Meeting

Minutes for June 14–15, 2016

The Federal Motor Carrier Safety Administration’s (FMCSA) Motor Carrier Safety Advisory Committee (MCSAC) met on June 14–15, 2016, in Washington, DC. In accordance with the provisions of Pub. L. 92-463, the meeting was open to the public. Col. Scott Hernandez, MCSAC Chairman, called the meeting to order at 9:15 am.

The following individuals attended the meeting:

**MCSAC COMMITTEE MEMBERS**

Rob Abbott, American Trucking Associations

LaMont Byrd, Director of Health and Safety, International Brotherhood of Teamsters

Gary Catapano, Senior Vice President of Safety First Student, Inc.

Bruce Hamilton, Vice President, Amalgamated Transit Union

Scott Hernandez, Chairman; Chief, Colorado State Patrol

Henry Jasny, Advocates for Highway and Auto Safety

John Lannen, Vice Chairman; Executive Director, Truck Safety Coalition

Jane Mathis, Parents Against Tired Truckers

Robert Mills, Officer, Fort Worth, TX, Police Department *(Absent)*

Janice Mulanix, Assistant Chief, Enforcement and Planning Division, California Highway Patrol

Stephen Owings, President, Road Safe America

David Parker, Senior Legal Counsel, Great West Casualty Company

Danny Schnautz, Clark Freight Lines, Inc.

Calvin Studivant, Motorcoach Operator, Community Coach

Pete Pantuso, President and CEO, American Bus Association

Todd Spencer, Executive Vice President, Owner-Operator Independent Drivers Association

Tami Friedrich Trakh, Citizens for Reliable and Safe Highways

**FMCSA AND OTHER GOVERNMENTAL REPRESENTATIVES**

Larry Minor, Associate Administrator for Policy and Designated Federal Officer (DFO), FMCSA

Cyndy Shaffer, United States Department of Transportation, Volpe Center

Shannon Watson, Senior Policy Advisor and Deputy DFO, FMCSA

**OTHER ATTENDEES**

Charity Coleman, Volpe Center

Matthew Erim, National Motor Freight Traffic Association

Jay Grimes, Owner-Operator Independent Drivers Association (OOIDA)

Collin Long, (OOIDA)

Tim Lynch, Morgan Lewis, LLP

Kelly McNelis, Volpe Center

Julie Perrott, National Transportation Safety Board

Al Smith, Greyhound

Bryan Vicker, International Association of Machinists (IAM)

Ronna Weber, National School Transportation Association

**Call to Order**

The committee met to provide recommendations to the Agency concerning implementation of section 5203 of the Fixing America’s Surface Transportation (FAST) Act to: (1) prioritize regulatory guidance that should be incorporated into the safety regulations to promote clear, consistent, and enforceable rules; (2) identify regulatory guidance that appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; and (3) identify guidance that should remain in place.

**REMARKS AND COMMITTEE ACTION**

The September 21-22 meeting minutes were approved.

**1. Guidance Overview Discussion**

Col. Hernandez read aloud the Colorado Department of Public Safety Memorandum, which addressed the FMCSA Regulatory Guidance. The committee agreed to a methodology for revising CFR Title 49 Parts 40, 325-399 and confirming interpretations.

Discussion points

* The June and October meetings will be used to generate a consensus on a methodology to approach the task for the FAST Act.
* There is confusion with some regulations, including complicated/contradictory guidance in some areas. Questions to consider:
  + How will different States apply the guidance?
  + Will the guidance create problems with data in datasets?
* Questions and answers that appear on the FMCSA website need to differ from regulatory guidance. However, there is a need to differentiate between questions and answers versus guidance in general. Regulatory guidance is needed.
* There will always be inconsistencies from States.
* Guidance needs to be written in plain language.

**2. Regulatory Guidance Review**

Discussion points

The committee began to sort the 700 FMCSA Regulatory Guidance items into three categories: (1) incorporate safety regulations to promote clear/consistent enforcement rules; (2) eliminate guidance inconsistent with intent of safety regulations; or (3) retain as guidance. Sections 395, 383, and 392, prioritized in the Colorado Department of Public Safety Memorandum, were reviewed.

A list of all questions containing their status and additional notes can be found in the Task 16-1 matrix. Members will spend the coming months reviewing remaining sections on their own using the Task 16-1 matrix and send their Task 16-1 matrix to Shannon Watson. The individual input will be combined into a master matrix and sent to the committee. Further deliberation will be done at the next MCSAC meeting in October 2016. Key discussion areas from Task 16-1 are below.

