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January 3, 2008

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

The Honorable James Oberstar
Chairman
The Honorable John L. Mica
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 the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), entitled "Hours of Service of Drivers" (RIN: 2126-AB14). We received the rule on December 20, 2007. It was published in the *Federal Register* as an interim final rule on December 17, 2007. 72 Fed. Reg. 71,247.

The interim final rule with request for comments amends the regulations to allow commercial motor vehicle drivers up to 11 hours of driving time within a 14-hour, non-extendable window from the start of the workday, following 10 consecutive hours off duty (11-hour limit). The interim final rule also allows motor carriers and drivers to restart calculation of the weekly on-duty time limits after the driver has at least 34 consecutive hours off duty (34-hour restart). The interim final rule was made in response to a decision by the United States Court of Appeals for the District of Columbia Circuit to vacate the portions of the 2005 rule setting the 11-hour limit and the 34-hour restart. *Owner-Operator Independent Drivers Ass'n, Inc. v. FMCSA*, 494 F.3d 188, 212 (2007).

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.

The Congressional Review Act requires a 60-day delay before a major rule can become effective. 5 U.S.C. §801(a)(3). The interim final rule became effective on December 27, 2007, less than 60 days after publication in the *Federal Register* or receipt by Congress. FMCSA found good cause to waive the 60-day delay in effective date under 5 U.S.C. § 808(2).

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. 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

Robert J. Cramer
Associate General Counsel

Enclosure

cc: John H. Hill
Administrator, Federal Motor Carrier
Safety Administration
Department of Transportation

ENCLOSURE

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-AB14)

(i) Cost-benefit analysis

The Federal Motor Carrier Safety Administration (FMCSA) updated the cost-benefit analysis it had prepared for the 2005 hours of service of drivers rule (70 Fed. Reg. 49,978 (Aug. 25, 2005)) and included the analysis with the interim final rule. FMSCA determined that the analysis, as updated, continued to support setting the driving limit at 11 hours. FMCSA determined that setting the driving-limit at 10 hours, as opposed to 11 hours, would have a benefit of reducing fatigue crash risk by 5.1 percent, with an estimated value of $85 million per year, but that the costs in terms of productivity would be almost 2 percent, or an estimated $586 million, leaving a net cost of $501 million per year by eliminating the 11th hour.

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

Because FMCSA did not issue a notice of proposed rulemaking prior to the publication of this interim final rule, FMCSA is not required to prepare a final regulatory flexibility analysis.

(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 interim final rule will not impose an unfunded federal mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private section, of $128.1 million or more in any one year.

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

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

FMCSA determined that it had good cause under 5 U.S.C. § 553(b) to adapt the interim final rule without prior notice and opportunity for comment. FMCSA found that notice and comment are both “impracticable” and “contrary to the public interest.” Notice and comment were waived in order to avoid administrative and

operational burdens on state enforcement agencies and motor carriers and drivers that would result from the Court's order to vacate portions of the rule and because the variety in standards and influx of new drivers could offset safety gains made since 2003.

FMCSA also determined that it had good cause under 5 U.S.C. § 553(d) to make the interim final rule final less than 30 days after publication. FMCSA stated that the disruption to enforcement, operations, and compliance that justify an interim final rule provide good cause to make the interim final rule final upon publication.

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

This interim final rule does not alter the existing information collection requests for hours-of-service recordkeeping.

Statutory authorization for the rule

The interim final rule is authorized by sections 31136 and 31502 of title 49 of the United States Code.

Executive Order No. 12,866

FMCSA determined that the interim final rule is economically significant within the meaning of the Executive Order. FMCSA prepared a regulatory impact analysis of the interim final rule, and the Office of Management and Budget has reviewed the interim final rule.

Executive Order No. 13,132 (Federalism)

FMCSA has determined that the interim final rule does not have a substantial direct effect on states, nor will it limit the policymaking discretion of the states.