



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Room W64-232
Washington, DC 20590

February 27, 2014

The Honorable Anne S. Ferro
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Ferro:

In February 2014, the Federal Motor Carrier Safety Administration (FMCSA) tasked its Motor Carrier Safety Advisory Committee (MCSAC) with identifying ideas that the Agency should consider in moving forward with recommendations to the Department, and ultimately to Congress, on surface transportation reauthorization. The MCSAC met in public meetings on February 10-11, 2014, to develop and discuss ideas for reauthorization. The attached report includes all of the ideas relating to reauthorization that the MCSAC developed during those meetings.

It is important to note that the ideas in this report do not represent consensus recommendations. The ideas presented in this report are not based on a full discussion on the merits; rather, these ideas were suggested and supported by a variety of MCSAC members. The Committee's intention is to provide FMCSA with a broad range of reauthorization ideas from the diverse group of stakeholders that constitute the MCSAC membership. Finally, the MCSAC notes that the inclusion of ideas in this report was not based on a discussion of whether sufficient data exists to support the recommendations or on cost/benefit considerations. For this reason, several of the reauthorization ideas suggest that FMCSA examine a particular issue to explore the merits/safety benefits and costs of moving forward on an idea.

I respectfully submit this report to FMCSA for its consideration.

Sincerely,

//signed//

Stephen C. Owings
Chairman, Motor Carrier Safety Advisory Committee

Enclosure

MCSAC Task 14-01: Recommendations to the Agency to be Included in the Upcoming Reauthorization of the Surface Transportation Law, the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141)

Introduction

In Task 14-01, FMCSA requested that the MCSAC identify ideas the Agency should consider in moving forward with recommendations to the Department, and ultimately to Congress, on surface transportation reauthorization. The MCSAC believes it is important to note that the ideas in this report do not represent consensus recommendations. The ideas presented in this report are not based on a full discussion on the merits; rather, these ideas were suggested and supported by a variety of MCSAC members. The Committee's intention is to provide FMCSA with a broad range of reauthorization ideas from the diverse group of stakeholders that constitutes the MCSAC membership. The first part of the report includes the reauthorization ideas that received the most support from MCSAC members. The second part of the report includes all other reauthorization ideas suggested by MCSAC members. Neither set of ideas is listed in any particular order. Finally, the MCSAC notes that the inclusion of ideas in this report was not based on a discussion of whether sufficient data exists to support the recommendations or on cost/benefit considerations. For this reason, several of the reauthorization ideas suggest that FMCSA examine a particular issue to explore the merits/safety benefits and costs of moving forward on an idea.

I. Top 12 MCSAC Reauthorization Ideas

- A. The next surface transportation reauthorization should authorize FMCSA to develop more stringent entry into the motor carrier industry.
 1. For example, FMCSA should evaluate/consider whether to require the following before granting operating authority to new entrant motor carriers:
 - a. Increased insurance requirements.
 - b. Examining financial capabilities of a new entrant to determine they have the capability to be in the business (beyond insurance requirements).
 - c. Increase new entrant registration fee.
 - d. Determination that new entrants can deploy latest safety technologies.
 - e. Minimum standards for maintenance facilities.
 - f. Ongoing safety training program.
 - g. Entry level driver training.
 - h. Consider decreasing new entrant safety audit timeline or conducting safety audit before operating authority is granted (audit should be done significantly earlier than 18 months).
 - i. Authorize FMCSA to collect Social Security Numbers (SSNs) of officers of new entrants.
 2. One MCSAC member suggested developing new entrant registration standards comparable to those used by the Federal Maritime Commission.

- B. Authority Over Chain of Responsibility, Including Shippers, Receivers, Brokers –
The next surface transportation reauthorization should require FMCSA to put forward minimum standards for anyone who engages the services of passenger or property carriers. In other words, FMCSA should require that the entire chain of responsibility is “on the hook” for passenger or property carriers engaging in dangerous behavior.
 - 1. Motorcoach – tour companies/brokers should also be included in the chain of responsibility.
 - a. The next surface transportation reauthorization should give FMCSA regulatory oversight over bus brokers (i.e., entities who are in the business of arranging a motorcoach operator for passengers, but do not operate vehicles and do not organize the tour).
 - 2. Property Carriers – Bring shippers into FMCSA’s safety program jurisdiction.
 - a. The next surface transportation reauthorization should require FMCSA to pursue avenues to ensure that when a truck is held up by shippers, the carrier and the driver are paid.
 - b. Prohibit penalties for carriers or drivers for being late with a shipment.
- C. The next surface transportation reauthorization should authorize additional funding to support the expedited deployment of intelligent transportation technologies by DOT, both in vehicles and infrastructure.
 - 1. For example, stop lights communicating with vehicles, vehicle-to-vehicle communications.
 - 2. Intelligent technologies in vehicles can result in passenger vehicles braking when commercial vehicles are stopped, etc.
- D. Congress should reform truck driver compensation by eliminating the Fair Labor Standards Act (FLSA) overtime exemption for over-the-road drivers. Drivers should be paid for every hour worked.
 - 1. Require FMCSA to establish a minimum safe pay rate for commercial motor vehicle (CMV) drivers.
 - 2. This would result in carriers more effectively managing drivers’ time.
- E. The next surface transportation reauthorization should require that FMCSA conduct a notice and comment rulemaking on sleep apnea.
 - 1. Recent legislation prohibited FMCSA from issuing final guidance on sleep apnea, and stated that if the Agency issued anything on sleep apnea, it would have to be notice and comment rulemaking.
- F. The next surface transportation reauthorization should expand options for appropriate, adequate, and safe truck and bus parking, both in the short and long-term.
- G. Relating to underride (property-carrying vehicle), the next surface transportation reauthorization should require FMCSA to update the standard for rear guard and require that the Agency conduct a study for front and side guards (leading to potential rulemaking).

