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December 27, 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:
Commercial Driver's License Drug and Alcohol Clearinghouse*

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 "Commercial Driver's License Drug and Alcohol Clearinghouse" (RIN: 2126-AB18). We received the rule on December 14, 2016. It was published in the *Federal Register* as a final rule on December 5, 2016, with an effective date of January 4, 2017. 81 Fed. Reg. 87,686.

The final rule establishes requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database under FMCSA's administration that will contain information about violations of FMCSA's drug and alcohol testing program for the holders of commercial driver's licenses (CDLs).

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 5, 2016. 81 Fed. Reg. 87,686. It was received on December 14, 2016, and has a stated effective date of January 4, 2017. Therefore, the final rule does not have the required 60-day delay in its effective date. However, FMCSA stated that the final rule has a compliance date of January 6, 2020. 81 Fed. Reg. 87,686.

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. With the exception of the 60-day delay in effective date requirement, 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: Biven Patnalk
Chief, 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
“COMMERCIAL DRIVER’S LICENSE DRUG
AND ALCOHOL CLEARINGHOUSE”
(RIN: 2126-AB18)

(i) Cost-benefit analysis

The Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), summarized the costs and benefits of this final rule. FMCSA estimates that the rule will result in \$154 million in annual costs. These costs include \$29 million estimated monetized value of employees’ time to prepare annual employer queries, \$11 million estimated monetized value of employees’ time to prepare pre-employment queries, \$3 million for employers to designate service agents, \$1 million for substance abuse professionals to report initiation of the return-to-duty Initial Assessment, and \$5 million incurred by various reporting entities to register with the Clearinghouse, verify authorization, and become familiar with the rule, plus an additional \$700,000 for these entities to report positive tests. FMCSA also stated that the costs include \$35 million of fees and consent and verification costs, \$2.2 million for development of FMCSA’s Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse) and management of records, \$56 million incurred by drivers to go through the return-to-duty process, and \$11.5 million of opportunity costs incurred by employers due to lost on-duty hours and profits associated with drivers suspended from safety-sensitive functions until successful completion of the return-duty process.

FMCSA stated that the annual net benefit of the final rule is \$42 million. The benefits of this final rule include reductions in commercial motor vehicle crashes, improved health, quality-of-life improvements, and increased life expectancy for drivers of commercial motor vehicles. However, FMCSA also stated that it could not precisely quantify all the benefits of this final rule.

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

FMCSA stated that DOT policy requires an analysis of the impact of all regulations (or proposals) on small entities, and mandates that agencies shall strive to lessen any adverse effects on these businesses. FMCSA provided a Final Regulatory Flexibility Analysis in the final rule.

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

FMCSA stated that an assessment under the Unfunded Mandates Reform Act of 1995 was not required because this final rule is a regulation that incorporates requirements specifically set forth in law. 2 U.S.C. § 1531.

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

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

On April 22, 2014, FMCSA published a proposed rule. 79 Fed. Reg. 9703. FMCSA received 165 comments. FMCSA responded to comments in the final rule.

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

FMCSA determined that this rule will create a new information collection to cover the requirements set forth in the amendments to 49 C.F.R. 382. These amendments will create new requirements for commercial driver's license (CDL) drivers, employers of CDL drivers, medical review officers, substance abuse professionals, and consortia/third-party administrators to register with the new database, which will be created and administered by FMCSA. The total burden to respondents for queries, designations, registration, familiarization, reporting and recordkeeping to the Clearinghouse is estimated at about 1.86 million burden hours annually.

Statutory authorization for the rule

FMCSA stated that it promulgated this rule under 49 U.S.C. § 31133, 49 U.S.C. § 31136, 49 U.S.C. § 31301 et seq., § 32934 of Pub. L. 112-141, and 49 C.F.R. 1.87.

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

FMCSA determined that this final rule is an economically significant regulatory action under the Order. FMCSA prepared a Regulatory Impact Assessment of the benefits and costs of this final rule.

Executive Order No. 13,132 (Federalism)

FMCSA stated that as a practical matter this rule may have an impact on states. Therefore, FMCSA sought advice from the National Governors Association, National Conference of State Legislators, and the American Association of Motor Vehicle Administrators on the topic of developing a database that FMCSA believed would increase the effectiveness of its drug and alcohol testing program.

Additionally, FMCSA determined that section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) preempts state and local laws inconsistent with the Clearinghouse. However, FMCSA stated that MAP-21 does not preempt state laws related to a driver's commercial driver's license or driving record.