



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

December 7, 2016

Docket Services
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

**RE: Docket Number: NHTSA-2016-0087, FMCSA-2014-0083
Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and
Accessories Necessary for Safe Operation; Speed Limiting Devices**

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments regarding the National Highway Traffic Administration (NHTSA) and Federal Motor Carrier Safety Administration (FMCSA) joint notice of proposed rulemaking (NPRM) on Speed Limiting Devices (speed limiters), Docket No. NHTSA-2016-0087, FMCSA-2014-0083.

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 the United States, Canada and Mexico by providing guidance and education to enforcement, industry and policy makers.

General Comments

CVSA supports regulations and policies that encourage the deployment of safety technologies proven, through independent research, to improve commercial motor vehicle (CMV) safety, either through preventing crashes or mitigating the severity of crashes. NHTSA and FMCSA's joint proposal on speed limiters represents an encouraging step towards addressing CMV-related crashes and fatalities. However, CVSA has identified several questions and concerns that should be addressed before the agencies issue a final rule.

Due to the number of unanswered questions and lack of clarity regarding important issues such as FMCSA's expectations regarding the scope of enforcement, when and how to cite prima facie violations and compliance by both CMV drivers and manufacturers, CVSA requests the agencies issue a supplemental notice of proposed rulemaking answering the questions included here along with those from other stakeholders before issuing a final rule. This will allow stakeholders to fully evaluate the proposal and provide constructive input, ensuring more effective deployment and enforcement of speed limiters.

Concerns and Issues

1. Issue: Lack of Clarity Regarding Scope of Enforcement

“FMCSA’s adoption of a rule requiring interstate motor carriers to maintain speed limiting devices would be accompanied by the states’ adoption of compatible rules applicable to both interstate and intrastate motor carriers pursuant to 49 CFR part 350. The inclusion of the OBD [on-board diagnostic] feature for the speed limiting device would enable FMCSA and its state partners to enforce the proposed rule during roadside inspections, at the discretion of the agency and its state partners. The enforcement of the requirements could be conducted in a targeted manner, periodically or randomly to provide an effective deterrent to carriers tampering with or disabling the device to avoid the need for the agency and its state partners to consider changes to the standard inspection procedures or increases in the amount of time needed to complete a roadside inspection.” (Page 61958)

CVSA asks FMCSA to clarify the scope and level of enforcement the agency expects state partners to undertake when enforcing this requirement. FMCSA’s directive that enforcement be conducted in a “targeted manner, periodically or randomly” does not give appropriate parameters of enforcement and may result in confusion and inconsistent levels of enforcement across states. For example, who will decide what tool is used on a state-by-state basis and how and when will the tool be utilized? Does FMCSA anticipate enforcement only take place when a CMV is observed speeding over the set speed? Or should enforcement of the speed limiter requirement be conducted as part of inspections roadside and at inspection facilities?

While CVSA supports giving states flexibility and allowing them to establish enforcement programs that meet their own unique needs, it is also critical that states have a clear understanding of the agency’s expectations, in order to allow them to plan and structure the programs appropriately. CVSA asks FMCSA to address this matter in a supplemental notice of proposed rulemaking prior to moving forward with a final rule.

Second, the proposed rule states that FMCSA does not anticipate adding speed limiter checks to roadside inspections. However, CVSA disagrees. Even if FMCSA does not anticipate that inspectors will check speed limiter compliance with each inspection, it is still necessary for CVSA to establish the procedures for doing so, in order to set standards and develop training to ensure consistent enforcement of the speed limiter requirement. CVSA anticipates revising the North American Standard Inspection Procedures to include a check of the speed limiter setting, with the understanding that not all inspectors will need to carry a speed limiter setting verification device and not every inspection will necessarily include a check of the speed limiter setting. This is similar to how states incorporate performance-based brake testers into their inspection process.

2. Issue: Prima Facie Violations

FMCSA states that “[i]f the vehicle is observed to be operating in excess of a posted speed limit greater than the maximum specified set speed, and the vehicle was manufactured on or after the effective date of the proposed rule, the speeding violation would then serve as prima facie evidence that the speed limiting device was inoperative, or the setting altered.” (Page 61958)

CVSA has concerns regarding FMCSA’s position on prima facie violations and requests the agency clarify this section in a supplemental notice of proposed rulemaking before proceeding to a final rule. In section VII(D)(1)

(page 61958) of the proposed rule, FMCSA states that “[i]f the vehicle is observed to be operating in excess of a posted speed limit greater than the maximum specified set speed, and the vehicle was manufactured on or after the effective date of the proposed rule, the speed violation would then serve as prima facie evidence that the speed limiting device was inoperative, or the setting altered.” However, in section IV(B), which discusses a National Transportation Safety Board (NTSB) investigation of a motorcoach crash, FMCSA acknowledges a CMV equipped with a properly-set and functioning speed limiter device can, in fact, exceed the set speed, saying “today’s proposal would not necessarily limit speed on downhill portions of roadways.” (Page 61951) This is in direct conflict to the justification for using observed speeding as prima facie evidence. If a vehicle with a CMV equipped with a functioning, properly-set speed limiter can exceed the set speed, inspectors cannot use speeding on its own as evidence of a violation.

