



June 20, 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-2015-0124 – Notice: Beyond Compliance Program**

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) second notice requesting comment on its Beyond Compliance program following the passing of the Fixing America's Surface Transportation Act (FAST Act). ABA does not believe that this notice meets the spirit of the FAST Act and does not provide credit to motor carriers or encourage the early voluntary adoption of safety improvements.

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 individual 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.

By way of background, ABA has facilitated and hosted a listening session on Beyond Compliance in January of 2016, participated in the initial discussions on this subject at the March 2015 Motor Carrier Safety Advisory Committee meeting, joined the April 2016 listening session at the Commercial Vehicle Safety Alliance meeting and submitted comments to this docket in June of 2015. ABA cautiously supports the concept of incentivizing safety innovation and the recognition of technologies and best practices that improve safety performance.

The Federal Aviation Administration (FAA), a sister agency to FMCSA, has achieved great success in achieving safety goals by partnering with the aviation industry and labor through the Commercial Aviation Safety Team, and voluntarily adopting new technologies and best practices through safety enhancements.<sup>1</sup> We believe the motor carrier industry can likewise benefit from a voluntary approach to achieving safety goals. Voluntary programs facilitate the adoption of new technologies and best practices by providing flexibility to accommodate various types and sizes of operations, a key consideration for the intercity bus industry. This approach also leads to a change in culture, from viewing regulations as “maximum” to “minimum” standards, encouraging operators to take greater control of their risk management profile based on their own operations, needs, and available resources. The FMCSA Beyond Compliance proposal will not accomplish its goal of encouraging early adoption of voluntary safety enhancements and the sense of partnership feels lost.

Unfortunately, FMCSA is not pursuing the FAA model. The FMCSA proposed new Behavior Analysis and Safety Improvement Categories (BASIC) for Beyond Compliance falls short of meeting the goals announced in the previous notice for this program. Specifically, the proposal provides no incentive to innovate and too short of a time period to measure effectiveness. As well, the normal ebb and flow of fleet size variance will pose problems with the application petition.

### **Lack of Incentive to Innovate**

With the new Beyond Compliance BASIC proposal as presented, carriers are essentially paying for a “certified” marketing program. For trucking companies, whose CSA scores are currently not available to public view<sup>2</sup>, there appears to be no incentive to participate. The credit is challenging to discern as no one would be able to see if they were even participating. For bus companies, particularly smaller sized fleets, this approach resembles a “pay to play” scenario and is priced out of their meager means.

ABA also believes that the incentive to innovate is stymied by this proposal because the scoring. This new BASIC has no impact on any of the other BASICs or any other safety intervention. Because motorcoach safety scores remain publically available on the FMCSA website, this program proves to be a double edged sword. A motorcoach operator who voluntarily seeks to apply a safety improvement and fails, would present a safety profile to the travelling public that still would be misinterpreted. A degradation following an evaluation for a safety improvement, could impact their business. Thus, it would make sense for carriers to limit applications for

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<sup>1</sup> See CAST, <http://www.cast-safety.org>

<sup>2</sup> <https://ttnews.com/articles/basetemplate.aspx?storyid=42237&t=DOTs-Anthony-Fox-Says-CSA-Scores-to-Become-Public-Again-in-2-Years>

safety improvements to those that produced guaranteed results and a continued listing in the Beyond Compliance BASIC.

### **Longer Evaluation Period Needed**

FMCSA proposes that 6 months after an application has been approved, that a carrier's implemented solution be evaluated. Six months is a relatively short time frame to implement a new program and to start to see appreciable impacts. FMCSA's own new entrant program monitors new carriers for at least an 18 month period as part of its evaluation of their operations. A carrier has an audit in the first 9-12 months. A longer evaluation period for Beyond Compliance would significantly improve observed impacts as well as more closely mirror other existing FMCSA evaluation programs. ABA believes that it would be a more cost beneficial solution to have these evaluations conducted in conjunction with a carrier's compliance review than the "no-cost" 3<sup>rd</sup> party evaluators. ABA questions what the annual monitoring entails, such as a replication of the application process to set new or revised safety improvement goals. It is not clear from the proposal what continued monitoring would seek to achieve. ABA would urge FMCSA to reconsider its approach to Beyond Compliance and look at the work of the FAA as well as our previous comments for ways to retool this proposal.

### **Application**

The proposed application approach offers some logistical challenges as well, which could prevent the successful implementation of the Beyond Compliance program. Utilizing an application that requires a specified target audience of individuals and/or fleet vehicles would force a carrier to intentionally underestimate safety performance and program coverage in order to ensure accuracy and achievability. Fleets and personnel fluctuate during an annual business cycle.

With such a short evaluation period, a carrier is disincentivized from trying a safety performance measure that has not already been proven or previously approved through the petition process. There is no room for error. Simple fluctuations in a motor carrier's fleet size could throw off the results during an evaluation and lead to a degradation in the BASIC. Fear of throwing off the results and preventing themselves from achieving an improvement metric by the nature of their fleet operations will disincentivize carriers from submitting applications.

Also, by making the application a petition, these applications will fall under the new transparency requirements for the FMCSA petition process (Section 5204 of the FAST Act). There will be an increased opportunity for the public and industry to review petitions. The ability to review petitions will lead to challenges, litigation, and inconsistency in approved petitions. A fear of challenges will contribute to fewer petitions being filed.

Among the pieces of information requested in the application petitions, the disclosure of estimated costs should remain a proprietary and protected item. ABA questions the role cost plays in the consideration of a petition by FMCSA. It is not clear in the proposal how revealing an estimated cost provides for the assignment of credit or encourages voluntary adoption. This

disclosure of cost will impact the participation by smaller fleets.

