

the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue an NPRM at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

#### **Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this document does not contain a significant regulatory action under Executive Order 12866. The FHWA does not know what direction this rulemaking will take, however, it does not expect that this rulemaking will be inconsistent with any other agency actions or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The FHWA anticipates that the costs of any rulemaking action that might be implemented in response to comments received would be no greater than the motor carrier's current costs of complying with the regulatory requirements. At this preliminary stage, we do not anticipate that any regulatory action taken in response to comments introduced here would be of sufficient economic magnitude to warrant a full regulatory evaluation.

#### **Regulatory Flexibility Act**

Although this document does not include any specific proposal at this time, the FHWA believes this action will not lead to a proposed rule that would have a significant economic impact on a substantial number of small motor carriers.

To meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), however, the FHWA would evaluate the effects on small entities of any rule promulgated in subsequent phases of this proceeding. Therefore, the agency is particularly interested in comments from small entities on whether there are impacts from this action and how those impacts may be minimized.

#### **Unfunded Mandates Reform Act of 1995**

The FHWA will analyze any proposed rule to determine whether it would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

#### **Executive Order 12612 (Federalism Assessment)**

The FHWA will analyze any proposed rule using the principles and criteria contained in Executive Order 12612 to determine whether the proposal would have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA does not expect that any action developed in response to comments introduced here would infringe upon the State's ability to discharge traditional State governmental functions because interstate commerce, which is the subject of these regulations regarding interstate operations, has traditionally been governed by Federal laws.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### **Paperwork Reduction Act**

The FHWA does not anticipate that any rulemaking action implemented in subsequent phases of this proceeding would result in changes in the collection of information requirements that are currently approved. The FHWA does not foresee the likelihood of increased paperwork burdens because what is being considered in this action is an evaluative process to determine, in part, how regulated motor carriers are complying with existing regulations. Should revisions to the safety assessment and rating system be proposed in this proceeding, however, the agency will evaluate carefully the information collection implications of such revisions under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### **National Environmental Policy Act**

The agency will analyze any action implemented in subsequent phases of this proceeding for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) to determine whether the action would affect the quality of the environment.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be

used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 385**

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

Issued on: July 10, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 98-19294 Filed 7-17-98; 8:45 am]

BILLING CODE 4910-22-P

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

#### **49 CFR Parts 395 and 396**

[FHWA Docket No. FHWA-98-3414]

RIN 2125-AE35

#### **Out-of-Service Criteria**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); request for comments.

**SUMMARY:** The FHWA seeks public comment concerning use of the "North American Uniform Out-of-Service Criteria" (OOS Criteria). During roadside inspections, Federal, State and local safety inspectors use the OOS Criteria as a guide in determining whether to place commercial motor vehicles (CMVs) or drivers of CMVs out-of-service. The OOS Criteria is a list of those violations which are so unsafe that they must be corrected before operations can resume. Correction of other less severe violations can be deferred to a more convenient time and place. The FHWA is seeking public comment on the future scope and effect of the OOS Criteria, which are not part of the Federal Motor Carrier Safety Regulations (FMCSRs). The agency is also seeking comment on the need to formalize these guidelines.

**DATES:** Comments should be received on or before September 18, 1998.

**ADDRESSES:** Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Schultz, Jr., Office of Motor Carrier Research and Standards (HCS-10), (202) 366-4009, or Mr. Charles Medalen (HCC-20), Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL):<http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).

**What is the "North American Uniform Out-of-Service Criteria"?**

The OOS Criteria is a reference guide developed and maintained by the Commercial Vehicle Safety Alliance (CVSA) to assist enforcement personnel in deciding whether to allow a CMV or driver, found in violation of law, to continue in commerce. The CVSA is an association of State, local, provincial and Federal officials responsible for the administration and enforcement of motor carrier safety laws and regulations in the United States, Canada, and Mexico. The CVSA provides a mechanism for the development of consensus upon issues of common concern. The OOS Criteria is a detailed list of conditions which the CVSA membership has agreed are sufficiently hazardous to justify restricting further operation by a driver or a CMV. Each year the CVSA reviews the OOS Criteria, and makes necessary changes.

**How are the OOS Criteria Used?**

The majority of the safety violations found during inspections at the roadside relate to the condition of the CMV. Some of these violations can be corrected at the roadside; for example, a driver can repair a turn signal which is not functioning. Others must be corrected at a repair facility. If a

particular safety violation presents no immediate or undue threat to public safety, it would be an unnecessary interruption in the flow of commerce and perhaps even cause a traffic safety problem to require the motor carrier to undertake corrective action on site. In such cases, the assessment of a warning, fine, or other penalty is sufficient; the repairs necessary to prevent further deterioration or ultimately correct the condition may safely be deferred to another time and place.

