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February 9, 2016

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter A. DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Motor Carrier Safety Administration: Electronic Logging Devices and Hours of Service Supporting Documents*

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 Logging Devices and Hours of Service Supporting Documents” (RIN: 2126-AB20). We received the rule on January 27, 2016. It was published in the *Federal Register* as a final rule on December 16, 2015. 80 Fed. Reg. 78,292.

The final rule amends the Federal Motor Carrier Safety Regulations to establish minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs), requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status, requirements concerning HOS supporting documents, and measures to address concerns about harassment resulting from the mandatory use of ELDs. FMCSA states in the rule that the requirements for ELDs will improve compliance with the HOS rules.

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). This final rule was published in the *Federal Register* on December 16, 2015, and has a stated effective date of February 16, 2016. The rule was received by the House of Representatives on December 21, 2015, and by the Senate on December 30, 2015. We received the rule on January 27, 2016.¹ 162 Cong. Rec. H13 (Jan. 5, 2016); 162 Cong. Rec. H494 (Feb. 2, 2016); 162 Cong. Rec. S70 (Jan. 12, 2016); 162 Cong. Rec. S575 (Feb. 3, 2016); 80 Fed. Reg. 78,292. Therefore, the final rule does not have the required 60-day delay in its effective date.

¹ The rule was also received a second time by the House of Representatives, the Senate, and GAO on January 28, 2016.

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, with the exception of the required 60-day delay in effective date, 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 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 LOGGING DEVICES AND
HOURS OF SERVICE SUPPORTING DOCUMENTS”
(RIN: 2126-AB20)

(i) Cost-benefit analysis

The Federal Motor Carrier Safety Administration (FMCSA) discussed the benefits and costs of this final rule, and included tables in the rule summarizing the annualized costs and benefits in 2013 dollars, using 3 percent and 7 percent discount rates. FMCSA also estimated the reductions in crashes as a result of the adoption of the final rule. The total costs were estimated to be \$1,851 million at the 3 percent discount rate, and \$1,836 million at the 7 percent discount rate. The total benefits, including safety (crash reductions) and paperwork savings, were estimated to be \$3,035 million at the 3 percent discount rate, and \$3,010 million at the 7 percent discount rate. The net benefits were estimated to be \$1,184 million and \$1,174 million, respectively. Under the final rule, FMCSA estimates 1,844 crashes will be avoided and 26 lives saved annually.

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

As stated in the final rule, the motor carriers regulated by FMCSA operate in many different industries, and no single Small Business Administration (SBA) size threshold is applicable to all motor carriers. FMCSA included a table summarizing the SBA size standards for selected industries. The SBA size standard for truck transportation and local delivery services is currently \$27.5 million in revenue per year and 1,500 employees for express delivery services. For other firms in other modes that may also be registered as for-hire motor carriers, the size standard is 500 or 1,500 employees, and has a size standard of \$15 million in annual revenue. This rulemaking will also affect private motor carriers. FMCSA estimates that 99.1 percent of regulated motor carriers are small businesses according to SBA size standards.

FMCSA provided a final regulatory flexibility analysis that: (1) contained a statement of the need for and objectives of the rule, a statement of significant issues raised by the public comments in response to the Initial Regulatory Flexibility Act, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (2) the response of the agency to any comments filed by the Chief Counsel for Advocacy of SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives

of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and (6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

FMCSA states that because small businesses constitute a large part of the demographic FMCSA regulates, providing exemptions to small business to permit noncompliance with safety regulations is not feasible and not consistent with good public policy. Accordingly, the agency will not allow any motor carriers to be exempt from coverage of the rule based solely on a status as a small entity. Lastly, FMCSA concluded that because it is not a covered agency as defined in section 609(d)(2) of RFA, it has taken no steps to minimize the additional cost of credit for 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 title II of the Unfunded Mandates Reform Act of 1995 requires agencies to evaluate whether an agency action would result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$155 million or more (which is \$100 million in 1995, adjusted for inflation) in any 1 year, and, if so, to take steps to minimize these unfunded mandates. FMCSA concluded that this rulemaking would result in private sector expenditures in excess of the \$155 million threshold for each of the options. According to FMCSA, however, gross costs are expected to be more than offset in savings from paperwork burden reductions.

