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December 3, 2008

The Honorable Daniel K. Inouye
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Motor Carrier Safety Administration: Hours of Service of Drivers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), entitled "Hours of Service of Drivers" (RIN: 2126-AB14). We received the rule on November 19, 2008. It was published in the *Federal Register* as a final rule on November 19, 2008. 73 Fed. Reg. 69,567.

The final rule adopts as final provisions of an interim final rule concerning hours of service for commercial motor vehicle drivers. The final rule allows drivers to continue to drive up to 11 hours within a 14-hour, non-extendable window from the start of the workday, following at least 10 consecutive hours off duty. The final rule also allows drivers to restart calculation of the weekly on-duty limits after a driver has at least 34 consecutive hours off duty. The final rule also contains a new regulatory impact analysis responding to comments received on the interim final rule, as required by a decision issued by the United States Court of Appeals for the District of Columbia Circuit. *Owner-Operator Independent Drivers Association, Inc. v. Federal Motor Carrier Safety Administration*, 494 F. 3d 118 (D.C. Cir. 2007)

Enclosed is our assessment of the FMCSA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that FMCSA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

Robert J. Cramer

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Theresa Rowlett
Regulatory Ombudsman
Department of Transportation

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
ENTITLED
"HOURS OF SERVICE OF DRIVERS"
(RIN: 2126-AB14)

(i) Cost-benefit analysis

FMCSA prepared a cost-benefit analysis comparing the current rule, which allows up to 11 hours of driving, allows a new 7 or 8 day period to begin after a 34-hour restart break, and some splitting of off-duty periods using sleeper berths, to a second option that would limit driving to 10 hours in a tour of duty and eliminate the 34-hour restart provision. FMCSA estimated that the second option would result in decreased productivity yielding $2,443 million in annual costs, and that it would reduce crash risk by approximately 0.63 percent yielding a value of $214 million per year. Based on this analysis FMCSA concluded that the total annual net costs resulting from the second option would be approximately $2,229 million.

FMCSA also conducted a series of sensitivity analyses, where it revised its assumptions regarding the percentage of all large truck crashes that are fatigue related, the value of a statistical life, and the relative risk of a fatigue-related crash in the 11th hour of driving. FMCSA combined all of the new assumptions in a way that makes the elimination of driving in the 11th hour more favorable from a cost-benefit analysis perspective, and the exercise still found the annual net costs of the second option to be $71 million. Based on its cost-benefit analysis and its sensitivity analyses, FMCSA concluded that eliminating the 11th hour of driving is unlikely to be cost-effective under any reasonable set of circumstances.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Because FMCSA did not issue a notice of proposed rulemaking prior to the publication of this final rule, FMCSA is not required to prepare a final regulatory flexibility analysis. According to FMCSA, the 2005 rule, which certified that the rule would not have a significant impact on a substantial number of small entities, adequately describes the regulatory flexibility impacts of this final rule. 70 Fed. Reg. 49,978 (August 25, 2005).

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

FMCSA states that the final rule will not impose an unfunded federal mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 17, 2007, FMCSA published an interim final rule in the *Federal Register* with a 60-day period for public comment. 72 Fed. Reg. 71,247. FMSCA received 913 comments and responded to those comments in this final rule. 73 Fed. Reg. 69,567.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This final rule does not alter the existing information collection requests for hours-of-service recordkeeping.

Statutory authorization for the rule

The final rule is authorized by sections 31136 and 31502 of title 49 of the United States Code.

Executive Order No. 12,866

FMCSA determined that the final rule is economically significant within the meaning of the Executive Order. FMCSA prepared a regulatory impact analysis of the final rule, and the Office of Management and Budget has reviewed the final rule.

Executive Order No. 13,132 (Federalism)

FMCSA has determined that the final rule does not have federalism implications.