Therefore, ABA is cautious in terms of its support for FMCSA's interest in a Beyond Compliance program, but does not support the establishment of a new Beyond Compliance BASIC as proposed. As a result of both the "credit" and the approach, we don't believe a new BASIC will encourage voluntary adoption of safety improvements. We encourage FMCSA to continue to weigh the impacts of this proposal on smaller fleet bus operators, in terms of their ability to participate and the benefits to be derived as you look again at comments to the previous Beyond Compliance notice and successful programs like the FAA's.

For many small businesses with limited profit margins and constrained financial flexibility, there is generally a reluctance to adopt unproven techniques or technologies that don't have a direct impact on the bottom line and realizes a return on investment. We also have some concerns that by maintaining the cost component in the application there might be a perception that safety is an amenity rather than a progression of a company's safety culture.

Notably, as ABA members will attest: good companies already voluntarily pursue best practices and beneficial technologies because it is the right thing to do, regardless of Agency action. Based on this philosophy, ABA believes the Agency must give thoughtful consideration to the types of relief or incentives it assigns to a Beyond Compliance program.

As a reminder of ABA's comments during the ANPRM process, we resubmit our answers to FMCSA's specific questions and encourages FMCSA to reconsider its approach to Beyond Compliance:

**1. What voluntary technologies or safety program best practices would be appropriate for a Beyond Compliance program?**

ABA believes the answers to this question are critical in terms of ensuring a balanced Beyond Compliance program that offers opportunities to both large and small operators. For example, new technologies such as forward facing or inward facing video recorders may initially be cost prohibitive to smaller operator; however, by ensuring best practices are given equal weight or consideration under such a program, smaller operators have an opportunity to participate through the exercise of good safety management principles or practices.

Also, ABA is interested in learning of FMCSA's willingness to accept technologies and practices currently in use; or, in other words, where FMCSA plans to draw the line in terms of timing of technology adoption and best practices. As well, ABA believes in the importance of being expansive in its views of best practices. For example, although sales/itinerary planning staffs are rarely involved directly in the operation of a vehicle, a practice of training such staff on the hours of service rules (HOS) can mitigate HOS violations by drivers by ensuring the initial itinerary of a trip takes into account the HOS.

**2. What Safety performance metrics should be used to evaluate the success of voluntarily implemented technologies or safety program best practices?**

ABA believes the question of establishing appropriate metrics for a Beyond Compliance program can be extremely challenging. Safety trends occur over time, and in order to evaluate the effectiveness of the program there needs to be sufficient data collected to be evaluated. We are also concerned about the scalability of this program and how a single technology or best practice is measured against an operator that utilizes five safety improvements. In addition, many times there is a synergy between technologies and best practices that create a comprehensive safety system.

- 3. What incentives would encourage motor carriers to invest in technologies and best practices programs?**
  - a. Credit on appropriate Safety Measurement System (SMS) scores?**
  - b. Credit on Inspection Selection System (ISS) scores?**
  - c. Reduction in roadside inspection frequency?**
  - d. Other options**

ABA supports the various ideas mentioned in the notice and listed above, in other words credit on appropriate SMS and ISS scores as well a reduction in roadside inspection frequency. As previously noted, good companies already pursue safety best practices and technologies, if affordable, because such actions make good business sense and provide a sound return on investment. The recognition of these efforts through a reduction in the oversight burden provides the Agency an opportunity to redirect resources to other lesser known carriers or carriers deemed worthy of additional oversight. Further, these types of incentives are tangible for motorcoach operators; reduction in oversight activities can immediately pay dividends, particularly to smaller carriers. Alternatively, incentives such as recognition of carriers' voluntary efforts through a "star" rating or label program, to induce competition among carriers, will not likely prove successful. The motorcoach industry is comprised of a broad range of operations as well as operators, of all sizes, and competition varies among geographic regions, markets and types of operation. Unlike the automobile industry, where there are clear and defined lines of competition, an attempt to incentivize motorcoach operators through ratings, simply would not work in terms of achieving the Agency's goals.

- 4. What events should cause the incentives to be removed?**
  - a. If safety goals for the carrier are not consistently achieved, what is the benefit to the motoring public?**

ABA supports withdrawal of incentives or rewards if an operator provides false or misleading information, or in any other way attempts to circumvent the requirements of the program.

- 5. Should this program be developed by the private sector like PrePass, ISO 9000, or Canada's Partners in Compliance (PIC)?**

Again, as demonstrated in the aviation sector, a joint partnership between government and industry provides the strongest basis for achieving safety goals. By having both the

regulator and the regulated community working together, all parties vested in the outcome, there is greater opportunity for communication, education and balance leading to sound decision making and goals.

**6. How would FMCSA verify that the voluntary technologies or safety programs were being implemented?**

Generally it would appear to make sense that these technologies and programs should be verified during the compliance review process. The MCS-150 with its regular filing schedule, and with some minor modifications, would also seem a good choice to provide a regular opportunity for operators to identify items that might be considered for this program.

ABA believes there is great value in exploring voluntary opportunities and encouraging early adoption of safety enhancements. However, the Agency needs to ensure that the program can provide a credit to both large and small fleet operators. The idea of encouraging a systematic approach to improving safety through a process that looks at technologies and best practices as potentially equally effective mitigation measures is one that we find exciting, although we do not see that the Agency's current proposal for the program will allow that to occur. Limited evidence of an incentive to innovate, a shortened time period to measure effectiveness, and the normal course of business variance will pose problems with the application/monitoring are some of the reasons why we think the design of this program needs additional scrutiny.

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