1. Such override protections may not be a good idea for school buses. If there were override or side crash protection on these vehicles, this would transfer crash impacts to passengers.
- H. The next surface transportation reauthorization should require that FMCSA conduct a notice and comment rulemaking on speed governors.
- I. The next surface transportation reauthorization should require that FMCSA conduct a notice and comment rulemaking to encourage or require use of collision avoidance systems and technologies (e.g., active braking with forward collision, stability control).
- J. Basic Motor Carrier Safety Assistance Program (MCSAP) grant program funding – The next surface transportation reauthorization should increase the cap on traffic enforcement programs from 5 percent to 10 percent in terms of percentage of MCSAP funding that may be used for such efforts.
 1. This would allow officers to increase pursuit of traffic enforcement re: passenger vehicle driving behavior around CMVs (vs. commercial officers only citing CMVs for traffic violations).
- K. The U.S. Department of Transportation (DOT) should advocate that Congress maintain current Federal size and weight limits until the mandated MAP-21 study is completed.
- L. The next surface transportation reauthorization should require FMCSA to conduct a notice and comment rulemaking to increase minimum insurance requirements.
 1. In this rulemaking, the Agency should consider the following:
 - a. Medical healthcare costs in current dollars (inflation over 30 years since last set, \$4.4 million).
 - b. DOT value of life.
 - c. Estimates of lifetime costs of care for spinal, brain injury, etc.
 - d. Per claim versus per crash liability amounts.
 2. Consider maintaining proportional/differentiated rates between property carriers, passenger carriers, hazmat carriers, household goods carriers.

II. Other MCSAC Reauthorization Ideas

- A. Basic MCSAP grant program funding – The next surface transportation reauthorization should change the Federal-State funding sharing from 80-20, to 90-10.
 1. Rationale: States are being asked to do a lot more now than in the past (i.e., during the inception of the MCSAP grants and the 80-20 cost sharing). The current level of effort is not sustainable at the State level with the current 80-20 split as they face increasing pressures to do more.
 2. There should not be changes to the current maintenance of effort requirements.

3. Fiscal impact would be approximately \$30-40 million to MCSAP budget.
- B. Bus safety – The next surface transportation reauthorization should authorize States to conduct en route inspections.
1. Require FMCSA to work with industry and the Commercial Vehicle Safety Alliance (CVSA) to develop guidelines regarding how en route inspections should be conducted safely and with minimal disruption to passengers.
- C. Commercial vehicle safety plan (CVSP) processes – The next surface transportation reauthorization should:
1. Require FMCSA to adjust the period of performance on a grant such that it only begins when grants have been allocated to the States.
 2. Require the CVSP process move to a more long term cycle (e.g., 3-5 years) rather than annually.
 3. Provide adequate funding for FMCSA to improve the CVSP website.
- D. The next surface transportation reauthorization should require FMCSA to conduct a study where the Agency would study the airline industry and determine what FMCSA would need to do to get to zero deaths on highway systems.
- E. The next surface transportation reauthorization should authorize FMCSA to create a Voluntary Safety Excellence Program for both drivers and carriers – carriers and drivers who wanted to be a part of it would have to establish (via annual submittals to Agency) that they have certain elements in place.
1. In addition to required processes/activity, such a program should include a component to require the achievement of actual results.
 2. Benchmarks could be different for small, medium, and large fleets.
 3. Carriers could then advertise that they are part of the excellence program.
 4. Participating carriers would be subject to audit.
 5. This type of program would not replace baseline regulation, but would be voluntary compliance with something above the minimum standards.
- F. The next surface transportation reauthorization should direct that an objective review all current regulations (and Safety Measurement System (SMS) methodology) be conducted to determine each regulation’s impact and relation to safety and effectiveness.
1. Rationale:
 - a. This would better enable FMCSA to set priorities regarding where the Agency should be focusing resources.
 - b. This could improve enforcement because they could focus on what affects safety.
 2. The Agency already does Section 610 retrospective reviews of regulations, but this could be a more broad review that involves input from various stakeholders.
 3. Regarding SMS methodology, there are some Behavior Analysis and Safety Improvement Categories (BASICS) with little or no correlation to crashes (i.e.,

