

MCSAC Task 17-03: Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs
Discussion Notes from June 12-13, 2017, MCSAC Meeting

Introduction

Task 17-03:

- *The Agency requests that the Motor Carrier Safety Advisory Committee (MCSAC) identify a preliminary list of regulations that may be redundant, unnecessary, or obsolete and consider them for removal.*
- *In addition, we ask the MCSAC to provide any industry impacts that the removal of these regulations may create.*
- *The Agency has identified a set of recommendations for review and asks the Committee to consider these and others it identifies for consolidation or removal.*
- *Finally, we ask the MCSAC members to confer with their constituencies over the summer before finalizing the Committee's recommendations.*

I. Discussion of Deregulatory Opportunities Presented by FMCSA

- A. The Federal Motor Carrier Safety Administration (FMCSA) discussed several regulations that it has determined preliminarily may be candidates for burden reduction (i.e., deregulation).
- B. 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. If part 325 noise emission standards are eliminated, would this revert to the Occupational Safety and Health Administration (OSHA) requirement?
- C. 49 CFR Part 356 (Motor Carrier Routing Regulations)
1. Interstate Commerce Commission (ICC) remnant – does it still serve a purpose?
 2. Elimination would simplify regulations and have no significant economic impact.
- D. 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:
 - a. OMB Control No. 2126-0032 – assumes 308 carries, cost \$308.
 - b. OMB Control No. 2126-0031 – assumes 2 carriers, cost \$2.
- E. 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. If part 370 loss and damage claims provisions are eliminated, how will due process for damaged cargo claims be affected?
- F. 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.
- G. 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).
- H. 49 CFR Part 391 (Qualifications of Drivers)

1. 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).
 2. The PRA ICR associated with this regulation (OMB Control No. 2126-0004) assumes 10 million burden hours at a cost of \$89.9 million.
- I. 49 CFR 395.1(e) (Time Card Exception)
1. Recommendation would be to change the workday from 12 to 14 hours.
 2. Change to 150 air miles to be consistent with other exceptions.
 3. Making these changes would simplify the regulations with significant economic impacts expected.
- J. 49 CFR 395.3(c) & (d) (Restart Provisions)
1. Recommendation 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. Has the agency accounted for the safety impact of removing the restart provisions in § 395.3(c) and (d)?
 - a. FMCSA is aware that there is a social cost to eliminating this provision.
- K. 49 CFR 396.11 (No-Defect Driver-Vehicle Inspection Report)
1. Recommendation would be to extend to passenger carriers.
 2. Potentially more than \$1 billion in savings for property carriers.
- L. 49 CFR Part 398 (Transportation of Migrant Workers)
1. Are separate regulations needed?
 2. Elimination would simplify regulations and have no significant economic impact.
 3. Create uniform hours of service, medical standards, etc.
 4. Uncertainty regarding worker protections.
 5. Covered by OSHA?
 6. If provisions in part 398 regarding the transportation of migrant workers are eliminated, FMCSA should ensure that they coordinate with OSHA as that agency's regulations might reference FMCSA's regulations.
- M. 49 CFR Part XXX (Agricultural Requirements)
1. Rather than have exceptions in multiple parts, consider 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.
- N. General Discussion
1. Are exceptions granted by the agency considered deregulatory?
 2. Regarding the Executive Order (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?
 - a. No, based on Office of Management and Budget (OMB) guidance they do not need to be related or even from the same modal agency as long as they are Department of Transportation regulations.
 - b. The intent of E.O. 13771 is to remove obsolete rules and reduce burden.
 - c. Removing an obsolete rule allows the agency to add more safety regulations.
 - d. There is still some debate about what is "a regulation" for purposes of this E.O.
 3. Costs and Benefits

- a. Benefits of eliminated and added rules will need to be considered when calculating the overall burden.
 - b. The cost of the Agency'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.

II. MCSAC Deregulatory Ideas

- A. Any parts of 49 CFR part 390 that are not being cited at the roadside could be candidates for potential rescission or revision.
- B. The requirement to have an Emergency Response Guidebook on each truck when hauling hazardous materials could be reconsidered.
- C. Allow vehicle permits to be provided electronically and not maintained physically on the commercial motor vehicle (CMV).
- D. Part 370 (Loss and Damage Claims), as discussed above by FMCSA.
- E. Part 377 (Payment of Transportation Charges).
- F. Part 378 (Procedures Governing the Processing, Investigation, and Disposition of Overcharge, Duplicate Payment, or Overcollection Claims).
- G. 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.
- H. 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.
- I. Light emitting diode (LED) road flares should be acceptable as an emergency response device (49 CFR 393.95(f)(3)).
- J. FMCSA should reconsider requirements to maintain maintenance records for the length of ownership of vehicle plus one year.
- K. 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.

III. Public Comments on Deregulation

- A. Stakeholder representing small carriers and brokers:
 1. Strategy and regulatory reform are inseparable and should be considered together;
 2. The Agency should suspend implementation of the Unified Registration System (URS) due to complexity; and
 3. FMCSA should minimize the use of guidance and instead promulgate rules through notice-and-comment rulemaking to increase the predictability of requirements.
- B. Stakeholder representing an oil company:
 1. With the implementation of electronic logging devices (ELDs), supporting documents to track the time and location of drivers should be eliminated;
 2. There is a significant burden associated with retaining these records;
 3. The documents need to be retained to verify on duty, not driving time, which is not captured by ELDs.