As currently written, the proposed rule does not give clear directions for inspectors on how to enforce when a CMV is found to be operating above the maximum specified set speed. CVSA requests that FMCSA provide clarification on the prima facie issue prior to moving forward with a final rule. FMCSA could consider adding a ‘deeming provision,’ similar to that adopted in Ontario, Canada. When Ontario implemented its own speed limiter requirement, the province included a deeming provision that allows a vehicle to travel up to 10km/h over the speed limiter setting, which captures unintended acceleration such as when a vehicle is driving downhill.

3. Issue: Malfunctioning Devices

FMCSA states that “[i]f a speed limiting device is not functioning, drivers and carriers could avoid violations by driving no faster than the maximum specified set speed until the vehicle is repaired.” (Page 61959)

CVSA notes that inspectors cite malfunctioning devices as violations during inspections as part of a CMV driver’s requirement to keep the vehicle well-maintained, safe and operational. When a device is not operating correctly, drivers cannot claim that it is malfunctioning to avoid a violation. If a vehicle’s antilock braking system (ABS) is determined to be malfunctioning, it is documented as a violation. If a vehicle’s brakes are out of adjustment, that is documented as a violation. This section represents a departure from protocol for CMV inspections and may result in making the proposed rule vulnerable to fraud.

In addition, the proposed provision makes the rule unenforceable at roadside. For example, if a driver is stopped for driving above the maximum set speed and the speed limiter is found to be incorrectly set, the driver could argue that the device is broken and, in theory, avoid a violation. Few drivers would report that their system is fully functional if the set speed were other than what is required. FMCSA should clarify that a malfunctioning device is a violation and that drivers cannot avoid documentation of the violation, if identified by an inspector.

4. Issue: Access to Past Settings

NHTSA proposes that in addition to the current speed limiter setting, the “two most recent modifications of the set speed of the speed limiting device and the two most recent modifications of the speed determination parameters be readable and include the time and date of the modifications.” (Page 61944)

It is unclear how enforcement is expected to use this information. NHTSA and FMCSA should clarify the intent and purpose of collecting the two most recent modifications of the speed limiter in a supplemental notice of proposed rulemaking, prior to moving forward with a final rule. Do the agencies expect enforcement on one or both of the prior set speed settings if set above the federal maximum established in the forthcoming final rule? This could quickly become problematic, as CMVs traveling interstate may operate beyond U.S. borders and vehicle operators and drivers may need the ability to adjust their vehicles to higher set speeds if operating outside U.S. federal jurisdiction. CVSA requests that the agencies clarify, for enforcement purposes, the expectations for resetting the devices when the vehicles return to U.S. federal jurisdiction.

5. Issue: Possible Conflict with Electronic Logging Devices

In discussions with our enforcement and industry members who are familiar with speed limited CMVs and the devices used to confirm speed limiter settings, it has come to our attention that use of speed limiter device readers could create a conflict with some electronic logging devices (ELDs). Currently, some CMVs have ELDs that are not hardwired to the electronic control module (ECM) and are instead plugged into the same port that enforcement would need to plug the speed limiter reading device into. This forces inspectors to disconnect the ELD, which is problematic. The final rule must address this issue, possibly by directing CMV manufacturers to implement design modifications that accommodate two or more plug-in devices.

CVSA Responses to FMCSA Questions

As part of the NPRM, FMCSA requested feedback on a number of provisions included in the proposal. Below, find CVSA's responses to those questions.

1. Question: FMCSA seeks comment and information regarding the cost of enforcement of the proposed FMCSR, training, new enforcement tools that may be required, and the costs, if any, to law enforcement partner agencies. (Page 61958)

CVSA Response: As states are tasked with additional oversight responsibilities in enforcing the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA must recognize the additional costs associated with the adoption of new technologies such as speed limiters. While the cost to purchase devices to check speed limiter settings are eligible for the Motor Carrier Safety Assistance Program (MCSAP), funds spent on these devices are funds not spent on other priorities. Even if the cost of the devices is minimal, the cost to purchase speed limiter setting reading devices could still be significant and many states may find it prohibitive to equip every inspector. The agency should clarify how many inspectors it expects to be equipped with a device for reading speed limiter settings. This number should take into account the fact that, because no additional funds are being provided to states to purchase the necessary tools for enforcement, any funds spent on speed limiter enforcement can detract from other enforcement needs.

