

ISSUE NUMBER

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ISSUE NAME

Operational Policy 15 - 396.3(a)(1) Guidance

STATUS

Closed

Vehicle Committee

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The use of 49 CFR 396.3(a)(1), has historically been used as a "catch all" by many inspectors to cite defects on commercial motor vehicles when no other regulation is in place to address the issue an inspector feels should be corrected. For example, I have seen inspections with violations for bent wheels, broken rear windows, check engine light, check oil light, and other defects that do not constitute a violation of the federal regulations or out of service criteria.

Due to the ambiguous language of the regulation, the argument can be made for the use of the 396.3(a)(1), but it is also difficult to defend the violation based on the wording. For many years, it has been taught in the North American Standard Part B course to only use 396.3(a)(1) violations when specifically referenced in the North American Standard Out of Service Criteria. For example, all driveline/driveshaft violations, some brake violations, and some coupling device violations, among many others. Additionally, CVSA Operational Policy 15 allows the use of 396.3(a)(1) for air leaks discovered that are not attributable to the brake or suspension systems, but shall not be declared out of service.

Currently there is no written directive or policy to only use 396.3(a)(1) when referenced in the OOSC or CVSA policy.

JUSTIFICATION OR NEED

Written guidance will ensure uniformity and consistency across North America by all instructors of the NAS Part B course, and inspection personnel. This issue is a constant battle that burdens industry with erroneous violations, and worse - incorrect out of service violations. It also burdens enforcement agencies with investigating DataQ challenges. Many inspectors rely on the broad language of 396.3(a)(1), such as the wording, "safe and proper operating condition," and parts that "may affect safety." Such terms are not defined in the regulation.

During federal fiscal year 2021, the code 396.3 was the #6 ranked violation on roadside inspections. It was cited 94,603 times on 80,666 inspections. Of those violations, only 12,491 were marked as out of service.

Other than the air leaks not attributable to the brake or suspension systems, any violation of 396.3 is an out of service defect. Therefore, one can conclude a large portion of those remaining 68,175 violations were likely not a correctly recorded violation. As such, this is a substantial issue.

REQUEST FOR ACTION

I recommend adding a new section to CVSA OPS 15 policy to address when 396.3(a)(1) may be used. Suggested text is below:

XX . MISCELLANEOUS

INSPECTION, REPAIR AND MAINTENANCE – Regulatory Guidance

b.(6) When should a violation of 396.3(a)(1) be cited?

ANSWER: A violation of 396.3(a)(1) should only be cited when the condition has been determined to affect the safe operation of the vehicle by inclusion as an imminent hazard in the North American Standard Out-of-Service Criteria or specifically indicated in policy as a violation (i.e. Operational Policy 15 Section 1.b.(3)).

SUPPORTING DOCUMENTS/PHOTOS

- [AI-FFY-21-Vehicle.pdf](#)

ACTION TAKEN BY COMMITTEE

The following guidance was added to Operational Policy 15 in June 2022 in the Miscellaneous section.

INSPECTION, REPAIR AND MAINTENANCE – Regulatory Guidance

b.(6) When should a violation of 396.3(a)(1) be cited?

ANSWER: A violation of 396.3(a)(1) shall only be cited when the condition is an imminent hazard in the North American Standard Out-of-Service Criteria or specifically indicated in CVSA Operational Policy as a violation (e.g., Operational Policy 15 Section 1.b(3)).