



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Regulatory Guidance: Clarification of Reissuance Dates

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Regulatory guidance; notice of reissuance dates.

**SUMMARY:** On March 3, 2020, the Department announced the availability of a regulatory guidance portal to provide public access to the Department’s guidance documents. This notice clarifies the reissuance date of FMCSA guidance published in FMCSA’s guidance portal (“Guidance Portal” or “Portal”) as of March 3, 2020. This notice also clarifies the reissuance dates for guidance posted between March 4 and June 27, 2020, during the “grace period.”

**DATES:** This clarification of prior reissuance dates is applicable on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Winkle, Attorney-Advisor, Office of Chief Counsel, FMCSA, 1200 New Jersey Ave. SE, Washington, DC 20590-0001; 202-366-5257; [anna.winkle@dot.gov](mailto:anna.winkle@dot.gov).

#### SUPPLEMENTARY INFORMATION:

*Executive Order (E.O.) 13891 and the Announcement of the DOT and FMCSA Guidance Portals*

On March 3, 2020, the Department announced the availability of a portal for regulatory guidance (85 FR 12663). As explained in the introductory text on the DOT Guidance Portal, each operating administration maintains a guidance portal available through a link on the DOT Guidance Portal website.<sup>1</sup> The guidance portals were

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<sup>1</sup> <https://www.transportation.gov/guidance/operating-administration-guidance-portals>. FMCSA’s Guidance Portal may also be accessed through a direct link: [www.fmcsa.dot.gov/guidance](https://www.fmcsa.dot.gov/guidance).

originally established to comply with section 3(a) of E.O. 13891,<sup>2</sup> which required each Federal agency to establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from that agency or its components. While E.O. 13891 has since been revoked,<sup>3</sup> it provides context, along with the Office of Management and Budget (OMB) memorandum<sup>4</sup> implementing the Order, for the efforts FMCSA undertook to comprehensively review its existing guidance in establishing its Guidance Portal.

The E.O. and implementing memorandum required in part that Federal agencies establish the database mandated by the E.O. no later than February 28, 2020, and permitted agencies a grace period, through June 27, 2020, to reinstate any existing guidance documents not posted by the initial deadline without the need to conduct a formal good faith cost estimate or otherwise review the guidance in accordance with newly-required approval procedures prior to posting it to the relevant database (e.g., the FMCSA Guidance Portal). The E.O. also required each agency to comprehensively review its guidance documents, rescind those it determined should no longer be in effect, and prohibited agencies from either retaining in effect any guidance document not posted to the database or issuing a guidance document without including it in the database. See 84 FR 55236.

### *FMCSA's Reissuance of Existing Guidance*

FMCSA conducted an extensive review of its guidance in response to the requirement in E.O. 13891 to post current guidance and rescind outdated guidance. When

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<sup>2</sup> See “Promoting the Rule of Law Through Improved Agency Guidance Documents.” 84 FR 55235 (Oct. 15, 2019), *available at*: <https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents>.

<sup>3</sup> See E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation.” 86 FR 7049 (Jan. 25, 2021), *available at*: <https://www.federalregister.gov/documents/2021/01/25/2021-01767/revocation-of-certain-executive-orders-concerning-federal-regulation>.

<sup>4</sup> See M-20-02, “Guidance Implementing Executive Order 13891, Titled ‘Promoting the Rule of Law Through Improved Agency Guidance Documents,’” (Oct. 31, 2019) *available at* : <https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf>.

FMCSA published current guidance to FMCSA’s Portal, including guidance with a specific expiration date identified in the Federal Register notices,<sup>5</sup> FMCSA effectively reissued the guidance. The date the Department announced the availability of the regulatory guidance portals, March 3, 2020, is therefore the reissuance date for all guidance FMCSA published in the Portal as of that date. Guidance documents with previously identified expiration dates are identified as follows:

<b>FMCSA Guidance Portal Unique Identifier(s)</b>	<b><i>Federal Register</i> Notice Issuing the Guidance</b>	<b>Applicability/Expiration Dates in Federal Register Notice</b>
FMCSA-HOS-AG-395.1-Q34, FMCSA-HOS-AG-395.1-Q35, FMCSA-HOS-AG-395.1-Q36, and FMCSA-HOS-AG-395.1-Q37	83 FR 26374 (June 7, 2018)	Applicable June 7, 2018; Expires June 7, 2023.
FMCSA-HOS-395.8-Q26	83 FR 26377 (June 7, 2018)	Applicable on June 7, 2018; Expires June 7, 2023.

Guidance documents that were posted to the Portal by the initial OMB deadline (February 28, 2020) were publicly reissued on March 3, 2020; however, FMCSA’s Guidance Portal will continue to provide the original “issued date” unless substantive updates were subsequently made to the existing guidance. FMCSA believes this approach provides continuity and minimizes risk of confusion as compared with adding new issuance dates each time a guidance document is reissued.