In this sense, the OOS Criteria are usually less stringent than the FMCSRs. For example, a CMV with a single headlamp incapable of producing a low beam during night-time driving does not comply with the FMCSRs (49 CFR 393.9). The OOS Criteria, however, are not operable until both headlamps are incapable of producing a low beam. In this example, the inspector would cite the motor carrier for the violation of the FMCSRs, but permit the CMV to proceed so that repairs to the headlamp can be made at a more convenient time and place. In cases such as this, the OOS Criteria serve as enforcement tolerances because the violation of the FMCSRs is allowed to continue. In other instances, provisions of the OOS Criteria correspond precisely with the FMCSRs. For example, a CMV with only one rear turn signal working properly does not comply with the FMCSRs (49 CFR 393.11). The OOS Criteria also provides that the CMV should not be moved until both signals are in working order.

State inspectors with general police powers have authority under State law to stop and seize summarily. All States participating in the Motor Carrier Safety Assistance Program (MCSAP) have agreed that their inspectors will use the OOS Criteria when exercising this power. If an inspector, during an inspection activity, observes inherently dangerous conditions which are identified in the OOS Criteria, the inspector may issue an out-of-service order. Motor carriers and their drivers are able to anticipate reasonably uniform treatment of violations in all jurisdictions throughout this country because of the general acceptance of the OOS Criteria.

The majority of drivers who are placed out-of-service are so treated because they are driving in violation of the maximum hours-of-service rules under 49 CFR part 395. Such violations are usually corrected by the driver being off-duty at least eight consecutive hours.

An FHWA inspector at roadside may order a motor carrier's driver or CMV to

cease operation.<sup>1</sup> When conducting roadside vehicle and driver inspections, the FHWA uses the OOS Criteria in deciding whether to allow particular motor carriers, CMVs, or drivers to proceed in violation of the FMCSRs.

**How has the OOS Criteria Evolved?**

Out-of-service criteria for drivers and CMVs have been in existence over forty years. Prior to its absorption into the United States Department of Transportation in 1967, the Bureau of Motor Carrier Safety (BMCS), a part of the former Interstate Commerce Commission, developed the first out-of-service criteria in carrying out its inspection function. Those criteria continued in use by the FHWA safety investigators thereafter.

In 1980, the FHWA conducted a pilot program to assess the potential of States to enforce CMV safety rules at the same time they enforce the restrictions on the size and weight of CMVs. Four States participated and generated results which were a factor in the enactment of legislation in 1982 authorizing the Motor Carrier Safety Assistance Program. That program, which provides funding to the States in their efforts to enforce motor carrier safety regulations, has been quite successful.

The States were brought together on another front by their search for a solution to the problems created by the patchwork of diverse State laws and regulations governing motor carrier safety. The States came to realize that a larger number of motor carriers could comply with safety laws and regulations if greater uniformity in enforcement were achieved. Several western States and Canadian Provinces formed the CVSA to reach agreement on issues such as inspections and out-of-service criteria. With the subsequent encouragement and support of the FHWA through the MCSAP, the CVSA expanded dramatically. Soon all 50 States and the District of Columbia became partners with the FHWA by adopting and enforcing, with minor variances, the FMCSRs and the Hazardous Materials Regulations (HMRs) of the Research and Special Programs Administration, and by using uniform inspection criteria.

In 1988, the FHWA published a comparison of the OOS Criteria and the FHWA's inspection criteria in 49 CFR Ch. III, subchapter B, appendix G. The fact that this comparison is so outdated and of little use today demonstrates one of the issues discussed below in the options for further regulatory action.

<sup>1</sup> See 49 CFR 395.13(a), and 396.9(c).

The Motor Carrier Act of 1991 (the Act) prescribed certain penalties for motor carriers or drivers found to have violated out-of-service orders (49 U.S.C. 31310(g)(2)). The Act made the adoption of such penalties by the States, and a program of random reinspection of vehicles placed out-of-service, a condition for receipt of Federal safety funding under the MCSAP. The Congress also made a State's adoption of the penalties for violation of out-of-service orders a condition of continued receipt of the State's full allocation of highway construction funds (49 U.S.C. 31311). The FHWA published implementing regulations on May 18, 1994 (59 FR 26022) (codified in part at 49 CFR 383.5 and 390.5, definitions of "out-of-service criteria").

