



## Federal Motor Carrier Safety Administration

### 49 CFR Parts 350

[Docket No. FMCSA-2014-0470]

RIN 2126-AB84

#### State Inspection Programs for Passenger-Carrier Vehicles

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** FMCSA announces that it is considering a rulemaking that would require the States to establish a program for annual inspections of commercial motor vehicles (CMVs) designed or used to transport passengers (or, passenger-carrying CMVs). FMCSA plans to assess the risks associated with improperly maintained or inspected passenger-carrying CMVs by reviewing the effectiveness of existing Federal inspection standards that are applicable to these types of vehicles, and considering the costs and benefits of having a mandatory inspection program.

**DATES:** Comments on this notice must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2014-0470 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Loretta Bitner, Chief, Passenger Carrier Division at 202-385-2428, or via email at Loretta.Bitner@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

This advanced notice of proposed rulemaking (ANPRM) is organized as follows:

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act
- II. Legal Basis for the Rulemaking
- III. Background
- IV. Questions

#### **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

##### **A. Submitting Comments**

If you submit a comment, please include the docket number for this ANPRM (Docket No. FMCSA-2014-0470), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail

address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2014-0470, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may develop a notice of proposed rulemaking (NPRM) based on your comments and other information and analysis.

## **B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2014-0470, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal

information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## II. LEGAL BASIS FOR THE RULEMAKING

Section 32710 of Motorcoach Enhanced Safety Act of 2012, enacted as part of MAP-21, requires that the Secretary of Transportation complete a rulemaking proceeding to consider requiring States to establish a program for annual inspections of vehicles designed or used to transport passengers (Pub. L. 112-141). As part of this proceeding, FMCSA must assess: (1) the risks associated with improperly maintained or inspected CMVs designed or used to transport passengers; (2) the effectiveness of existing Federal inspection standards in mitigating the risks associated with improperly maintained vehicles and ensuring safe and proper operation; and (3) the costs and benefits of a mandatory inspection program.

## III. BACKGROUND

Section 210 of the Motor Carrier Safety Act of 1984 required the Secretary of Transportation to prescribe standards for the inspection of CMVs. See 49 U.S.C. 31142. Under the Federal Motor Carrier Safety Regulations (FMCSR), a CMV, including qualifying passenger vehicles,<sup>1</sup> must be inspected at least once every 12 months. See 49 CFR 396.17. Subject to exceptions under § 396.23, a motor carrier must either conduct the inspection using its own qualified personnel or use a qualified third party that maintains appropriate facilities and employs inspectors qualified under § 396.19. In lieu of conducting a self-inspection or relying on a third-party inspector under § 396.17, a motor carrier may satisfy the FMCSR annual inspection

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<sup>1</sup> A CMV is defined, in part, for purposes of this regulation as a “motor vehicle used on a highway in interstate commerce to transport passengers ... when the vehicle—(1) [h]as 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) [i]s designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) [i]s designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation ...” 49 CFR 390.5.

requirement through a State or other jurisdiction's inspection program in accordance with § 396.23(a), provided that the inspection satisfies regulatory requirements.

However, in those States that have a mandatory State inspection requirement that the FMCSA Administrator has determined to be as effective as inspections under § 396.17, a motor carrier may rely on the State inspection process in order to satisfy the annual inspection requirement. 49 CFR 396.23(b)(1). A State inspection under this provision might be conducted by State personnel, at a State-authorized commercial facility, or by the motor carrier under the auspices of a State-authorized self-inspection program. Id. According to the latest list published by FMCSA, 22 States are among the governmental entities that have mandatory inspections programs recognized by the FMCSA Administrator. 73 FR 63040 (October 22, 2008).<sup>2</sup>

In 2012, Congress enacted legislation requiring the Secretary of Transportation to complete a rulemaking proceeding to consider requiring States to establish an annual inspection program as discussed under the Legal Basis section, above. Subsequently, FMCSA conducted three public listening sessions that provided interested parties with the opportunity to share their views on the merits of requiring State inspections of passenger CMVs.<sup>3</sup> Transcripts of these sessions are available in the public docket noted above. Stakeholders' presentations proved valuable in developing the questions posed in today's ANPRM. While the Agency received a broad range of comments, recurring themes included the costs of mandatory inspection programs, the value of a nation-wide uniform inspection standard, and the need for national

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<sup>2</sup> At the time of publication, the list of State inspection programs determined comparable to, or as effective as, the FMCSA periodic inspection program included California, Connecticut, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin. Other jurisdictions and agencies with approved programs are the District of Columbia, the Alabama LPG Board, the 10 Canadian Provinces, and the Yukon Territory. However FMCSA does not collect inspection data on passenger CMVs that are not subject to FMCSA's regulatory authority.

