



June 27, 2016

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

RE: Docket No. FMCSA-2014-0470 – Advanced Notice of Proposed Rulemaking: State Inspection Programs for Passenger-Carrier Vehicles

Dear Sir/Madam:

The American Bus Association (ABA) appreciates the opportunity to respond to the Federal Motor Carrier Safety Administration's (FMCSA's or Agency's) advanced notice of proposed rulemaking (NPRM) requesting comment on requiring the States to establish a program to annually inspect commercial motor vehicles designed to carry passengers. From a general standpoint, ABA is supportive of establishing a requirement for an annual safety inspection program for each of the 50 states; however, as with any regulatory initiative, the "devil is in the details" and we are cautious in our support at this time. In an effort to assist FMCSA in pursuing this initiative, ABA offers the following comments to address what ABA believes to be the fundamental elements necessary for states to establish successful annual safety inspection programs. As well, and as noted in the NPRM, there are costs involved for states to implement annual inspection programs, and we are interested to understand how this initiative would be funded.

The ABA is the leading trade association for private and over-the-road passenger motor carrier operators who transport the public and serve the motorcoach industry. ABA has been in operation for 90 years and has over 800 bus operating company members, including both large and small; rural and urban; and intercity, charter and tour operators. Our members provide all manner of passenger transportation services, including intercity scheduled service, charter and tour operations, airport and employee shuttle services, and commuter operations. In addition, ABA membership includes hotels, convention and visitors' bureaus, attractions, restaurants, motorcoach manufacturers and companies providing services to the motorcoach industry. Motorcoach companies carry out more than 600 million passenger trips per year, moving passengers a total of 65 billion miles annually.

ABA's members pride themselves on their commitment to safety. They are active participants in groups such as the Bus Industry Safety Council, the Bus Maintenance and Repair Council, the Commercial Vehicle Safety Alliance (CVSA), the Transportation Research Board's Bus and Truck Safety Committee and other groups committed to safety and compliance in fleet operations. As the established representative of the private motorcoach industry and its affiliates, ABA submits these comments.

As a national trade association, ABA has a limited ability to provide specific answers to the questions posed by FMCSA in this notice; but we would like to express our support for our bus operator members submitting comments to this docket and recognize their individual experiences in navigating the annual inspections process at the state level.

ABA believes a successful state inspection program would be a program that: 1) includes all passenger carrying vehicles classified as commercial motor vehicles; 2) ensures uniform and consistent inspection and inspector training standards with all other state programs; 3) recognizes and grants reciprocity for inspections conducted under other state programs; and 4) provides for the acceptance of self-inspections in conformance with 49 CFR 396.17.

1. Class of Vehicles Set for Inspection

If FMCSA were to require states establish mandatory passenger carrying CMV annual inspection programs, ABA believes all of the CMV's covered by 49 CFR 390.5 should be included in such inspection programs.

49 CFR 390.5 reads:

Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers ... when the vehicle—

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; ...

By using Section 49 CFR 390.5 as the basis for determining the passenger carrying vehicles to be covered by a state annual inspection program requirement, the Agency would ensure all configurations of passenger carrying vehicles operated in interstate commerce, including motorcoaches, school buses, mini-buses, 9-15 passenger vans and other vehicles such as high occupancy limousines would be subject to the requirement.

2. Uniform Inspection Standards & Inspector Training Standards

In ABA’s filing to docket FMCSA–2015–0176 (Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments), ABA supported the Agency’s decision to revise the regulations related to inspections. In that proposal, FMCSA clarified that a roadside inspection is not equivalent to an annual or periodic inspection as required under 396.17. ABA strongly supports the Agency’s position, believing the roadside inspection program and the periodic/annual inspection requirements need to be decoupled. At the same time, we know the success of any annual inspection program is dependent on the establishment and application of uniform inspections standards. Without uniformity, instead allowing for state programs to have varying standards, there is too much opportunity for the creation of “safe harbors” and can lead to “forum shopping” by questionable carriers.

While the occurrence of a fatal motorcoach accident as a result of mechanical failure is rare, there is no basis for increasing this risk by imposing a requirement for state annual inspection programs without ensuring uniform standards. Further, to ensure continuity in maintaining the standards and uniformity in their application, FMCSA should require certification of the training and competency of inspectors charged with the responsibility of conducting the annual inspections.

