

FIXING AMERICA'S SURFACE TRANSPORTATION (FAST) ACT PROVISIONS OF INTEREST TO NSTA

Minimum Levels of Financial Responsibility - Section 5509

The insurance provision for passenger carriers requires the Secretary of Transportation to do a comprehensive study of passenger carrier insurance limits PRIOR TO INITIATING a rulemaking to change minimum insurance limits. Study contents include: a review of accidents, injuries and fatalities in over the road bus and school bus industries, a review of insurance held by over the road bus and public and private school bus companies, including companies of various sizes, and an analysis of whether such insurance is adequate to cover claims, an analysis of whether and how insurance affects the behavior and safety record of motor carriers of passengers, including with respect to crash reduction; and an analysis of the anticipated impacts of an increase in financial responsibility on insurance premiums for passenger carriers and service availability. The provision requires consultation with representatives of the over the road bus and private school bus transportation industries, insurers of motor carriers of passengers, and representatives of bus drivers. There is no time deadline on the report. The provision requires DOT to abandon their existing ANPRM with respect to passenger carriers, do the comprehensive study and then begin the rulemaking process over again. The provision is a modified version of Congressman Perry's passenger carrier insurance bill introduced in April of this year.

CSA Reform – Sections 5221, 5223, 5224, 5225, 5226

The bill requires a National Academy of Sciences study on the CSA program and SMS. The study must analyze the accuracy of BASIC in identifying high risk carriers and predicting future crash risk, methodology for BASIC, relative value of inspection information and roadside enforcement data, data collection gaps or data sufficiency problems, accuracy of safety data, whether BASIC percentiles for motor carriers of passengers should be calculated differently than for trucks, differences in safety violation reporting from various enforcement authorities, how members of the public use SMS and the effect of making SMS information public has had on reducing crashes and eliminating unsafe motor carriers. The study must consider whether SMS provides comparable precision and confidence for relative crash risk of large and small carriers, whether alternatives to SMS would ID high risk carriers more accurately and recommendations of the GAO study. After submission of the study, DOT must submit a report to Congress on the results of the study. Six months after the report, DOT must submit a corrective action plan that responds to deficiencies identified in the report and how they will be addressed, provides an estimate of the costs to address the deficiencies, and an implementation plan including benchmarks, programmatic reforms, revisions to regs or proposals for legislation. Within six months of submitting the corrective action plan, the Inspector General is required to review the extent to which the plan addresses the recommendations of the report required under FAST and the GAO study.

1 day after enactment of the bill, no information regarding analysis of violations, crashes in which a determination is made that the motor carrier or the commercial motor vehicle driver is not at fault, alerts or the relative percentile for each BASIC developed under CSA must be taken down from public view until the IG certifies that all the requirements cited above are complete.

Information regarding alerts and the relative percentile for each BASIC developed under the CSA program may not be used for safety fitness determinations until IG makes the certification. Inspection and violation information submitted by commercial motor vehicle inspectors and qualified law enforcement officials, out of service rates, and absolute measures will remain available to the public. The provision provides an exception that data analysis of motorcoach operators MAY be provided online with a notation indicating that the ratings or alerts listed are not intended to imply any Federal safety rating of the carrier including the following note: “Readers should not draw conclusions about a carrier’s overall safety condition simply based on the data displayed in this system. Unless a motor carrier has received an UNSATISFACTORY safety rating under part 385 of title 49, Code of Federal Regulations, or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation’s roadways.” The directive on motorcoach data being posted is a “may” not a “shall”.

The Secretary is directed to develop functional specs to ensure the consistent and accurate input of data into systems and databases relating to the CSA program, including uniform standards for managing data and consultation with States.

Within 1 year, the Secretary is also directed to task the MCSAC with reviewing treatment of preventable crashes under the SMS. The MCSAC is directed to make recommendations on a process to allow motor carriers and drivers to request that the Administrator make a determination with respect to the preventability of a crash, if such a process hasn’t yet been established. The bill defines “preventable” as meaning given that term in Appendix B of part 385 of title 49 CFR.

Finally, the bill directs DOT within 18 months to create a methodology to incorporate into the CSA program some items to allow for an improved SMS score for “beyond compliance” initiatives including installation of advanced safety equipment, use of enhanced driver fitness measures, adoption of fleet safety management tools, technologies and programs, or other standards as determined appropriate by FMCSA. The Administrator will incorporate a methodology into the CSA program or establish a safety BASIC in the SMS. The process shall be developed with notice and comment. It will provide for a petition process for reviewing advanced technologies and programs and seek industry input, followed by technical and performance standards.

