



United States Government Accountability Office
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May 30, 2012

The Honorable John D. Rockefeller
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:
National Registry of Certified Medical Examiners*

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 "National Registry of Certified Medical Examiners" (RIN: 2126-AA97). We received the rule on May 15, 2012. It was published in the *Federal Register* as a final rule on April 20, 2012. 77 Fed. Reg. 24,104.

The final rule establishes a National Registry of Certified Medical Examiners (National Registry) with requirements that all medical examiners who conduct physical examinations for interstate commercial motor vehicle (CMV) drivers meet the following criteria: complete certain training concerning FMCSA's physical qualification standards, pass a test to verify an understanding of those standards, and maintain and demonstrate competence through periodic training and testing. Following establishment of the National Registry and a transition period, FMCSA will require that motor carriers and drivers use only those medical examiners (MEs) on its National Registry and will only accept as valid medical examiner's certificates issued by medical examiners listed on the National Registry. FMCSA is developing the National Registry program to improve highway safety and driver health by requiring that medical examiners be trained and certified so they can determine

effectively whether a CMV driver's medical fitness for duty meets FMCSA's standards.

The final rule has an effective date of May 21, 2012, but a compliance date of May 21, 2014. 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 April 20, 2012, and we did not receive the rule until May 15, 2012. Therefore, putting aside the compliance date, 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
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
"NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS"
(RIN: 2126-AA97)

(i) Cost-benefit analysis

FMCSA requested comments on the costs and benefits of the proposed rule and responded to comments in the final rule. FMCSA also analyzed the costs and benefits for all three alternatives in this regulatory evaluation. According to FMCSA, all alternatives involve an initial training phase for 40,000 MEs which is expected to last 2 years. At the beginning of the third year the agency requires drivers to be examined by MEs listed on the NRCME once their current medical certification expires. Under Alternative 1, the alternative adopted by this final rule, MEs are required to attend a training conducted by a private-sector organization, which is anticipated to result in training and testing fees that would have to be paid by MEs. Under Alternative 1, FMCSA anticipates that training programs will be available throughout the country, and that some programs will offer online training courses, which will minimize the need for long distance travel.

According to FMCSA, the 10-year total cost of the Public-Private Partnership Model is estimated at \$232 million, when discounted at a 7 percent discount rate. FMCSA believes undiscounted annual costs vary between \$14 million and \$59 million, with ME certification costs (training and testing costs plus lost time and travel costs) being the largest portion of the cost at approximately \$31.5 million in the highest-cost year. In all alternatives, FMCSA notes that the value of ME time spent in training is the largest portion of cost. FMCSA states the costs of the training/testing, including lost time and travel costs for MEs, is estimated to vary between \$63 million and \$131 million during the initial training phase, depending on the alternative, with Alternative 1 having the lowest cost. FMCSA believes the lower cost associated with Alternative 1 is due to its minimization of travel and associated costs, both in expenses and lost time, to MEs.

Because FMCSA expects all three alternatives to improve the performance of MEs by equivalent amounts, total benefits are expected to be equivalent for all programs. According to FMCSA, these benefits are based on the reduction in CMV crashes that is likely to result from improved medical screening of drivers. FMCSA estimates that physically impaired interstate drivers are responsible for approximately 9,687 of the roughly 440,000 commercial motor vehicle crashes that occur annually.

Although it is not anticipated that this program would completely eliminate these crashes, FMCSA expects to prevent a portion of them. FMCSA estimates that this program may prevent up to one-fifth of these crashes annually, which would result in approximately 1,219 fewer crashes per year. According to FMCSA, the estimated annual benefit associated with avoiding these crashes is \$189 million per year, undiscounted, but these full benefits are not realized until the program is fully phased in, which is several years after the establishment of the program. Nevertheless, FMCSA states that at a 7 percent discount rate, the 10-year net benefits of this rule are estimated at approximately \$633.2 million to \$784.1 million over 10 years depending on the alternative. The agency's chosen alternative has the highest net benefits at \$784.1 million.

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

The Regulatory Flexibility Act of 1980 (5 U.S.C. §§ 601–612) requires federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, FMCSA states that Transportation policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. FMCSA conducted an initial Regulatory Flexibility Analysis for the published notice of proposed rulemaking (NPRM) and found that the rule would not have a significant economic impact on a substantial number of small entities. Additionally, FMCSA notes that no comments were received on that analysis from the public. FMCSA certifies that this rule would 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 states that this rulemaking will not impose an unfunded federal mandate, as defined by the Unfunded Mandates Reform Act that would result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million or more in any 1 year. The \$143.1 million figure was derived by inflation adjusting the \$100 million cap in the original Act from 1995 to 2010 dollars using the Consumer Price Index.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On December 1, 2008, FMCSA published a NPRM to establish the National Registry. 73 Fed. Reg. 73,129. FMCSA received approximately 80 comments, which it discussed in the final rule.

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

FMCSA states that the final rule contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. § 3507(d)), FMCSA submitted the information requirements associated with the proposal to the Office of Management and Budget for its review.

Statutory authorization for the rule

FMCSA states that the primary legal basis for the National Registry of Certified Medical Examiners program comes from 49 U.S.C. § 31149, enacted by section 4116(a) of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109–59, 119 Stat. 1726 (Aug. 10, 2005) (SAFETEA–LU).

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

The FMCSA has determined that this rulemaking action is a significant regulatory action under Executive Order 12,866, Regulatory Planning and Review, as supplemented by Executive Order 13,563 (76 Fed. Reg. 3821, January 18, 2011), and that it is significant under Transportation regulatory policies and procedures.

Executive Order No. 13,132 (Federalism)

FMCSA analyzed the final rule in accordance with the principles and criteria contained in Executive Order 13,132. FMCSA has determined that this rulemaking will have no significant cost or other effect on or for states and that states will have policy-making discretion. According to FMCSA, nothing in this document will preempt any state law or regulation. Therefore, FMCSA states that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.