

MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration

1200 New Jersey Avenue, SE

Room W64-232

Washington, DC 20590

October 16, 2018

The Honorable Raymond P. Martinez

Administrator

Federal Motor Carrier Safety Administration

1200 New Jersey Avenue, SE

Washington, DC 20590

Dear Administrator Martinez:

The Motor Carrier Safety Advisory Committee (MCSAC) commenced work on Task 17-3 at its June 2017 meeting. The Federal Motor Carrier Safety Administration (FMCSA) tasked the Committee with providing recommendations to the Agency regarding Executive Order (E.O.) 13771, the Presidential order requiring the removal of two existing regulations for each new regulation promulgated.

The MCSAC met in public meetings on June 12-13, 2017, and July 30-31, 2018, to discuss the task. During these meetings, FMCSA staff presented to the Committee its ideas for potential deregulatory action. The MCSAC deliberations on this task included consideration of those FMCSA suggestions, as well as others brought up by the members. The task’s guiding principle is that safety must not be impacted negatively by a removal of any regulation. The resulting ideas and recommendations are attached as the Task 17-3 Report.

On behalf of the MCSAC, I respectfully submit this report to FMCSA for its consideration.

Sincerely,



John Lannen

Chairman

Enclosure

**MCSAC Task 17-3: Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

Introduction

In Task 17-3, the Federal Motor Carrier Safety Administration (FMCSA) requested that the Motor Carrier Safety Advisory Committee (MCSAC) provide recommendations to the Agency regarding Executive Order (E.O.) 13771, the Presidential order requiring the removal of two existing regulations for each new regulation promulgated. Specifically, FMCSA asked the MCSAC to identify a preliminary list of regulations that may be redundant, unnecessary, or obsolete and consider them for removal. In addition, the Agency requested that the MCSAC explain any industry impacts that the removal of these regulations may create. FMCSA had identified a set of recommendations for review and asked the MCSAC to consider those and others it identified for consolidation or removal. Finally, the Agency requested that the MCSAC members confer with their constituencies before finalizing the Committee’s recommendations.