FMCSA should also work with states to minimize costs associated with enforcement of the proposed rule and in doing so, balance the need for appropriate numbers of equipped inspectors with ensuring that enforcement of this rule does not detract from other important inspection activities. Allowing states the flexibility to decide what type of device to buy may have economic benefits for those with limited resources or MCSAP funding. FMCSA should carefully weigh these considerations before promulgating the final rule.

In addition, FMCSA should recognize that, depending on when this requirement goes into effect, states may need to make budget adjustments to accommodate the costs of such devices and allow states to modify their budget documents to account for and accommodate compliance with the final rule.

Finally, NHTSA should consider requiring a standard set up for the ECM port – three-prong versus four-prong. Currently, manufacturers use different configurations to access the ECM, which creates the need for multiple adapters when plugging in with a device. Requiring a standard configuration would help reduce costs long term, as eventually older models would cycle out of the vehicle pool and all vehicles would have a standard set up, eliminating the need for multiple adapters.

2. Question: NHTSA solicits comment on the types of vehicles to which the speed limiting device requirements should be applicable. (Page 61960, 61961)

CVSA Response: Currently, NHTSA is proposing that speed limiter requirements apply to all new multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of more than 26,000 pounds. CVSA agrees with the class of vehicles included in the proposed rule.

However, CVSA asks that NHTSA and FMCSA clarify the rulemaking so that truck tractors are also included in the class of covered vehicles. Additionally, FMCSA should clarify that the rule applies to covered vehicles with a gross vehicle weight rating (GVWR) of more than 26,000 pounds and not vehicles with a gross combination weight rating (GCWR) of more than 26,000 pounds. This ensures that the appropriate class of CMVs are included in the scope of the rulemaking.

Finally, CVSA also asks NHTSA and FMCSA to revise the language in the proposed rule to be consistent with language in 49 C.F.R. § 383.5—“having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more).” Although the intent of the proposal is clear—for “vehicles with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device”—substituting “26,001 pounds” for the current language of “26,000 pounds” ensures clarity and uniformity of language across regulatory texts.

3. Question: FMCSA and NHTSA requests comment on whether the agencies should consider requiring a speed limiter device requirement for existing vehicles as well as the technical and economic feasibility of a retrofit requirement. (Page 61960, 61961)

CVSA Response: CVSA recommends the rule be applied to all covered CMVs with electronically controlled engines that have the ability to be speed limited at a set speed and enforced per the provisions of the final rule, effective on a single date of manufacture, as early as practical, and not only to newly manufactured vehicles. Although requiring the retrofitting of CMVs with speed limiters could impose additional costs, only a small segment of CMVs would be captured should the final rule apply exclusively to newly manufactured vehicles. Further, requiring existing vehicles which have the capability to be retrofitted to be equipped with speed limiters has been successfully implemented in Ontario, Canada, which set its speed limiter rule to be applied retroactively to all vehicles manufactured after 1995. While CVSA does not advocate a specific date for retroactivity, we ask FMCSA and NHTSA to examine available information and manufacture data to

determine a timeframe that is both practical and cost-effective for all segments of the CMV industry to comply with.

4. Question: NHTSA seeks comment on the proposed speed limiter setting readability requirements. To assist in verifying the performance of the speed limiter while the vehicle is in use, NHTSA is proposing that the vehicle set speed and speed determination parameters be readable through the On-Board Diagnostic (OBD) connection. (Page 61957)

CVSA Response: CVSA supports a standard display for enforcement purposes. Requiring that the speed limiter settings are readily accessible through the OBD connection and displayed in an easy to read and understand format will assist inspectors in ensuring compliance with the final rule.

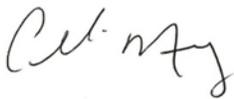
5. Question: NHTSA requests comment on the feasibility of technologies such as GPS, vision system and other autonomous vehicle technologies which would limit the speed of the vehicle as an alternative option to mandating speed limiting devices. (Page 61958)

CVSA Response: CVSA supports considering alternatives methods to limit a CMV's speed in the future, as long as consideration is given to how these future methods will be enforced as any alternative methods should be easily enforceable. When considering future alternatives, CVSA encourages the agencies to conduct additional rulemaking, giving stakeholders the opportunity to provide input on the use of alternative technologies.

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,



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