



441 G St. N.W.
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September 3, 2020

The Honorable Roger Wicker
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Peter A. DeFazio
Chairman
The Honorable Sam Graves
Ranking 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 report¹ on a major rule promulgated by the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) entitled “Hours of Service of Drivers” (RIN: 2126-AC19). We received the rule on May 20, 2020. It was published in the *Federal Register* as a final rule on June 1, 2020. 85 Fed. Reg. 33396. The stated effective date of the rule is September 29, 2020.

According to FMCSA, this final rule revises the hours of service regulations to provide greater flexibility for drivers subject to those rules without adversely affecting safety. FMCSA states the rule extends the maximum duty period allowed under the short-haul exception in 49 C.F.R. § 395.1(e)(1) from 12 to 14 hours, and extends the maximum radius in which the short-haul exception applies from 100 to 150 air-miles. According to FMCSA, the rule also modifies the definition of adverse driving conditions so that the adverse driving conditions exception may be applied based on the driver’s and dispatcher’s knowledge of the conditions after being dispatched, and extends the driving window during which the current exception for extended driving time may be used by up to 2 hours for truck and bus operations under 49 C.F.R. § 395.3(a)(2) and 49 C.F.R. § 395.5(a)(2), respectively. Additionally, according to FMCSA, the rule makes the 30-minute break requirement for drivers of property-carrying commercial motor vehicles in 49 C.F.R. § 395.3(a)(3)(ii) applicable only when a driver has driven (instead of having been on-duty) for a period of 8 hours without at least a 30-minute non-driving interruption. Finally, FMCSA states that the rule modifies the sleeper berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period

¹ We are issuing this report after the deadline described in 5 U.S.C. § 801(a)(2), as we initially included this final rule as a non-major rule in our database for purposes of the Congressional Review Act.

(whether in or out of the sleeper berth) is at least 2 hours long and the other involves at least 7 consecutive hours spent in the sleeper berth, and to add that neither period counts against the maximum 14-hour driving window in 49 C.F.R. § 395.3(a)(2).

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Sarah Stella
Chief, Regulatory Development Division
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
“HOURS OF SERVICE OF DRIVERS”
(RIN: 2126-AC19)

(i) Cost-benefit analysis

The Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) estimated this final rule will create 10-year cost savings of \$2,366,200,000 at a 3 percent discount rate and \$1,917,500,000 at a 7 percent discount rate. FMCSA also estimated the rule will create annualized cost savings of \$277,400,000 at a 3 percent discount rate and \$273,000,000 at a 7 percent discount rate. FMCSA stated that these amounts are in 2018 dollars.

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

FMCSA certified that this final rule will not 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 this final rule will not have an effect on state, local, or tribal government, in the aggregate, or on the private sector, of \$165 million (\$100 million, adjusted for inflation) or more.

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

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

On August 22, 2019, FMCSA published a proposed rule, entitled “Hours of Service of Drivers.” 84 Fed. Reg. 44190. According to FMCSA, the comment period for the proposed rule closed on October 21, 2019, and it considered late-filed comments to the extent practicable and, as of November 27, 2019, had received a total of 2,874 public comments on the proposed rule. According to FMCSA, the rule provides summaries of the public comments received on the proposed rule and its responses to those public comments based on its consideration of a wide range of studies, including those provided or cited by commenters. Additionally, according to FMCSA, it held two public listening sessions during the comment period for the proposed rule, and the rule provides responses to these comments.

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

FMCSA determined that this final rule contains no information collection requirements under the Act.

Statutory Authorization for the Rule

FMCSA promulgated this final rule pursuant to various provisions of title 49, United States Code, section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-87, section 113 of the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. No. 103-311, section 4133 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, section 108 of the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, section 32934 of the Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, section 5206(b) of Fixing America's Surface Transportation Act, Pub. L. No. 114-94, and section 1.87 of title 49, Code of Federal Regulations.

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

The Office of Management and Budget (OMB) determined that this final rule is economically significant under the Order.

Executive Order No. 13,132 (Federalism)

FMCSA determined that this final rule will not have a substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.