVSA Web site at www.cvsa.org or by mail at: Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770. The CVSA telephone number is (301) 830-6143, and the facsimile is (301) 830-6144.

ALTERNATIVES

The CHP has not identified, nor been made aware of, an alternative which would be as effective and less burdensome to affected parties than the proposed action. Additionally, the CHP has not identified an alternative which would be more cost effective to affected parties and equally effective in implementation of the statutory policy or other provision of law.

Alternatives Identified and Rejected:

Alternative 1: Do nothing and allow outdated reference to remain in Title 13, CCR: This alternative was not selected because the continued use of outdated criteria would defeat the purpose of promoting uniformity and consistency with CVSA partners.

Alternative 2: Discontinue use of CVSA, NAS OOS Criteria: Discontinuing the use of the CVSA, NAS OOS Criteria as an enforcement tool by CHP officers may result in:

- Increased numbers of unsafe commercial vehicles operated on California highways;
- Lack of inspection uniformity with CVSA partners; and
- Increased equipment-related traffic collisions involving commercial vehicles.

The estimated cost of this alternative could exceed one million dollars. This estimated figure was derived based on the additional time accident investigators may spend investigating collisions resulting from increased numbers of unsafe vehicles on California highways. Additional costs could ensue when a commercial officer, not realizing or recognizing a vehicle has already been inspected outside of California, performs another inspection on the vehicle.

Alternative 3: Update Title 13, CCR to the current revision of the CVSA, NAS OOS Criteria: This is the alternative selected as it meets the safety needs of the public and the Department.

Performance vs. Prescriptive Standards

Due to the nature of the equipment (brakes, frames, fuel systems, etc.) and the standards (driver licenses, hours of service, etc.) to which this criteria will be applied, it is necessary to apply prescriptive standards. Equipment service limits are critical in commercial vehicles and must be closely adhered to in order to ensure the proper functioning of the equipment. Small deviations in critical component dimensions could mean the difference between an item of equipment that works properly and an item that fails completely. A critical item of equipment that fails on any vehicle could lead to a collision and possibly injury or death. Non-equipment related standards are also prescriptive and critical. In order to properly and safely operate a vehicle, a driver must pass a written knowledge test as well as demonstrate an ability to operate the vehicle.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or Elimination of Jobs in the State of California

The CHP evaluated whether jobs would be affected in the State of California. There is no indication that businesses operating vehicles which are subject to the NAS OOS criteria will result in hiring more personnel, and it is not anticipated it will lead to layoffs or downsizing as a direct result of this rulemaking action. Additionally, use of the NAS OOS criteria is prevalent, adopting an updated edition, will not affect jobs. Due to the fact that this proposed rulemaking is merely updating the annual criteria to align with federal regulation, which is critical in maintaining safety standards for a vehicle, cargo, and driver, this proposed rulemaking will have no impact on jobs. Therefore, the CHP has determined this rulemaking action will neither create, nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California. Based on the above findings, this proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

Creation, Expansion or Elimination of Businesses in the State of California

The CHP evaluated whether businesses would be affected in the State of California. No adverse impact was identified. Businesses involved in the transportation of interstate and intrastate commerce via commercial trucking may choose to purchase the current CVSA, NAS OOS criteria at a cost of approximately \$45 annually at www.cvsa.org. These businesses will not otherwise experience any greater economic effects due to the implementation of the CVSA, NAS OOS Criteria, April 1, 2017, Edition. Additionally, the CHP has made the initial determination this proposed regulatory action will not affect the creation of new businesses, the expansion of existing businesses, or the elimination of existing businesses.

Benefits of the Regulation

The CHP has evaluated the potential benefits of this proposed regulatory action. This proposed regulatory action will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and the environment by ensuring the safest commercial motor vehicles are operated on public roadways therefore, contributing to the safety of the motoring public. Items listed in the NAS OOS criteria are already within existing requirements for industry. The CHP has made an initial determination that this proposed regulatory action:

- Will have no effect on housing costs;
- Will not impose new mandates upon local agencies or school districts;
- Will involve no nondiscretionary costs or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code require reimbursement, no costs or savings to any state agency, nor costs or savings in federal funding to the state;

- Will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California;
- Will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment by providing a regulatory basis for enforcement efforts as they relate to the CFR;
- Will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states; and
- Will provide safety to the environment by providing an updated regulatory authority for enforcement efforts.

FISCAL IMPACT TO THE STATE

The CHP has determined these regulation amendments will result in:

- No significant increase in costs for owners or operators of commercial vehicles. This rulemaking action will simply provide a regulatory basis to enforce the OOS criteria which is already being used by the CHP and throughout North America;
- No significant compliance cost for persons or businesses directly affected;
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public;
- No impact on the level of employment in the state; and
- No impact on the competitiveness of this state to retain businesses, as state, provincial, and national governments throughout North America have already adopted these requirements.