*Reissuance Dates of Grace Period Guidance*

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<sup>5</sup> In both *Federal Register* notices, FMCSA referenced section 5203 of the Fixing America’s Surface Transportation (FAST) Act (Public Law 114–94, 129 Stat. 1312, 1535, Dec. 4, 2015). This section does not require that an expiration date be added to guidance but rather instructs, in part, that not later than 5 years after the date on which a guidance document is published or during a regular review, FMCSA reissue an updated version of any guidance document for which it was not practicable to incorporate into its regulations. Sec. 5203(a)(3)-(4).

This notice also clarifies the reissuance dates of the 53 “grace period” guidance documents, which are the existing guidance documents FMCSA posted to the Guidance Portal between March 4 and June 27, 2020—the grace period established by the OMB implementing memorandum. As with the guidance posted to the Portal by February 28, 2020, the original “issued date” of all grace period guidance documents remains the same unless substantive updates were made to the existing guidance. However, since the guidance was not in fact posted to the Portal by February 28, 2020, the reissuance dates are the dates they were posted to the Portal, as follows:

<b>Unique Identifier</b>	<b>Issued Date</b>	<b>Reissuance Date</b>
FMCSA-CDL-383.133-Q001	3/1/2019	6/25/2020
FMCSA-ELDT-380.600-Q007	3/1/2020	6/25/2020
FMCSA-ELDT-380.603-Q001	3/1/2019	6/25/2020
FMCSA-ELDT-380.603-Q002	3/1/2019	6/25/2020
FMCSA-ELDT-380.603-Q004	3/1/2019	6/25/2020
FMCSA-ELDT-380.605-Q005	3/1/2019	6/25/2020
FMCSA-ELDT-380.605-Q010	3/1/2019	6/25/2020
FMCSA-ELDT-380.605-Q015	3/1/2019	6/26/2020
FMCSA-ELDT-380.605-Q017	3/1/2019	6/26/2020
FMCSA-ELDT-380.605-Q018	3/1/2019	6/26/2020
FMCSA-ELDT-380.605-Q023	3/1/2019	6/26/2020
FMCSA-ELDT-380.703-Q009	3/1/2019	6/26/2020
FMCSA-ELDT-380.707-Q008	3/1/2019	6/26/2020
FMCSA-ELDT-380.707-Q022	3/1/2019	6/26/2020
FMCSA-ELDT-380.719-Q011	3/1/2019	6/26/2020
FMCSA-ELDT-380.719-Q012	3/1/2019	6/26/2020
FMCSA-ELDT-380.719-Q013	3/1/2019	6/26/2020
FMCSA-ELDT-380.721-Q014	3/1/2019	6/26/2020
FMCSA-ELDT-380.721-Q016	3/1/2019	6/26/2020
FMCSA-ELDT-380-Appendix-Q003	3/1/2019	6/26/2020
FMCSA-ELDT-380-Appendix-Q019	3/1/2019	6/26/2020
FMCSA-ELDT-380-Appendix-Q020	3/1/2019	6/26/2020
FMCSA-ELDT-380-Appendix-Q021	3/1/2019	6/26/2020
FMCSA-ELDT-380-Appendix-Q024	3/1/2019	6/27/2020
FMCSA-ELDT-380-Appendix-Q025	3/1/2019	6/27/2020
FMCSA-ELDT-380-Q026	2/4/2020	6/27/2020

FMCSA-ELDT-383.73-Q006	3/1/2019	6/27/2020
FMCSA-FR-78FR25782.2013.05.02	5/2/2012	6/24/2020
FMCSA-RG-390.23-FAQ001	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ002	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ003	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ004	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ005	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ006	4/18/2018	6/23/2020
FMCSA-RG-390.23-FAQ007	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ008	4/15/2018	6/23/2020
FMCSA-RG-390.23-FAQ009	4/15/2018	6/24/2020
FMCSA-RG-390.23-FAQ010	4/15/2018	6/24/2020
FMCSA-RG-390.23-FAQ011	4/15/2018	6/24/2020
FMCSA-RG-390.23-FAQ012	4/15/2018	6/24/2020
FMCSA-RG-390.23-FAQ013	4/15/2018	6/29/2020
FMCSA-RG-390.23-FAQ014	4/15/2018	6/24/2020
FMCSA-RG-390.23-FAQ015	4/15/2018	6/24/2020
FMCSA-RG-390.23-FAQ016	3/19/2020	6/24/2020
FMCSA-RG-390.23-FAQ017	3/19/2020	6/24/2020
FMCSA-RG-390.23-FAQ018	3/19/2020	6/25/2020
FMCSA-RG-390.23-FAQ019	3/19/2020	6/25/2020
FMCSA-RG-390.23-FAQ020	3/19/2020	6/25/2020
FMCSA-RG-390.23-FAQ021	3/19/2020	6/25/2020
FMCSA-RG-390.23-FAQ022	3/19/2020	6/25/2020
FMCSA-RG-390.23-FAQ023	3/25/2020	6/25/2020
FMCSA-RG-390.23-FAQ024	3/5/2020	6/24/2020
FMCSA-RG-390.23-Q004	2/28/2020	6/23/2020

**Robin Hutcheson,**  
*Administrator.*

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