**Section 395—Docket 1**

* This docket was the highest priority.
* The law needs to be enforced, no matter what State one is in. If exceptions are made, then no one will have a clear understanding of what the law actually is.
* Committee suggested stakeholders have an opportunity to comment on the categorization of Regulatory Guidance.
* Carriers sometimes attempt to interpret rules in certain ways. The Agency needs to enforce the guidance to help align the carriers in compliance with rules. The guidance must reflect the reality that drivers are dealing with; guidance can be utilized as a teaching tool.
* Questions that incorporate “air mile radius” will be combined into one question and will be implemented into the FMCSRs. One question versus multiple questions in regard to this topic will be less cumbersome.
* Definition for “off-duty time” will be implemented in hopes to make the guidance more clear and understandable.
* The letter the committee will write to FMCSA will indicate some process questions that need to be embedded with a new regulation.

**Section 395—Docket 2**

* Clarification is needed to determine when drivers are under the direction of their employer. Circumstances must be clarified to determine when drivers are free to drive their trucks on their own will or if someone is forcing them to drive.
* Modifications will be added to guidance that mentions phone calls made by drivers as “momentary and brief” to specifically indicate the duration of phone calls.
* All “on-duty time” guidance questions will be combined as a single guidance.
* Answers to the questions are not able to be revised by the committee. Members suggested eliminating guidance that they are unable to identify.
* It is hard to say if a driver is free to do as they please as some areas of guidance indicate drivers are under the threat of discipline if they do not answer the phone.
* Drivers should not be threatened to answer the phone during their rest period. New drivers especially are going to feel obligated to answer. Some members agreed to have areas with this guidance be rewritten with the new regulations.
* Some guidance that includes school bus operations looks inconsistent with legal. Questions will be confirmed with legal opinions.
* Anytime a driver’s attention is diverted, the likelihood of someone getting hurt increases.
* Guidance with information regarding firefighters and the National Guard will be combined.
* Company policies will reflect guidance on driver’s trips to physical examinations using non-commercial motor vehicles (CMVs).

**Section 395—Docket 3**

* Guidance that contains information about 60-hour/7-day limit and 70-hour/8-day limit for motor carriers will be combined.
* Guidance must clarify when U.S. requirements begin for motor carriers driving over the Canadian border.
* Current regulation for relevance and accuracy (11 hours for property and 10 hours for buses) needs to be taken into consideration with the guidance.
* Time spent resting or sleeping in motor homes being delivered and recorded as off-duty time has not been heard of by most of the committee; therefore, it was eliminated.

**Section 395—Docket 8**

* Likely this section will need to be updated based on advances in technology.
* All guidance that explains how to correct logs will be combined to eliminate contradictions.
* Guidance not relevant to safety will be eliminated.
* Guidance including carrier responsibility for driver violations will be combined with other areas of guidance that include the same topic.
* The “10-hour driving limit” will be changed to reflect current hours of service (HOS) standards.
* Incorporate personal conveyance guidance into recommended off-duty definition in regulatory text.
* Different States have different regulations, which can cause overall confusion for some areas of guidance.
* There is a need to incorporate personal conveyance guidance into recommended off-duty definition in regulatory text.

**Section 395—Docket 13**

* Companies with fatigued drivers need to take the right course of action in order to make the roads safe for everyone. If a driver is pulled over for being fatigued, a company should not expect this driver to drive a non-CMV home safely.

**Section 395—Docket 15**

* No further discussion regarding these questions.

**Section 383—Docket 3**

* There are multiple definitions for the number of passengers school buses have in order for the driver to obtain a commercial driver’s license (CDL). FMCSA should clarify and align various questions and other guidance (2006 pamphlet) that describe the applicability to school and other bus operations. CDLs affect both interstate and intrastate.
* Mixing school buses and church buses in the same guidance is ill-advised.
* The 2006 pamphlet is being updated.
* Adding “when operated on a public road” adds clarity to guidance that contains information on practicing duties at construction sites.
* Guidance that references “recreational vehicles” will be combined.
* Questions that reference “empty school buses” will be combined.
* Questions that reference “private property use” and whether a CDL is required will be combined. Many industries refer to private property use.
* Guidance that relates to the applicability of CDL requirements for CMV use on private property will be combined.
* FMCSA should reconsider the use of the word “employee” in certain instances. Drug and alcohol testing questions will be moved to section 382.
* Not all types of HMRs are all inclusive.
* Questions relating to farm and agriculture will be combined.
* Questions on endorsements rather than applicability will be moved to the correct section.

