



Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

April 10, 2025

Sue Lawless
Executive Director and Chief Safety Officer
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
6th Floor, West Building
Washington, DC 20590-9898

RE: Petition for Rulemaking – Amend Title 49 CFR § 392.4 Drugs and Other Substances

Dear Ms. Lawless,

Pursuant to Title 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 § 392.4, Drugs and other substances, to include language that prohibits a driver who has been cited and issued an out-of-service order under § 392.4 from violating that out-of-service order.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

Justification

In September 2024, the CVSA Driver-Traffic Enforcement Committee reviewed an Issue/Request for Action submitted to CVSA by the Alabama Law Enforcement Agency. The state observed an instance in which a driver was inspected in Mississippi and placed out of service for 24 hours after being found to be in possession of marijuana. However, the driver violated that out-of-service order and was subsequently stopped in Alabama while the Mississippi out-of-service order was still active. Currently, there is no language in § 392.4, Drugs and other substances, prohibiting a driver from violating an out-of-service order. It was noted that in most (if not all) instances, when a driver is placed out of service for possession of a controlled substance, the inspector/officer will seize the substance as part of their enforcement duties.

As a result, the committee discussed a scenario similar to the one brought forward by Alabama where a driver is stopped for inspection and found to be in possession of a controlled substance. That driver is placed out of service

for 24 hours and the controlled substance is seized. Instead of complying, the driver violates the out-of-service order and, like in Alabama, is stopped and found to be operating the commercial motor vehicle while under an active out-of-service order. However, because the controlled substance was seized at the first stop, there is no longer any contraband in the vehicle to authorize the issuance of a new out-of-service order, and, as a result, there is no way to enforce the original out-of-service order and prevent the driver from continuing on their trip.

In comparison, if the same driver had been placed out of service for possession of alcohol, because of the language found in § 392.5(c), the second inspector would be able to enforce the out-of-service order. Possession of a controlled substance poses the same risk to safety as possession of alcohol. In fact, the risk associated with possession of a controlled substance may be higher, as identification of impairment by drugs is not as straightforward as detecting and measuring impairment by alcohol. Because possession of either a controlled substance or alcohol by a commercial motor vehicle driver poses, at minimum, an equivalent risk, the regulatory language addressing possession should be the same.

To address this, CVSA is asking FMCSA to amend § 392.4 to include language similar to that found in § 392.5, specifically:

§ 392.5 Alcohol prohibition.

...

(c) *Any driver who is found to be in violation of the provisions of [paragraph \(a\)](#) or [\(b\)](#) of this section shall be placed out-of-service immediately for a period of 24 hours.*

(1) *The 24-hour out-of-service period will commence upon issuance of an out-of-service order.*

(2) *No driver shall violate the terms of an out-of-service order issued under this section.*

Amending § 392.4 to be consistent with the language in § 392.5 will better equip enforcement to effectively remove dangerous drivers from our roadways.

Proposed Language

§ 392.4 Drugs and other substances.

(a) *No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:*

(1) *Any [21 CFR 1308.11](#) Schedule I substance;*

(2) *An amphetamine or any formulation thereof (including, but not limited, to “pep pills,” and “bennies”);*

(3) *A narcotic drug or any derivative thereof; or*

(4) *Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.*

(b) *No motor carrier shall require or permit a driver to violate [paragraph \(a\)](#) of this section.*

(c) *Any driver who is found to be in violation of the provisions of [paragraph \(a\)](#) or [\(b\)](#) of this section shall be placed out-of-service immediately for a period of 24 hours.*

- (1) The 24-hour out-of-service period will commence upon issuance of an out-of-service order.*
- (2) No driver shall violate the terms of an out-of-service order issued under this section.*
- (ed) Paragraphs (a) (2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner, as defined in [§ 382.107 of this subchapter](#), who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.*
- (de) As used in this section, "possession" does not include possession of a substance which is manifested and transported as part of a shipment.*

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 roadways. 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 consideration of this petition.

If you have further questions or comments, please do not hesitate to contact me at 202-998-1008 or collin.mooney@cvsa.org.

Respectfully,



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