<sup>3</sup> The listening sessions were conducted at the American Bus Association Marketplace in St. Louis, Missouri on January 13, 2015, a United Motor Coach Association meeting in New Orleans, Louisiana on January 18, 2015, and a Commercial Vehicle Safety Alliance workshop in Jacksonville, Florida on April 14, 2015.

training of inspectors to eliminate inconsistencies in how inspection standards are applied. Both industry and the enforcement community identified concerns about the cost of the inspection programs. Stakeholders' estimates of costs for program administration and individual inspections varied significantly. Industry stakeholders expressed concern about inconsistent inspections under existing programs.

Section 32710 of MAP-21 did not address the Agency's authority to require mandatory State inspection programs. While Congress has granted the Secretary broad regulatory authority over the interstate operation of CMVs, under Federalism principles and the 10<sup>th</sup> Amendment, the Federal government may not compel the States to enact or administer a Federal regulatory program (New York v. United States, 505 U.S. 144, 188 (1992)), or compel State officers to administer or enforce a Federal regulatory program (Printz v. United States, 521 U.S. 898, 935 (1997)). Thus, FMCSA assumes Congress intended that State participation would be required as a condition of receiving Federal funds. See, e.g., South Dakota v. Dole, 483 U.S. 203, 206-207 (1987). However, Congress neither established a new financial assistance program for funding State inspection programs nor specified what existing financial assistance program FMCSA might employ to incentivize States to adopt inspection programs. Thus, in posing its final question below, the Agency is seeking its State partners' views on how to implement and incentivize a required State inspection program, should the Agency propose such a program.

## **VI. QUESTIONS**

FMCSA is considering a rulemaking under which States would establish a program for annual inspections of CMVs designed or used to transport passengers. The Agency will use information gathered through this ANPRM to quantify the economic benefits and costs of this action if it issues an NPRM. The Agency encourages parties with knowledge of the industry to provide information about the impact that such a rule would have on current regulations,

operating costs, business practices, safety, and any other areas that would be affected by a rule requiring States to establish inspection programs.

FMCSA also requests responses to the following issues and questions. Again, whenever possible, commenters should provide data. FMCSA also encourages stakeholders to describe any applicable regulatory inspection process under which they operate. FMCSA recognizes that an individual commenter may choose to respond to all of the issues or only a subset, based on his or her interest or area of expertise.

**Existing State Mandatory Vehicle Inspection Programs for Passenger-Carrying Commercial Motor Vehicles (CMVs)**

1. Does your State or the States in which you register your passenger-carrying CMV conduct mandatory inspections of such vehicles? Please indicate the State(s) in which your passenger-carrying CMVs are registered.

2. What vehicle types are included in the mandatory passenger-carrying CMV inspection program (e.g., motorcoaches, school buses, mini-buses, 9-15 passenger vans, etc.) and which are not included?

3. If your State has a mandatory program, briefly describe your inspection procedures and indicate which vehicle components are inspected.

4. How many total inspections are performed by your State annually for each of the following types of vehicles?

- a. Motorcoaches
- b. School buses
- c. Mini-buses
- d. 9-15 passenger vans
- e. Other

5. What is the estimated time required to complete each vehicle inspection?

6. What procedures are used to record the vehicle inspection?

7. If a vehicle does not pass an inspection, who addresses the issues? If it is done by someone other than the inspecting entity, is there a second inspection after the issues are addressed? On average, how many follow up inspections does it take to pass a vehicle?

8. Are mandatory vehicle inspections performed by State employees, by third-party inspectors authorized by the State, or by passenger carrier employees through a State-authorized self-inspection program ?