School Bus Safety Study – Section 5511

The bill requires GAO to do a study on school bus safety including existing Federal and State rules and guidance in home to school transportation, including regulations and guidance regarding driver training, capacity requirements, programs for special needs students, inspection standards, vehicle age requirements, best practices and public access to inspection results and crash records. The study is to note any correlation between public or private school bus operators involved in accidents or failure in state or local safety inspections, average age or odometer readings of the school buses in the fleets, violations of federal or state laws, violations of state or local laws related to illegal passing of school buses. The study will look at a regulatory framework comparison of public and private school bus operations, maximums for retirement, percentage of buses in a local bus fleet needed as spare buses, and capacity levels per school bus for different age groups.

FMCSA Regulatory Reform – Section 5202

The bill directs that as part of a regulatory impact analysis for a proposed or final major rule from FMCSA, it must include analysis of impacts on different segments of the industry and formulate estimates and findings based on best available science. The analysis shall use data that is representative of various commercial motor vehicle truck and bus operators that will be impacted and consider the effects on different sizes of truck and bus operators. If a proposed rule is going to lead to a major rule, the FMCSA must proceed with an ANPRM or a negotiated rulemaking. The ANPRM must identify the need for a potential regulatory action, identify and request public comment on the best available science or technical information relevant to analyzing potential regulatory alternatives; request public comment on the available data and costs with respect to regulatory alternatives reasonably likely to be considered as part of the rulemaking; and request public comment on available alternatives to regulation.

Prioritizing Rulemakings – Section 5302

The bill directs FMCSA to prioritize the completion of each outstanding rulemaking required by statute before beginning any other rulemaking, unless the Secretary determines that there is a significant need for such other rulemaking and notifies Congress of such determination.

FMCSA Guidance – Section 5203

The bill directs each guidance document (interpretation of regulations or enforcement policy) to be publicly available and identify a date of issue or revision and point of contact for questions. The FMCSA can redact from public view any information in guidance documents that would reveal investigative techniques. Every five years, the Secretary will review guidance documents and either incorporate into regs or reissue an updated version of the guidance document. Once every 5 years the Secretary must conduct a comprehensive review of guidance documents and make them subject to notice and comment. The bill requires FMCSA within 1 year to review all current guidance documents to make sure they meet these requirements.

Petitions - Section 5204

FMCSA must make publicly available a summary of all petitions for regulatory action, prioritize those most likely to have safety enhancements and prioritize responses to petitions, respond to petitions within 6 months.

Inspector Standards – Section 5205

Within 90 days, FMCSA shall revise regulations to incorporate by reference certification standards for roadside inspectors issued by CVSA.

Implementing Safety Requirements – Section 5307

The bill requires FMCSA to report within 30 days after enactment and every 6 months thereafter on status, reason for delay and expected issuance of certain overdue rulemakings including: Drug and Alcohol Clearinghouse, electronic logging devices, driver training, visibility of agricultural equipment, safety fitness determinations any FMCSA regulation from SAFTEA-LU or MAP-21 that has yet been implemented.

Drug Free Commercial Drivers/Hair Follicle Testing – Section 5402

The bill permits pre-employment testing for use of alcohol and to use hair testing as an acceptable alternative to urine testing for pre-employment and random drug testing. The bill creates an exemption from hair testing for cmv operators with established religious beliefs that prohibit the cutting or removal of hair. The bill directs HHS to issue guidance for hair testing within 1 year. Included in the conference report language accompanying the bill is this statement: “The FMCSA has informed the conferees and the conferees agree that nothing in section 5402 authorizes the use of hair testing as an alternative to urine tests until the U.S. Department of Health and Human Services establishes federal standards for hair testing.”

Seattle Penalty for Continued Exemptions from Enforcement of Charter Service Rule – Section 3011

The bill directs that if Seattle is exempt from the charter service rule, it loses its transit formula grant funds for that fiscal year. The lost funds can be restored in the following fiscal year if Seattle is no longer exempt.

Commercial Driver Pilot Program - Section 5404

The bill directs the Secretary to create a pilot program to evaluate and make recs on issues and benefits of permitting under age 21 drivers to drive in interstate commerce. Drivers of passenger vehicles are NOT permitted to participate in the pilot program.

Windshield Technology – Section 5301

The bill directs the Secretary within 6 months to issue regulations to permanently allow the voluntary mounting on the inside of a vehicle’s windshield of vehicle safety technologies (lane departure warning systems, collision avoidance systems, on board video event recording devices and any other technology deemed appropriate) if the Secretary determines that such mounting is likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved without such mounting.

