

ISSUE NUMBER

23-034-VEH

ISSUE NAME

396.7 - Unsafe Operation Forbidden

STATUS

Closed

Vehicle Committee

NAME

Abe Dunivin

AGENCY

Oregon Dept of Transportation

ADDRESS

455 Airport Road SE
Woodburn, Oregon 97071
United States

PHONE

15412072847

EMAILleonard.a.dunivin@odot.oregon.gov**SUMMARY OF ISSUE**

Occasionally we come across vehicles that are an imminent hazard and there is nothing in the OOS criteria to address the issue. This request for action is to come up with a solution to prevent vehicles that pose an imminent hazard to continue their trip unless they have complied with the OOS.

JUSTIFICATION OR NEED**Justification or Need**

There have been several instances where we have come across vehicles that have a violation(s) that is severe enough that if it was allowed to continue the likelihood of an accident is very high. Unfortunately, the OOS criteria does not cover all imminent hazards. The following are examples;

1. CMV was traveling down the interstate blowing smoke so badly that visibility was impaired to the point that cars could not pass causing a backup on the highway. Travelers were calling in complaining about the vehicle. CMV was pulled over but there was nothing in the OOS criteria to get the imminent hazard off the highway.
2. During winter in Oregon we get CMV operators who don't chain up when required. We have increased fines and have done an advertising campaign without any effect. CMV's, operating without chains, have caused up to 100 car pile ups, in a single incident, and costs Oregon millions of dollars every year. Also, these accidents cause delay in commerce and cause loss of life. Being able to place these trucks OOS would force them to get chains and prevent them from operating as an imminent hazard.
3. A suburban pulling a carnival ride is overloaded on the tongue causing the rear of the suburban to squat down to the point that the vehicle is unable to drive straight down the road. The combination was going down the freeway doing 25-30 MPH and could not maintain lane. The vehicle was an imminent hazard and there was nothing in the OOS criteria to place it OOS.
4. A passenger bus driver hit an owl which completely shattered his windshield. Visibility and depth perception were highly impaired. The driver reported the broken window to the company and was told to proceed to the shop as the broken window was only a violation and not OOS. The bus was full of passengers and the driver refused to operate the vehicle, however in the absence of his refusal, inspectors could not place the vehicle OOS for the imminent hazard.

REQUEST FOR ACTION

396.7 Unsafe operation forbidden.

Any motor vehicle discovered to be in an unsafe condition, posing an imminent hazard, while being operated on a

highway. Place vehicle out of service until unsafe condition is no longer an imminent hazard as to endanger any person or property (see note below).

NOTE: Inspectors must articulate in the notes section why the condition was unsafe and presented an imminent hazard to roadway safety based on vehicle condition and or likelihood of causing a crash.

Create Inspection Bulletin outlining scenarios and guidance on when to use this violation and OOS.

ACTION TAKEN BY COMMITTEE

There are many scenarios when the vehicle is likely to have an imminent hazard but does not meet any violation in the regulations. This is a very subjective topic and hard to regulate uniformly. There was a lot of concern in the committee about continuing to add such examples and application being subjective across the membership. Guidance was recently added to CVSA Operational Policy 15 on the use of 396.3(a)(1). This guidance requires the use to be restricted to OOS conditions identified in the OOSC or when Operational Policy 15 indicates that as the correct reference. There is a petition with FMCSA to add a specific reference in Part 393 for all the instances of the use of 396.3(a)(1) or 396.7. The procedure of the Vehicle Committee is for any new reference in the OOSC or Operational Policy of 396.3(a)(1) or 396.7 is to have an accompanying petition to add the violation to Part 393. The allowance for individual inspectors to use 396.7 when not referenced in CVSA material would conflict with vehicle committee procedure and uniformity of the inspections. Therefore, there was no motion and the action item was closed.