#### **What is the FHWA's Role in the Development of the OOS Criteria?**

The FHWA is a non-voting member of the CVSA, as are representatives of numerous trade organizations, such as the American Trucking Associations (ATA), the National Private Truck Council (NPTC), the Owner-Operator Independent Drivers Association, Inc. (OOIDA), and the National Tank Truck Carriers, Inc. (NTTC). Committees of the CVSA consider and recommend modifications to the OOS Criteria, which are then accepted or rejected by a vote of CVSA member jurisdictions. The revised OOS Criteria are then submitted to the FHWA for its use.

The FHWA's interest in the OOS Criteria is three-fold. First, as part of the MCSAP program, each State develops a Commercial Vehicle Safety Plan (CVSP) which the FHWA must approve before authorizing funds. At the present time, the CVSPs of all the States provide for use of the OOS Criteria in conducting driver, vehicle, and hazardous materials inspections at the roadside.

Second, the FHWA's own safety investigators use the CVSA OOS criteria in the limited number of roadside inspections they perform each year. By following the CVSA OOS criteria in determining whether to place a driver or vehicle out-of-service, the FHWA is promoting consistency with these State-developed criteria and further uniformity in treatment of carriers nationwide.

Third, the FHWA also uses the OOS Criteria indirectly in determining the safety fitness of motor carriers (49 CFR 385.5). The FHWA's safety ratings for motor carriers include three categories: Satisfactory, Conditional, or Unsatisfactory (49 CFR 385.7). The ratings are based on a number of factors, including compliance with the FMCSRs.

The FHWA has recently placed greater emphasis on the safety performance of motor carriers in the rating process, and this action has led to additional emphasis on the OOS Criteria. The FHWA considers the vehicle out-of-service experience of motor carriers when calculating the vehicle factor, one of the six components of a motor carrier's safety rating. Rather than taking all roadside violations into account, the FHWA considers only out-of-service violations on the presumption that, because they are more serious, they are more likely to reflect on the inspection, repair, and maintenance programs of motor carriers.<sup>2</sup>

#### **Why is the FHWA Undertaking This Action?**

The agency believes that the OOS Criteria serve as guides for enforcement personnel in the exercise of discretion. The inspector determines if there is a violation of the underlying substantive safety regulation, whether it be the FMCSRs, a State law or regulation compatible with the FMCSRs, or the HMRs. When this determination has been made, the inspector faces a second question: may this particular driver or vehicle resume operations immediately in the face of this violation? The inspector exercises his or her discretion in answering this question. The OOS Criteria serve as guidelines to help the inspector determine whether the condition that he or she is observing is sufficiently hazardous to warrant placing the driver or CMV out-of-service, or conversely, whether the condition is not serious enough to prevent the driver and CMV from proceeding in violation of the regulation, deferring the repairs until a more convenient time and location. Thus, the OOS Criteria take on the character of enforcement tolerances.

The FHWA is responding today, however, to a growing perception within the industry that the CVSA OOS

<sup>2</sup>The out-of-service history is drawn from the nearly 2 million vehicle inspections which are performed each year by the States participating in the MCSAP. If a motor carrier experiences a ratio of out-of-service inspections to "clean" inspections of 34 percent or greater (minimum of 3 inspections), the initial rating for the Vehicle Factor is Conditional. The FHWA believes setting the ratio, commonly called the "out-of-service rate," at 34 percent is appropriate because the national average is 33 percent.

For a more detailed explanation of the Safety Fitness Rating Methodology, please consult FHWA Docket No. 94-22; FHWA-97-2252 (59 FR 47203), and see two notices: (1) Notice of Proposed Rulemaking, Safety Fitness Procedures; Safety Ratings, May 28, 1997 (62 FR 28826), and (2) Final Rule, Safety Fitness Procedures, November 6, 1997 (62 FR 60035).

Criteria play a significant role in the enforcement of the FMCSRs, and that publication of the criteria as a part of the FMCSRs is therefore warranted. The FHWA believes that the time has come for a full discussion of the OOS Criteria: what are they; what is their purpose; how are they used; who is responsible for implementing them; and whether they are regulatory or merely guides for the use of necessary discretion in the enforcement of motor carrier safety.

The FHWA is undertaking this action because there has been criticism of the manner in which the CVSA OOS Criteria are currently utilized. On May 1, 1989, the Maine State Police petitioned the FHWA to incorporate the CVSA OOS Criteria by reference within the FMCSRs. On October 29, 1993, the CVSA, petitioned the FHWA to define "out-of-service criteria," and incorporate the CVSA OOS Criteria into the FMCSRs by reference. On June 13, 1994, the OOIDA filed a motion with the FHWA to stay the imposition of certain final FHWA rules pertaining to penalties for violation of out-of-service orders, and cited in support of its motion the failure of the FHWA to formally incorporate these standards within the FMCSRs (FHWA Docket No. MC-92-13; FHWA-97-2279 at 59 FR 26022).