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

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

On February 1, 2011, FMCSA published a notice of proposed rulemaking (NPRM) to expand the electronic logging requirements from a 2010 rule, to a broader population of motor carriers (76 Fed. Reg. 5537). There were several opportunities for public input, including a notice inviting comment on the issue of harassment, public listening sessions, Motor Carrier Safety Advisory Committee (MCSAC) meetings, and an online commenting system pilot program called Regulation Room. On February 13, 2012, FMCSA announced its intent to move forward with a supplemental notice of proposed rulemaking (SNPRM) that would propose technical standards for electronic logging devices, address driver harassment issues, and propose revised requirements on hours-of-service (HOS) supporting documents (77 Fed. Reg. 7562). Additionally, the agency stated it would hold public listening sessions and task the MCSAC to make recommendations related to the proposed rulemaking. FMCSA proposed new technical standards for electronic logging devices (ELDs) and required the use of ELDs on March 28, 2014 in the SNPRM (79 Fed. Reg. 17,656). The regulatory text proposed in the 2014 SNPRM superseded the regulatory text proposed in the 2011 NPRM. FMCSA received 385 unique and germane comments to the NPRM. Commenters included industry and safety advocacy groups, as well as individuals, motor carriers, and government entities. FMCSA held two public listening sessions. FMCSA received 1,750 unique and germane comments to the SNPRM. FMCSA responded to the comments in the final rule.

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

Part 395 of the Federal Motor Carrier Safety Regulations, “Hours of Service of Drivers,” requires drivers and motor carriers to collect, transmit, and maintain information about driver daily activities. The part 395 Information Collection Request (ICR) is assigned the Office of Management and Budget (OMB) Control Number 2126–0001. On May 21, 2015, OMB approved FMCSA’s estimate of 127.6 million burden hours as the annual Information Collection (IC) burden of part 395 as it existed at that time, prior to this final rule. This rulemaking substantially amends the IC requirements of part 395.

FMCSA estimates that 3.37 million interstate and intrastate CMV drivers are subject to the IC requirements of part 395 as of 2013. OMB regulations require that agencies estimate IC burdens over a period of 3 years. This rule has a compliance date 2 years from the date of its publication. Thus, as stated in the rule, during the first 2 years of this PRA estimate drivers and motor carriers will not be required to employ ELDs. FMCSA has incorporated estimates of the number of drivers who will be voluntarily employing electronic HOS recording devices during each of the first 2 years. For year three, FMCSA’s estimate is based upon all drivers using electronic logging devices. FMCSA estimates that the part 395 amendments of this final rule will reduce the IC burden an average of 21,373,653 hours annually for the 3-year period.

Statutory authorization for the rule

FMCSA states that it promulgated the rule on the authority in a number of statutes, including the Motor Carrier Act of 1935 (Pub. L. No. 74-255, 49 Stat. 543, Aug. 9, 1935), as amended, the Motor Carrier Safety Act of 1984 (Pub. L. No. 98-554, title II, 98 Stat. 2832, Oct. 30, 1984), the Truck and Bus Safety and Regulatory Reform Act of 1988 (Pub. L. No. 100-690, 102 Stat. 4181, 4529, Nov. 18, 1988), the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. No. 103-311, 108 Stat. 1673, 1676-1677, Aug. 26, 1994), and MAP–21 (section 32301(b) of the Commercial Motor Vehicle Safety Enhancement Act, enacted as part of MAP-21 (Pub. L. No. 112-141, 126 Stat. 405, 786-788, July 6, 2012)).

Executive Order No. 12,866 and 13,563 (Regulatory Planning and Review)

FMCSA has determined that the rule is an economically significant regulatory action under Executive Order No. 12,866, as supplemented by Executive Order No. 13,563 (76 Fed. Reg. 3821, January 21, 2011). FMCSA further states that it also is significant under Department of Transportation regulatory policies and procedures because the economic costs and benefits of the rule exceed the \$100 million annual threshold and because of the substantial congressional and public interest concerning the crash risks associated with driver fatigue.

Executive Order No. 13,132 (Federalism)

FMCSA states that the rule would not have a substantial direct effect on states or local governments, nor would it limit the policymaking discretion of states, and that nothing in this rule would preempt any state law or regulation.