In 2002, FMCSA published an interim final rule, docket FMCSA-2001-11060, that instituted minimum requirements for certification of inspectors. ABA is unclear on the status and enforcement of this rule. However, this NPRM could provide an opportunity for the Agency to explore using the “carrot” of providing additional Motor Carrier Safety Assistance Program (MCSAP) funding to states certifying that as part of their annual Commercial Vehicle Safety Plan that they conduct annual inspections of passenger carrying CMV registered in their state. In addition, states seeking those additional funds should list how many of their inspectors are certified to conduct those inspections in order to receive that “carrot”. The state of Oregon¹ provides a good template for what a submission of a qualifying Commercial Vehicle Safety Plan should look like.

3. State Reciprocity for Inspections

As well, in order to successfully establish a national requirement for individual states to implement annual inspection programs, and not unduly burden both state enforcement activities as well as business operations, the requirement must mandate reciprocity among the states. In other words, a carrier should only be required to undergo an “annual inspection” once annually, and it should occur in the state where they register their vehicle. A required annual inspection program without reciprocity among the states would lead to duplicative and redundant inspections, a poor use of already limited resources, and unnecessary interference with legitimate business operations. Any mandate to the states to establish annual inspection programs must include reciprocity, or the benefit of such a mandate will be lost.

Currently, there are some states that do not have a mandatory state inspection program, but instead permit and recognize self-inspections, or in other words vehicle inspections of a carrier’s

¹ <https://www.oregon.gov/ODOT/MCT/docs/CVSPPlan2015.pdf>

vehicles by a certified employee of the carrier. Alternatively, many states with mandatory state inspection programs will not accept a self-inspection from another state and instead force the operator to pay to be re-inspected. By FMCSA mandating reciprocity as requirement of state annual inspection programs, the Agency will eliminate this unnecessary and unduly burdensome inspection “game” played by the states. Also, if FMCSA plans to implement an annual inspection program requirement, it would be of great help to provide easier access to the list of states with inspection programs that meet FMCSA’s approval and are consistent with 396.17². It would also better serve the passenger carrying community if there were a mechanism to more routinely review state eligibility for the list. It has been 8 years since this list was last distributed/updated, it would be beneficial to evaluate and ensure the list properly reflects qualified state programs.

4. Self-Inspections

ABA and its members also believe any requirement to the states by FMCSA to establish a state annual inspection program should include the right for states to allow inspections to be conducted by certified employees of a carrier, i.e. self-inspect, as permitted under 49 CFR 396.23. Title 49 CFR 396.19 ensures that personnel of a carrier engaged in conducting inspections are well trained and can complete an inspection equivalent to standard of inspections completed by third-parties or states. The ability for carriers to self-inspect is also of great importance in terms of efficiency and cost. This practice enables many operators to schedule inspections in coordination with their operating hours, preventative maintenance schedules and work flow. Another positive aspect of the self-inspection allowance is the opportunity it provides to train and test future inspectors, as detailed under 396.19(a).

ABA would recommend that the compliance review be used as a reasonable interval to inspect and evaluate a company’s roster of qualified inspectors and their qualifications. There is no reason that the qualification files for these personnel should be treated any differently in terms of retention and examination than the driver qualification files, although a flexibility in format should be maintained.

Finally, in addition to the necessary elements to implement a federal requirement to establish successful state inspection programs, costs must be taken into consideration. Although ABA is supportive of establishing a uniform, national requirement for state annual inspection programs, as the Agency notes, there were no additional funds made available to do so. If the Agency does pursue this initiative, ABA will be anxious to understand how the costs of such programs will be borne. Currently, in those states with programs, there are a variety of approaches to how states fund their annual inspection activities; without clear guidance on this point, varying approaches could result in inequities, as well.

As previously noted, ABA is supportive of an initiative by FMCSA to establish mandatory state inspection programs. However, we believe that in order for this initiative to be successfully, there are key fundamental elements necessary to ensure success, namely: a state programs must cover all passenger carrying vehicles classified as commercial motor vehicles; state inspection

² Currently, it appears the list of 22 states may only be accessed by the public via publication at 73 Fed. Reg. 63040 as referenced in 396.23

and training standards must be uniform; states must recognize and grant reciprocity for inspections from other states; and states programs must have the flexibility to institute or continue to allow for self-inspections that conform to 49 CFR 396.17. In sum, FMCSA should seek to promote efficiency and uniformity in any inspection proposal the Agency puts forward, and costs for any such initiative need to be considered and evaluated.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brandon Buchanan
Director of Regulatory Affairs
American Bus Association