On April 20, 1995, the National Tank Truck Carriers, Inc. petitioned the FHWA to propose a rulemaking to establish the OOS Criteria as an appendix to the FMCSRs. On June 10, 1997, the FHWA granted the NTTC's petition, stating as part of the order entered that the FHWA would "publish a rulemaking to discuss the entire issue and propose a resolution." This ANPRM initiates that rulemaking.

Public comment on the issues raised in this ANPRM will assist the FHWA in determining whether any further regulatory action is required.

#### **What Should be the Future Scope and Effect of the OOS Criteria?**

1. Maintain the current FHWA policy.

As stated above, the FHWA uses the current CVSA OOS Criteria in several ways. The FHWA has treated these criteria as enforcement tolerances, as guidelines for its own staff, and as acceptable alternatives for States to use in their State Enforcement Plans adopted under the Motor Carrier Safety Assistance Program. Although these criteria are mentioned in the Federal Motor Carrier Safety Regulations (see, e.g., 49 CFR sections 383.5 and 390.5, definitions of "out-of-service orders"), the criteria themselves have not been adopted by the FHWA pursuant to notice and comment rulemaking. As

noted above, some industry representatives believe that the FHWA's use of these criteria has evolved to the point where adoption of the criteria pursuant to notice and comment rulemaking is warranted and desirable.

As part of this rulemaking, the FHWA will consider the scope and effect of the OOS criteria and the use to which the FHWA puts these criteria. One possible alternative is to limit the use of the criteria in ways that do not require adoption of the criteria as regulations. Under its current policy, the FHWA considers the OOS criteria to be a tool to determine whether violations of the FMCSRs (or compatible State safety regulations) are so serious as to warrant ordering a motor carrier to cease using the driver or vehicle in question. The criteria themselves do not establish separate standards of conduct for regulated entities, nor is it intended that use of the criteria excuses other less serious violations of applicable safety regulations.

Accordingly, comment is requested on the fundamental question of how the FHWA should use any OOS criteria. Comment is also solicited on the desirability of adopting the OOS criteria after notice and opportunity for comment, even if such opportunity for further public participation is not required.

#### 2. Adoption of the OOS Criteria in the FMCSRs.

Comment is requested on the alternative of adopting the OOS criteria as part of the Federal Motor Carrier Safety Regulations, either because of the use to which the criteria is or should be put or because of the desirability of the opportunity for public participation inherent in the process of adopting these criteria as Federal regulations. If the FHWA should adopt out-of-service criteria by regulation, can the FHWA avoid undermining the general principle that compliance with all applicable safety regulations is required? Should the FHWA specifically require the use of such federally adopted out-of-service criteria by States as a condition of MCSAP, or could the adopted criteria be one of several acceptable sets of criteria States could use? How would, or should, adoption of such criteria limit the discretion of Federal and State safety investigators to address discovered driver and vehicle safety violations at the roadside? Should investigators be limited to issuing out-of-service orders only to cases that expressly meet the adopted criteria? Should investigators be required to issue out-of-service orders in all cases where the criteria are met? How much discretion should investigators retain to

address safety hazards discovered at the roadside that may not be precisely covered in the adopted criteria?

#### 3. How should out-of-service criteria be adopted?

In addition to the basic question of whether the FHWA should adopt these criteria as regulations, the FHWA is requesting comment on the most desirable way to accomplish any such adoption. As explained above, the existing criteria are developed by the CVSA. Section 12 of Pub. L. 104-113 (see 5 U.S.C. 272 note) directs agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies. The FHWA appreciates the work done by the CVSA in maintaining the current criteria, and recognizes the value of that effort. The FHWA is also mindful of the role of the States in the MCSAP program and the desirability of using State-developed criteria or standards in the MCSAP program whenever possible. Therefore, the FHWA is seeking specific comment on how the FHWA should adopt any out-of-service criteria. Should the FHWA, for example, consider adopting the CVSA criteria and incorporating them in the FMCSRs, either as an appendix to the FMCSRs or by seeking approval from the Director of the Office of the Federal Register to incorporate by reference the CVSA criteria into the FMCSRs? Should the FHWA set forth the text of any criteria adopted in the body of its safety regulations? What implications, if any, would there be for continued State development of out-of-service criteria if the FHWA adopts separate criteria or incorporates existing criteria? How can the FHWA best address the federalism implications of adopting out-of-service criteria that may be used by the States which have concurrent motor carrier safety jurisdiction? How can national uniformity be promoted, and how can maximum State and industry acceptance of the criteria be gained, by any proposed alternative adoption method?

