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January 27, 2012

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 John L. Mica  
Chairman  
The Honorable Nick J. Rahall II  
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 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-AB26). We received the rule on January 13, 2012. It was published in the *Federal Register* as a final rule on December 27, 2011. 76 Fed. Reg. 81,134.

The final rule revises the hours of service (HOS) regulations to limit the use of the 34-hour restart provision to once every 168 hours and to require that anyone using the 34-hour restart provision have as part of the restart two periods that include 1 a.m. to 5 a.m. It also includes a provision that allows truckers to drive if they have had a break of at least 30 minutes, at a time of their choosing, sometime within the previous 8 hours. This rule does not include a change to the daily driving limit because FMCSA is unable to definitively demonstrate that a 10-hour limit—which it favored in the notice of proposed rulemaking (NPRM)—would have higher net benefits than an 11-hour limit. The current 11-hour limit is, therefore, unchanged at this time. The 60- and 70-hour limits are also unchanged. The purpose of the rule is to limit the ability of drivers to work the maximum number of hours currently allowed, or close to the maximum, on a continuing basis to reduce the possibility of driver fatigue. FMCSA notes that long daily and weekly hours are associated with an

increased risk of crashes and with the chronic health conditions associated with lack of sleep. These changes will affect only the small minority of drivers who regularly work the longer hours.

The final rule has an effective date of February 27, 2012. The Congressional Review Act (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 December 27, 2011, but we did not receive the rule until January 13, 2012. 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  
"HOURS OF SERVICE OF DRIVERS"  
(RIN: 2126-AB26)

(i) Cost-benefit analysis

FMCSA performed a cost-benefit analysis. For the analysis of the final rule, FMCSA considered and assessed the consequences of four regulatory options. According to FMCSA, net benefits (*i.e.*, benefits minus costs) are likely to be positive, but could range from a negative \$730 million per year to more than a positive \$630 million per year for Option 2 (a negative \$750 million to positive \$920 million with 3 percent discounting), from a negative \$250 million to more than a positive \$550 million for Option 3 (a negative \$220 million to a positive \$770 million with 3 percent discounting), and from a negative \$2.05 billion to more than a positive \$390 million for Option 4 (a negative \$2.18 billion to a positive \$780 million). FMCSA states that the wide ranges in estimates of benefits and net benefits are a consequence of the difficulty of measuring fatigue and fatigue reductions, which are complex and often subjective concepts, in an industry with diverse participants and diverse operational patterns. Still, FMCSA notes that it seems clear that the benefits could easily be substantial and are on the same scale as the costs. The costs, according to FMCSA, for their part, are large in absolute terms but minor when compared to the size of the industry: \$1.00 billion per year (the total annualized cost for Option 2) is less than two thirds of 1 percent of revenues, \$470 million per year (the total annualized cost for Option 3) is less than one third of 1 percent of revenues, and \$2.29 billion per year (the total annualized cost for Option 4) is less than 1.5 percent of revenues in the for-hire long-haul (LH) segment of the industry. FMCSA explains that these total annual costs are an even smaller fraction of revenues of the LH segment as a whole. As an additional example, FMCSA explains that the costs of Option 3 are equivalent to about a \$0.03 per gallon increase in long-haul industry fuel costs, which is a minimal increase in an industry used to wide swings in fuel costs. FMCSA states that between 2006 and 2010, diesel fuel prices ranged from \$2.09 a gallon to \$4.70 a gallon. According to FMCSA, compared to the other two options that were analyzed, Option 2 would have roughly twice the costs of Option 3 (which allows 11 hours of daily driving), and less than half the cost of Option 4 (which allows 9). In keeping with their relative stringencies, FMCSA states that Option 3 has lower, and Option 4 has higher, projected benefits than Option 2. FMCSA believes that Option 3's calculated net benefits appear likely to be somewhat higher than the net benefits of

Option 2 under some assumptions about baseline conditions. Additionally, FMCSA states that Option 4's substantially larger costs, on the other hand, did not appear to be justified by its generally higher range of benefits. Based on the estimated net benefits of the options, FMCSA has selected Option 3 as the Final Rule.

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

FMCSA completed a Final Regulatory Flexibility Analysis (FRFA) to analyze the impact of the proposed changes to the HOS regulations on small entities. FMCSA states that all of the carriers in Brackets 1 through 4 would qualify as small entities, as would many of the carriers in Bracket 5. Therefore, FMCSA explains that this analysis estimates that between 422,196 (Brackets 1 through 4) and 425,786 (Brackets 1 through 5) small entities would be affected by the HOS rule changes. (FMCSA describes the breakdown of fleet size and number of carriers that correspond to each bracket in the final rule.) FMCSA believes that this range overstates the number of affected small entities for several reasons. First, according to FMCSA, many private carriers with small fleets may not qualify as small businesses because their primary business is not the movement of freight. Second, FMCSA explains the carriers are allowed to register by location so that a single firm may have multiple Department of Transportation registrations, each of which appears to be small, but which at the firm level represents a large entity. Third, FMCSA notes the carrier numbers include firms that are not subject to this rule, such as passenger-carrying carriers and utilities, or are subject to only part of the rule (e.g., construction firms have a different restart provision).

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

According to FMCSA, though this rule would not result in a net expenditure at this level, the economic impacts of the rule have been analyzed in the regulatory impact analysis (RIA).

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. On December 29, 2010, FMCSA published a notice of proposed rulemaking (NPRM) to revise the HOS rules. 75 Fed. Reg. 82,170. On May 9, 2011, FMCSA reopened the comment period to accept comments on four studies related to the HOS proposal. 76 Fed. Reg. 26,681. FMCSA received about 21,100 unique comments, mostly from drivers, carriers, and industry associations. After FMCSA reopened the comment period on May 9, 2011, it received 14 comments on

the four studies discussed in that notice. FMCSA summarized and responded to the comments in the final rule.

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

FMCSA states that the final rule would call for no new collection of information under the Paperwork Reduction Act of 1995.

Statutory authorization for the rule

FMCSA states that the final rule is authorized by the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

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

FMCSA states that under the Order, agencies must estimate the costs and benefits of potential rules; for rules that may be considered economically significant (\$100 million or more in costs and benefits), agencies must also evaluate options. FMCSA developed an RIA for the proposed rule and accepted comments on it.

Executive Order No. 13,132 (Federalism)

FMCSA states that it analyzed the final rule in accordance with E.O. 13,132 and determined that the final rule would not have a substantial direct effect on states, nor would it limit the policymaking discretion of states. FMCSA notes that nothing in this document preempts any state law or regulation.