1. **Discussion of Deregulatory Opportunities Presented by FMCSA**
   1. FMCSA discussed several regulations that it has determined preliminarily may be candidates for burden reduction (i.e., deregulation).
   2. 49 CFR Part 325 (Noise Emission Standards)
      1. FMCSA has not performed noise tests for many years.
      2. The U.S. Environmental Protection Agency (EPA) has similar but less detailed provisions in 40 CFR part 202.
      3. Elimination would simplify regulations and have no significant economic impact.
      4. MCSAC Question: If part 325 noise emission standards are eliminated, would this revert to the Occupational Safety and Health Administration (OSHA) requirement?
   3. 49 CFR Part 356 (Motor Carrier Routing Regulations)
      1. These requirements are an Interstate Commerce Commission (ICC) remnant.
         1. Do they still serve a purpose?
      2. Elimination would simplify regulations and have no significant economic impact.
   4. 49 CFR Part 369 (Reports of Motor Carrier)
      1. FMCSA eliminated quarterly reporting of Forms M & MP in 2013.
      2. Elimination would simplify regulations and have no significant economic impact.
      3. Paperwork Reduction Act (PRA) Information Collection Requests (ICRs) associated with this regulation:
         1. OMB Control No. 2126-0032 – assumes 308 carries, cost $308.
         2. OMB Control No. 2126-0031 – assumes 2 carriers, cost $2.
   5. 49 CFR Part 370 (Loss and Damage Claims)
      1. These provisions are ICC remnants and have limited investigative use (shipper).
      2. Elimination would simplify regulations and have no significant economic impact.
      3. MCSAC Question: If part 370 loss and damage claims provisions are eliminated, how will due process for damaged cargo claims be affected?
   6. 49 CFR Part 379 (Preservation of Records)
      1. These provisions are ICC remnants and have limited investigative use.
      2. Elimination would simplify regulations and have no significant economic impact.
   7. 49 CFR Part 388 (Cooperative Agreements with States)
      1. These requirements are covered by Motor Carrier Safety Assistance Program (MCSAP) regulations (49 CFR part 350).
   8. 49 CFR Part 391 (Qualifications of Drivers)
      1. The PRA ICR associated with this regulation (OMB Control No. 2126-0004) assumes 10 million burden hours at a cost of $89.9 million.
      2. Removing some of these requirements would simplify regulations (e.g., medical records, employment applications, road test results for non-commercial driver’s license (CDL) drivers).
   9. 49 CFR 395.1(e) (Time Card Exception)
      1. Recommendations from FMCSA would be to:
         1. Change the workday from 12 to 14 hours; and
         2. Change to 150 air miles to be consistent with other exceptions.
      2. Making these changes would simplify the regulations with significant economic impacts expected.
   10. 49 CFR 395.3(c) & (d) (Restart Provisions)
       1. Recommendation from FMCSA would be to remove the 1:00am – 5:00am and 168 hours requirements.
       2. These changes would simplify these regulations and would make permanent existing Congressional requirement to suspend enforcement.
       3. MCSAC Question: Has the Agency accounted for the safety impact of removing the restart provisions in § 395.3(c) and (d)?
          1. FMCSA is aware that there is a social cost to eliminating this provision.
   11. 49 CFR 396.11 (No-Defect Driver-Vehicle Inspection Report)
       1. Recommendation from FMCSA would be to extend to passenger carriers.
       2. Potentially more than $1 billion in savings for property carriers.
   12. 49 CFR Part 398 (Transportation of Migrant Workers)
       1. Are separate regulations needed?
       2. Elimination would:
          1. Simplify regulations;
          2. Create uniform hours of service, medical standards, etc.; and
          3. Have no significant economic impact.
       3. Uncertainty regarding worker protections.
       4. Is this area covered by OSHA?
       5. MCSAC Recommendation: If provisions in part 398 regarding the transportation of migrant workers are eliminated, FMCSA should ensure that it coordinates with OSHA as that agency’s regulations might reference FMCSA’s regulations.
   13. 49 CFR Part XXX (Agricultural Requirements)
       1. Rather than have exceptions in multiple parts, FMCSA is considering identifying in a single new CFR part all requirements for which “transporters of agricultural commodities” are subject.
       2. Current regulations and exemptions are difficult to understand and enforce.
       3. Adding this new CFR part would simplify the regulations and have no significant economic impact.
2. **General Discussion**
   1. Are exceptions granted by the agency considered deregulatory?
   2. Regarding the E.O. 13771 “1-in 2-out” requirement for reducing regulations, do the two regulations removed and one regulation added need to be related to each other?
      1. No, based on Office of Management and Budget (OMB) guidance they do not need to be related or even from the same modal agency if they are Department of Transportation regulations.
      2. The intent of E.O. 13771 is to remove obsolete rules and reduce burden.
      3. Removing an obsolete rule allows the agency to add more safety regulations.
      4. There is still some debate about what is “a regulation” for purposes of this E.O.
   3. Costs and Benefits
      1. Benefits of eliminated and added rules will need to be considered when calculating the overall burden.
      2. The cost of the FMCSA’s effort to deregulate is not considered a cost of any rule.
   4. The process to remove regulations is the same as the process to promulgate them (i.e., notice-and-comment rulemaking), so it will not be faster than the promulgation process.
3. **MCSAC Deregulatory Ideas**
   1. Any parts of 49 CFR part 390 that are not being cited at the roadside could be candidates for potential rescission or revision.
   2. The requirement to have an Emergency Response Guidebook on each truck when hauling hazardous materials could be reconsidered.
   3. Allow vehicle permits to be provided electronically and not maintained physically on the commercial motor vehicle (CMV).
   4. These provisions are ICC remnants with negligible safety benefits. Their elimination would simplify regulations and have no significant economic impact.

1. Part 370 (Loss and Damage Claims), as discussed above by FMCSA.

2. Part 377 (Payment of Transportation Charges).

3. Part 378 (Procedures Governing the Processing, Investigation, and Disposition of Overcharge, Duplicate Payment, or Overcollection Claims).

* 1. A member recommended that FMCSA eliminate the exception allowing drivers to use Schedule II drugs if prescribed by a doctor.
     1. Thousands of drivers are in pain management programs for which they take opiates.
     2. Some noted that many drivers could lose their jobs if this exception is eliminated.
  2. One member suggested elimination of the 49 CFR part 393 requirements regarding the testing of fuel tanks, as this is more appropriate to require of manufacturers than carriers.
  3. Light emitting diode (LED) road flares should be acceptable as an emergency response device (49 CFR 393.95(f)(3)).
  4. FMCSA should reconsider requirements to maintain maintenance records for the length of ownership of vehicle plus one year.
  5. A member suggested FMCSA reconsider the requirement to maintain all the lights provided by the manufacturer, including a license plate light where there is no license plate.