#### Request for Comments

A copy of the CVSA OOS criteria has been placed in the docket and may be accessed and viewed electronically following the instructions provided at the beginning of the Supplementary Information section of this ANPRM. Copies of the OOS Criteria may also be obtained at offices of the Federal Highway Administration's Office of Motor Carriers located in each State. The telephone numbers of the State offices may be obtained by telephoning 1-800-832-5660.

The FHWA invites public comment on the OOS Criteria: What are they? Who should be responsible for implementing them? How should they be used? Are they appropriate for regulatory treatment, or should they remain as guides to the enforcement of motor carrier safety by participating jurisdictions? What should the scope and effect of the OOS Criteria be? Should they be referred to in the FMCSRs? If so, in what manner? Should they continue to be used in safety fitness determinations? The FHWA welcomes the presentation of alternatives to the approaches outlined in this document. The FHWA is not, however, seeking comment on the substance of the OOS Criteria at this time.

#### Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

#### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not significant within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the economic impact of the potential regulatory changes being considered in this rulemaking. Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with various alternative requirements. Comments, information, and data are solicited on the economic impact of any potential change.

#### Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the

FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), to carefully consider the economic impact of these potential changes on small entities. The FHWA solicits comments, information and data on these impacts.

#### Unfunded Mandates Reform Act

The FHWA will analyze any proposed rule to determine whether it would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

#### Executive Order 12612 (Federalism Assessment)

This action has been analyzed using the principles and criteria contained in Executive Order 12612. Because of the preliminary nature of this document, it is not possible to determine whether this proposal will have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA is presenting this rulemaking as an opportunity to air complex issues.

These issues appear to have federalism implications. For example, adoption by the FHWA of the OOS Criteria as part of the FMCSRs would have an effect on States and municipalities. By making the OOS Criteria a part of the FMCSRs, the FHWA would be exercising control over those criteria. The CVSA might experience a diminished role in the development of policy standards for the exercise of enforcement discretion. Its member States might likewise experience a reduced role in their relationships with the Federal government. Incorporation by reference within the FMCSRs might have less of a federalism impact. The FHWA would have to conduct a rulemaking whenever the CVSA developed revisions of the OOS Criteria. But, because the language of the OOS Criteria would be more directly under the control of the CVSA, the federalism impact would be less than in the first approach. Maintaining the current policy would appear to have minimal federalism impact. The State-Federal partnership which has been operative in this area would presumably continue, and the CVSA and its member States would continue to play a large role in the maintenance of the OOS Criteria.

#### Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding

intergovernmental consultation on Federal programs and activities do not apply to this program. Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.

#### Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and it has determined that this action would not have any effect on the quality of the environment.

#### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

**Authority:** 49 U.S.C. 31133, 31136, 31310, and 31502; sec. 345, Pub.L. 104-59, 109 Stat. 568, 613; and 49 CFR 1.48.)

Issued on: July 10, 1998.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 98-19153 Filed 7-17-98; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-98-4071; Notice 1]

RIN 2127-AH25

#### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Federal Motor Vehicle Safety Standard on occupant crash protection to provide greater flexibility regarding the location of the telltale for air bag on-off switches installed in new motor vehicles. It would do so by eliminating the requirement that the telltale be located on the vehicle dashboard. No change would be made to the separate existing requirement that the telltale must be clearly visible from all front seat seating positions. This proposal would also add a requirement that the telltale be located within the vehicle's interior. The proposal is being issued, in response to a petition for rulemaking, to make the telltale requirements in the standard consistent with those in the agency's regulation governing the retrofitting of used vehicles with air bag on-off switches.

**DATES:** Comments must be received by September 3, 1998.

**ADDRESSES:** Comments should refer to the docket and notice number of this notice and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590 (Docket Room hours are 10:00 a.m.-5 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS-11, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-2264. Fax: (202) 366-4329.

For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
- II. Details of the Proposal
- III. Proposed Effective Date
- IV. Rulemaking Analyses and Notices
- V. Submission of Comments

#### I. Background

This notice responds to a petition from Volkswagen of America, Inc. seeking to amend Federal Motor Vehicle Safety Standard No. 208 (FMVSS No. 208) by eliminating the current requirement that the telltale for air bag on-off (cutoff) switches in new motor vehicles be located on the vehicle dashboard. Under the proposed change, the telltale requirements for new vehicles equipped with an on-off switch