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September 9, 2005

The Honorable Ted Stevens  
Chairman  
The Honorable Daniel K. Inouye  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Don Young  
Chairman  
The Honorable James L. Oberstar  
Ranking Minority 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 Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), entitled "Hours of Service of Drivers" (RIN: 2126-AA90). We received the rule on August 19, 2005. It was published in the Federal Register as a final rule on August 25, 2005. 70 Fed. Reg. 49978.

The final rule contains FMCSA's requirements governing hours of service for commercial motor vehicle drivers including driving, duty, and off-duty time; recovery periods; sleeper berths; and new requirements for short-haul drivers.

The final rule has an announced effective date of October 1, 2005. The Congressional Review Act 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 received by

Congress on August 23, 2005, and was published in the Federal Register on August 25, 2005.

In the preamble to the final rule, FMCSA discusses why the rule's effective date is October 1, 2005. In 2003, FMCSA published a final rule dealing with hours of service. 68 Fed. Reg. 22456. The rule was the subject of a United States Court of Appeals for the District of Columbia decision (Public Citizen et al. v. Federal Motor Carrier Safety Administration, 374 F. 3d 1209) that found the rule arbitrary and capricious because FMCSA had failed to consider the impact of the rules on the health of drivers.

Subsequent to the Court's decision, section 7(f) of Part V of the Surface Transportation Extension Act of 2004 (The Act) (Pub. L. 108-310) was enacted, which requires the new final rule addressing the issues raised in the Court's decision to be in effect by September 30, 2005. The 2003 rule was published on September 30, 2003, and required compliance by January 4, 2004, in order to permit carriers, drivers, and the enforcement community to revise manuals, re-program computers, and retrain roadside enforcement personnel, drivers, and dispatchers.

While the final rule has a published effective date of October 1, 2005, FMCSA has issued a policy statement announcing its expectations for compliance and stating:

“FMCSA recognizes that neither the motor carrier industry nor enforcement agencies will be able to implement every provision of the new hours-of-service regulations immediately. Therefore, the Agency will provide a transition period for compliance and enforcement from October 1, 2005, through December 31, 2005.”

Therefore, the final rule will not “take effect” until 60 days later than the date of publication or receipt by Congress. See Liesegang v. Sec’y of Veterans Affairs, 312 F. 3d 1368 (Fed. Cir. 2002), which held that the 60-day delay requirement in section 801(a)(3) applies to when a rule “takes effect” or “goes into operation,” not necessarily the same date as the announced effective date. See also Natural Resources Defense Council v. Abraham, 355 F. 3d 179 (2d Cir. N.Y. 2004).

Enclosed is our assessment of the 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 indicates that FMCSA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Patricia Dalton, Managing Director, Physical Infrastructure. Ms. Dalton can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Sue Halladay  
Regulatory Ombudsman  
Department of Transportation

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF TRANSPORTATION,  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
ENTITLED  
"HOURS OF SERVICE OF DRIVERS"  
(RIN: 2126-AA90)

(i) Cost-benefit analysis

The annual total costs of the final rule are estimated to be \$34 million--composed of \$13 million in direct productivity losses and \$21 million in driver training costs. FMCSA estimates that the total safety and non-safety benefits from the final rule equal \$300 million (in 2004 dollars).

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

The Administrator of FMCSA has certified that the 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 states that the final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$120.7 million (\$100 million in 1995 dollars inflated to 2003 dollars.)

(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 January 24, 2005, FMCSA published a Notice of Proposed Rulemaking in the Federal Register. 70 Fed. Reg. 3339. In response, FMCSA received 1,790 comments from 1,590 commenters, and the comments are discussed in the preamble to the final rule.

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

The final rule contains an information collection that has already been approved by the Office of Management and Budget (OMB) under Control No. 2126-0001. The collection was approved with 160,376,492 annual burden hours. Based on the

changes made in the final rule, the burden should be reduced by 7,000,000 hours annually and the revised annual burden estimate has been submitted to OMB for approval.

#### Statutory authorization for the rule

The final rule is promulgated under the authority found in the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984 and, more specifically, 49 U.S.C. 31502(b), 31136(a), 31136(c)(2)(A), and 31502(d).

#### Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

#### Executive Order No. 13132 (Federalism)

The final rule does not have a substantial direct effect on states, nor would it limit the policymaking discretion of the states or preempt any state law.