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April 28, 2010

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

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

Subject: *Department of Transportation, Federal Motor Carrier Safety Administration:
Electronic On-Board Recorders for Hours-of-Service Compliance*

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 “Electronic On-Board Recorders for Hours-of-Service Compliance” (RIN: 2126-AA89). We received the rule on April 13, 2010. It was published in the *Federal Register* as a final rule on April 5, 2010. 75 Fed. Reg. 17,208. The final rule is effective June 4, 2010.

The final rule incorporates new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs) manufactured on or after June 4, 2012. On-board hours-of-service (HOS) recording devices meeting FMCSA’s current requirements and installed in CMVs manufactured before June 4, 2012, may continue to be used for the remainder of the service life of those CMVs. The final rule also makes motor carriers that have demonstrated serious noncompliance with the HOS rules subject to mandatory installation of EOBRs meeting the new performance standards. A carrier will be determined to have demonstrated serious non-compliance if FMSCA determines based on HOS records reviewed during a compliance review that a motor carrier has a 10 percent or greater violation rate for any HOS regulation. A carrier that has demonstrated serious non-compliance will be required to install EOBRs in all of its CMVs regardless of their

date of manufacture and use the devices for HOS recordkeeping for a period of 2 years, unless the carrier already equipped its vehicles with automatic on-board recording devices meeting FMCSA's current requirements and demonstrates to FMCSA that its drivers understand how to use the devices.

The final rule, a major rule under the Congressional Review Act (CRA), has an announced effective date of June 4, 2010. CRA requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). The rule was published in the *Federal Register* on April 5, 2010, but we did not receive the rule until April 13, 2010. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of 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 of the procedural steps taken 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Steven J. LaFreniere
Regulatory Ombudsman
Federal Motor Carrier Safety Administration
Department of Transportation

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
"ELECTRONIC ON-BOARD RECORDERS FOR
HOURS-OF-SERVICE COMPLIANCE"
(RIN: 2126-AA89)

(i) Cost-benefit analysis

FMCSA performed a cost-benefit analysis in conjunction with the final rule. FMCSA determined that the costs of the final rule on an annualized basis over a 10-year horizon will be \$139 million. The costs analysis estimates the cost of carriers coming into compliance with the hours of service rules, and includes the electronic on-board recorders required to be compliant with the rule, as well as training time costs for drivers, administrative staff, and state enforcement personnel. FMCSA determined the benefits of the final rule to be \$182 million annually, which includes safety benefits of electronic on-board recorder use by estimating reductions in hours of service violations and resulting reductions in fatigue-related crashes.

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

FMCSA determined that this final rule is not expected to have a significant economic impact on a substantial number of small entities.

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

FMCSA determined that the final rule would not result in the net expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$141,300,000 or more in any one year, nor would it affect small governments.

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

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

FMCSA published a notice of proposed rulemaking on January 18, 2007. 72 Fed. Reg. 2,340. FMCSA received 752 comments on the proposed rule, from commenters including safety advocacy groups, drivers' organizations, national trucking industry associations, state trucking associations, electronic on-board recorder software and system providers, U.S. government agencies, a CMV safety officials' organization,

state government agencies, motor carriers, national associations with transportation interests, and a commercial motor vehicle manufacturer. FMCSA responded to comments in the final rule. 75 Fed. Reg. 17,208.

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

The final rule contains changes to information collection requirements under the Paperwork Reduction Act, and FMCSA had previously received approval for the collections under OMB Control No. 2126-0001, which is valid through December 31, 2011. FMCSA estimates that the final rule would affect approximately 5,700 motor carriers that employ 129,000 drivers annually, and that it would reduce the annual burden hours under OMB Control No. 2126-0001 by 3,110,000 hours annually. FMCSA will submit a supporting statement to OMB to revise the estimated burden hours to 184,380,000 to 181,270,000 hours annually.

Statutory authorization for the rule

The final rule is authorized by sections of the Motor Carrier Act of 1935, codified at 49 U.S.C. § 31502(b), and sections of the Motor Carrier Safety Act of 1984, as amended, codified at 49 U.S.C. §§ 31133, 31136, and 31144.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule was determined to be an economically significant regulatory action and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

FMCSA determined that the final rule would not preempt or modify any provision of state law, impose substantial direct unreimbursed compliance costs on any state, or diminish the power of any state to enforce its own laws. Therefore, the final rule does not have federalism implications under the Executive Order.