Self Reporting of En Route Equipment Failures – Section 5303

The bill directs GAO to do a study on the cost and feasibility of establishing a self-reporting system for commercial motor vehicle drivers or motor carriers with respect to en route equipment failures. The report shall include alternatives for reporting of equipment failures in real time, including an internet website or phone hotline; ability of a commercial motor vehicle driver or a motor carrier to provide to the FMCSA proof of repair of a self-reported equipment failure; the ability of FMCSA to ensure that self-reported equipment failures proven to be repaired are not used in the calculation of BASIC scores; the ability of roadside inspectors to access self-reported equipment failures; the cost to establish and administer a self-reporting system; the ability for a self-reporting system to track individual commercial motor vehicles through unique identifiers; and whether a self-reporting system would yield demonstrable safety benefits.

High Risk Carrier Reviews - Section 5303

The bill directs that DOT will ensure that a review is completed on each motor carrier that demonstrates through performance data that it poses the highest safety risk. At a minimum, a review shall be conducted whenever a motor carrier is among the highest risk carriers for 4

consecutive months. Information on number of high risk carriers identified and reviewed will be posted publicly.

Post Accident Report Review – Section 5306

The bill directs DOT within 6 months to convene a working group to review data elements of post-accident reports for tow away accidents involving commercial motor vehicles reported to the federal government and report on findings and make recommendations, including best practices, for State post-accident reports to achieve certain prescribed data elements. Members of the working group will represent State law enforcement officials, industry, labor, and safety advocates. The criteria to be considered includes the primary cause of the accident if it can be determined, physical characteristics of the commercial motor vehicle and any other vehicle involved in the accident, including vehicle configuration; the gross vehicle weight, if the weight can be readily determined; number of axles; distance between axles, if the distance can be readily determined.

Technology Improvements – Section 5504

The bill directs a GAO comprehensive study of FMCSA's IT, data collection and management systems.

Report on Commercial Driver's License Skills Test Delays – Section 5506

The bill directs DOT to submit a report to Congress within 18 months a state by state analysis of status of CDL skills testing, including average wait times, number of examiners, number of test sites. The report must include specific steps FMCSA is taking to reduce delays.

Report on Design and Implementation of Wireless Roadside Inspection Systems – Section 5513

The bill directs a report on design, development, testing and implementation of wireless roadside inspection systems.

En Route Inspections – Section 5101

The bill provides that exception the case of an imminent hazard or obvious safety hazard, an inspection of a vehicle transporting passengers is conducted at a bus station, terminal, border crossing, maintenance facility, destination or other location where a motor carrier may make a planned stop (excluding a weigh station).

New Entrant Safety Review Program – Section 5304

The bill directs the Secretary to conduct an assessment of the new operator safety review program including the program's effectiveness in reducing crashes, fatalities and injuries involving commercial motor vehicles and improving commercial motor vehicle safety and recommendations for changes. \$32 million in FY 2016 is set aside for new entrant audits.

Speeding Up Registration Process – Section 5505

The bill requires the Secretary to submit a report within 30 days of actions the Secretary is taking to ensure to the greatest extent practicable, that each application for registration under 13902 is processed not later than 30 days after the date on which it was received.

Study on Commercial Motor Vehicle Driver Commuting – Section 5515

The bill directs FMCSA to do a study on safety effects of motor carrier commutes exceeding 150 minutes. Section 5515 requires the Administrator of the FMCSA to conduct a study on the safety effects. The report language accompanying the bill states: “On June 17, 2014, a tractor-trailer struck a van near Cranbury, New Jersey, killing one person and injuring several others.

According to the National Transportation Safety Board, the truck driver had been awake more than 24 hours at the time of the crash. In addition, the Georgia-based driver had driven 12 hours overnight to his job in Delaware before starting his shift. The study shall address the prevalence of long commutes in the industry and the impact on safety.”

Opportunities for Veterans – Section 5401

The bill directs the Secretary to modify regulations to exempt veterans from a portion of the driving test if the vet had experience in the armed forces or reserves driving vehicles similar to cmv’s, ensure that a vet may apply for an exemption for the one year period on date they separate from the military and credit military training for satisfying minimum standards for training and knowledge.

Marijuana – Impaired Driving – Section 4008

The bill requires the Secretary to conduct a study on marijuana-impaired driving and submit recommendations on effective detection and measuring of driving under the influence of marijuana, if feasible, an impairment standard and methodologies for increased data collection regarding prevalence and effects of marijuana-impaired driving.

PROVISIONS NOT INCLUDED IN FINAL CONFERENCE REPORT

NHTSA Seat Belt Study

The study was pending in House vehicle safety draft. NSTA provided perfecting language to make it more balanced but opposed the need for a study and it was not included in the final bill.