9. If vehicle inspections are conducted by a State-authorized third party or by passenger-carrier employees authorized by the State, are there differences in safety outcomes between those conducted by State employees and those conducted by third-party inspectors or through a passenger carrier's State-authorized self-inspection facilities?

10. Are there any specific benefits or concerns related to using third-party inspectors or by others?

11. If inspections are conducted by third-party inspectors or by passenger carrier-employed mechanics or technicians, what oversight is or should be required?

12. Should self-inspection or third-party inspections be options for compliance with a mandatory State inspection?

13. How does/would the cost of inspections differ between those conducted by State employees or by third-party inspectors?

14. What might be other preferable options?

### **Measuring Effectiveness of Inspection Programs**

15. Does your State have information on violations discovered during inspections that are attributable to maintenance issues that should have been found during a required vehicle inspection?

16. Has your State considered implementing a mandatory passenger-carrying CMV inspection program, but declined to do so? If so, what are your State's reasons for not implementing a program?

17. If your State imposes mandatory inspection of passenger-carrying CMVs, how is the effectiveness of that program measured?

18. What are the most common vehicle defects discovered during these mandatory vehicle inspections? What safety conclusions do you draw from the results of these inspections?

19. Has your State or organization collected data related to crashes, injuries, or fatalities attributable to improperly maintained or inspected passenger-carrying CMVs? If so, please provide summary information or links to detailed data associated with these areas.

20. Has the occurrence of passenger-carrying CMV-involved crashes, injuries, or fatalities before and after the implementation of a mandatory inspection requirement been evaluated? If so, please provide summary information or links to detailed data associated with these areas.

21. After a State inspection requirement was instituted, what changes were observed over time in the number of safety violations discovered during inspections, if any.

22. Do programs that inspect only a sample of vehicles have significantly different outcomes than those where all vehicles are inspected, please provide examples of how they differ?

### **Inspection Facilities and Locations**

23. Where does your State conduct mandatory passenger-carrying CMV inspections (e.g., State owned/leased facility, third party facility, carrier's place of business, or other type of facility)?

24. Where should mandatory passenger-carrying CMV inspections be performed?

25. If mandatory passenger-carrying CMV inspections are conducted at the carrier's place of business, what accommodations must be made to ensure appropriate access (e.g., pits, lifts, etc.) to conduct full inspections of motorcoaches and other large passenger vehicles?

26. How does facility location or accessibility for mandatory inspections impact inspections or compliance?

27. What delays may the State experience in completing mandatory inspections (e.g. lack of sufficient number of inspection facilities)?

### **Costs**

28. What is the cost per mandatory vehicle inspection to the carrier?

29. Do inspection fees differ based on the type of vehicle being inspected?

30. Do vehicle inspection fees differ based on location of the inspections?

31. How much does it cost the State to establish and run inspection programs on an annual basis?

32. If a vehicle does not pass an inspection, is there an additional cost for the second inspection?

33. If fees are collected by the State, does the State dedicate the revenue to the administration of the program?

### **Uniformity of Mandatory Vehicle Inspection Programs**

34. What qualifications should be applicable to individuals authorized to perform mandatory passenger-carrying CMV inspections?

35. Should minimum training elements be required for passenger-carrying CMV inspections? If so, how much training should be required and who should administer the training?

36. What should be the minimum vehicle components inspected under a mandatory bus inspection program?

37. How does the existence of different vehicle inspection requirements among the States affect carrier business practices?

38. How might business practices change under a uniform mandatory bus inspection program?

### **Current Federal Standards**

39. How effective are existing Federal standards for the inspection of passenger-carrying CMVs in (1) mitigating the risks associated with improperly maintained vehicles and (2) ensuring the safe and proper operating condition of the vehicles?

40. What is an effective and efficient way for the FMCSA to track inspected carriers to reduce burden on States and carriers?

### **Federal Authority**

41. How should FMCSA incentivize the States to establish mandatory passenger-carrying CMV inspection programs?

Issued under the authority of delegation in 49 CFR 1.87 on April 20, 2016.

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T.F. Scott Darling, III  
Acting Administrator