- safety), for example, Driver Fitness. Some of the public is misinterpreting the data.
- a. Advocates for Highway and Auto Safety: Some violations may relate to safety although they may not necessarily correlate with crashes.
- G. The next surface transportation reauthorization should require that FMCSA conduct a notice and comment rulemaking to address the exception that allows the use of Schedule II drugs when driving a CMV.
1. Part of the rulemaking would be a review of which drugs should be allowed.
 2. This rulemaking should consider procedures to determine which Schedule II drugs may be used by CMV drivers and how.
 3. This rulemaking should consider FAA Schedule II drug regulations.
- H. The next surface transportation reauthorization should require FMCSA to evaluate alternative paradigms to truck hours of service (HOS) requirements.
- I. The next surface transportation reauthorization should require FHWA to conduct notice and comment rulemaking to establish uniform tolerances for axle weights.
1. Axle weights add up to gross weights, no tolerance. There needs to be some measure of reasonable tolerance on axle weights (but not increase gross weights).
- J. The next surface transportation reauthorization should dedicate adequate funding for Agency enforcement, for example, to ensure that Strike Force can be ongoing and expand to the entire motor carrier industry.
- K. The next surface transportation reauthorization should require FMCSA to publish in the Federal Register any petitions for rulemaking filed with FMCSA and actions taken on such petitions.
- L. Exemptions (for groups, commodities) should not be included in future statutory language. If exemptions are included, there should be language to specify that exempt entities have to demonstrate an improved level of safety.
1. Pilot/set time frame for them to prove that what they're doing instead is a safer practice.
 2. Reevaluate how States are held accountable for crash data relating to exemptions.
- M. The next surface transportation reauthorization should require that the same rules apply for CMVs, carriers, drivers, regardless of whether they are operating in interstate or intrastate commerce.
- N. The next surface transportation reauthorization should authorize FMCSA in cooperation with the U.S. Department of Health and Human Services (DHHS) to establish standards to allow motor carriers to use hair testing results as an alternative to urinalysis testing for pre-employment and random drug tests.

1. National Clearinghouse should include positive drug tests from hair testing for commercial drivers.
- O. The next surface transportation reauthorization should require FMCSA to implement a national employer notification system (for any licensure action, e.g., suspension, revocation).
1. Congress should authorize additional funds for the Agency to accomplish this recommendation.
- P. The next surface transportation reauthorization should require FMCSA to give motor carriers and drivers access to the data to determine if a driver's privilege to operate has been suspended in any State (at no cost to the carrier or driver).
- Q. The next surface transportation reauthorization should require the Occupational Safety and Health Administration (OSHA) to prioritize whistleblower protections for drivers and expedite the investigative/resolution process.
1. When drivers elect to blow the whistle, their case should be expedited. (Cases often take 1-2 years to resolve.)
- R. The next surface transportation reauthorization should provide additional resources to strengthen the truck safety response hotline, which was never adequately funded.
1. No one responds to complaints filed.
 2. Congress should require FMCSA to give the truck safety response hotline a higher priority.
 3. Complaints filed via the truck safety response hotline could be used as a priority for enforcement and compliance reviews.
- S. The next surface transportation reauthorization should increase New Entrant Safety Assurance Program (NESAP) funding so that FMCSA can hire more inspectors or provide more overtime funding for States.
- T. The next surface transportation reauthorization should authorize FMCSA to collect SSNs from officers of registered entities.
- U. The next surface transportation reauthorization should set a uniform national highway speed limit for all vehicles.
- V. The next surface transportation reauthorization should require FMCSA to conduct a notice and comment rulemaking to develop commercial vehicle safety ratings, including occupant protection, safety technologies, etc.
- W. The next surface transportation reauthorization should remove the current 12 percent excise tax on new safety technologies. Currently, the 12 percent excise tax is a disincentive to invest in such technologies.
1. Congress should authorize DOT to determine which safety technologies would be exempt from the excise tax.

- X. The next surface transportation reauthorization should require FMCSA to conduct a notice and comment rulemaking to potentially restrict use of non-adaptive cruise control on all CMVs.
- Y. The next surface transportation reauthorization should require FMCSA to conduct a notice and comment rulemaking to explore identification requirements that would identify driving carrier/USDOT Number on trailers.
- Z. The next surface transportation reauthorization should require FMCSA to consider driver monitoring and collision prevention system technology and consider whether using such technology without the camera on the driver might accomplish 90 percent of the goals of that technology.
 - 1. This consideration should include an evaluation of the effect of such technologies on drivers.

NOTE: Future reauthorization should keep in mind that the majority of the motor carrier industry is small businesses and do not necessarily have the resources or technology to implement modern technologies.