August 25, 2017

Daphne Jefferson
Deputy Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE, 6th Floor
Washington, DC 20590-9898

RE: Petition for Rulemaking – Expanding Definition of “Actual Knowledge” in 49 C.F.R. § 382.107

Dear Deputy Administrator Jefferson,

Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend Title 49 C.F.R. § 382.107 by expanding the definition of “actual knowledge” to recognize long form criminal complaints as citations for the purposes of this section.

Paragraph 49 C.F.R. § 382.107 states that:

“Actual knowledge for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer’s direct observation of the employee, information provided by the driver’s previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee’s admission of alcohol or controlled substance use, except as provided in § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307.”

Justification
Currently, FMCSA does not recognize long form criminal complaints as citations for the purpose of meeting the definition of “actual knowledge” in 49 C.F.R. § 382.107. This creates an issue when, in certain jurisdictions, officers file long form criminal complaints in lieu of issuing a citation roadside at the request of the prosecutor or district attorney. In these circumstances, while a driver can be criminally prosecuted, motor carriers, who may be equally culpable, can escape liability simply due to the format in which the violation is recorded.

For example, if a driver has been arrested or cited on multiple occasions for drug or alcohol violations, a carrier conducting due diligence should be aware of these violations and suspend or terminate the driver. Yet, as currently written, 49 C.F.R. § 382.107 results in the carrier escaping culpability even when it has prior knowledge of a driver’s alcohol or drug use, because long form criminal complaints are not recognized as citations and therefore does not fall within the definition of “actual knowledge.” Thus, an
expansion of the definition of “actual knowledge” would capture negligent or willfully negligent carriers and drivers. Expanding the definition of “actual knowledge” will have a positive impact on safety as the expansion would aid in removing drivers who cause fatal crashes from our roadways. Ultimately, expanding the scope of “actual knowledge” ensures that all parties engaged in commercial motor vehicle operations are equally accountable for drug and alcohol violations. CVSA does not believe this change will have a significant financial impact to industry.

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 highways. 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 opportunity to comment on this proposal and the agency’s commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,

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