**Section 383—Docket 5**

* Questions relating to “designed to transport” will align with the new definitional standard, “designed or used to transport.”
* Endorsement questions will be moved to section 383.95.
* The 2015 GVWR rule eliminated two questions in this section.
* Redundant questions were eliminated.
* Determination of the committee to use “like terms” in the guidance. If there are not “like terms” in the questions, then these terms need to be defined.
  + For instance, the definition of “highway” needs to be consistent with the terminology throughout the regulations.
* Questions referring to cargo tank vehicles will be retained until the final rule is issued.

**Section 383—Docket 21**

* Two questions in this section—the first question was eliminated and the second will be checked for accuracy.

**Section 383—Docket 23**

* All five questions were retained as guidance. Questions will be updated for accuracy and terminology updated to reflect FMCSA versus the Federal Highway Administration (FHWA).

**Section 383—Docket 31**

* No further discussion regarding these questions.

**Section 383—Docket 33**

* No further discussion regarding these questions.

**Section 383—Docket 37**

* No further discussion regarding these questions.

**Section 383—Docket 51**

* Questions that may have legal implications will be eliminated.
* Questions not detailed enough and questions with incorrect answers will be eliminated.

**Section 383—Docket 51**

*\*Note: Section 383—Docket 51 was printed twice in the FMCSA Regulatory Guidance. The second set of Section 383—Docket 51 will be renamed.*

* All questions in this section will be eliminated.

**Section 383—Docket 71**

* All questions in this section will be eliminated.

**Section 383—Docket 73**

* CDL skills tests need to be conducted in English.

**Section 383—Docket 75**

* Person administering road test does not need to have a CDL. This is the reality of the State official administering the road test.

**Section 383—Docket 77**

* Both questions in this section will be eliminated.

**Section 383—Docket 91**

* No further discussion regarding these questions.

**Section 383—Docket 93**

* Drivers could deliver replacement buses for the broken-down bus.
* **[Alan Smith]** Received a ruling from FMCSA regarding driveaway-towaway operations. If drivers are going to deliver, they must have the key endorsement; have to qualify the CDLs with the endorsements. This does not cover the mechanic during the test drive or the location of the broken-down bus.
  + The committee decided a change to the regulation is needed. However, that is not the scope of the task.
* The committee will ask FMCSA to clarify whether a load of products with batteries of sufficient weight requires placarding and driver with hazardous material (HM) endorsement.
* Questions that refer to empty school buses will be retained as guidance and combined.

**Section 383—Docket 95**

* No further discussion regarding these questions.

**Section 383—Docket 113**

* No further discussion regarding these questions.

**Section 383—Docket 131**

* The one question in this section will be eliminated.

**Section 383—Docket 133**

* Questions referencing endorsement testing will be combined.
* All FHWA references will be updated to FMCSA.

**Section 383—Docket 153**

* Seven of eight questions will be eliminated in this section.

**Special Topics—Motor Coaches and CDL**

* No further discussion regarding these questions.

**Special Topics—State Reciprocity**

* No further discussion regarding these questions.

**Special Topics—International**

* No further discussion regarding these questions.

**Section 392—Docket 3**

* One question in this section, which will be updated to reflect the coercion rule as necessary.

**Section 392—Docket 5**

* Section 382 was written long after section 392—docket 5. Outdated language will be revised and incorporated into the appropriate regulations.
* Questions contradictory with regulations will be eliminated.

**Section 392—Docket 6**

* No further discussion regarding these questions.

**Section 392—Docket 7**

* No further discussion regarding these questions.

**Section 392—Docket 9**

* The committee believed that all questions in this section offer impractical advice for drivers and/or carriers.
  + The coercion rule can potentially contradict this section.

**Section 392—Docket 10**

* The one question in this section goes broader than hazmat. Therefore, this will apply.

**Section 392—Docket 14**

* No further discussion regarding these questions.

**Section 392—Docket 16**

* Two questions in this section will be eliminated.

**Section 392—Docket 60**

* No further discussion regarding these questions.

**Public Comment Period**

*No public comment on either day of the meeting.*

**ADJOURNMENT:** The meeting was adjourned at 4:30 pm.

We hereby certify that, to the best of our knowledge, the foregoing minutes are accurate and complete.

­­*//Signed//*

Scott Hernandez

Chairman, MCSAC

*//Signed//*

Larry W. Minor

Designated Federal Officer, MCSAC