



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-317626

January 5, 2009

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

The Honorable James L. 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:
New Entrant Safety Assurance Process*

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 “New Entrant Safety Assurance Process” (RIN: 2126-AA59). We received the rule on December 19, 2008. It was published in the *Federal Register* as a final rule on December 16, 2008. 73 Fed. Reg. 76,472. The rule has a stated effective date of February 17, 2009, and compliance with the rule is required beginning December 16, 2009.

The final rule amends the New Entrant Safety Assurance Program regulations to raise the standard of compliance for passing the new entrant safety audit. Under this rule, a carrier’s failure to comply with any one of 16 specified requirements will result in an automatic failure of its safety audit. Additionally, if certain violations are discovered during a roadside inspection, the new entrant now will be subject to expedited actions to correct these deficiencies. The rule also clarifies changes to some of the existing new entrant regulations and establishes a separate new entrant application procedure and safety oversight program for non-North America-domiciled motor carriers.

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 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
Associate General Counsel

Enclosure

cc: Theresa Rowlett
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
"NEW ENTRANT SAFETY ASSURANCE PROCESS"
(RIN: 2126-AA59)

(i) Cost-benefit analysis

The Federal Motor Carrier Safety Administration (FMCSA) analyzed the costs and benefits of this final rule. The costs for new entrants will be the costs of time spent reviewing educational and technical assistance materials, time spent with a safety auditor during the safety audit, and compliance costs to rectify any deficiencies found during the safety audit. FMCSA estimates that the total cost of this rule to be \$67.9 million in all years. Costs discounted over 10 years at a 7-percent rate will be \$477.2 million. FMCSA estimates that the benefit of this final rule will be the avoidance of about 39,929 crashes over 10 years. The average cost of such crashes is \$146,410, including both direct costs such as medical, emergency services, and property damage, and indirect costs such as lost productivity and diminished quality of life. By deterring 39,929 crashes, FMCSA estimates that this rule will yield a 10-year benefit, discounted at a 7-percent rate, of \$3,778.0 million.

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

FMCSA prepared a Final Regulatory Flexibility Analysis for this final rule. The analysis considered the objectives and need for the final rule; addressed relevant public comments; estimated the number of small entities affected; estimated the reporting, recordkeeping, and other compliance costs for small entities; and listed steps FMCSA took to minimize the significant adverse economic impact of this rule on small entities. FMCSA estimates that 99.8 percent of 40,000 carriers in the new entrant program are small entities. FMCSA estimates that the one-time total cost for a new entrant to be \$377.60.

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

FMCSA concluded that the final rule does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$100 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.

This final rule was issued using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On December 21, 2006, FMCSA published the proposed rule. 71 Fed. Reg. 76,730. FMCSA received 17 comment letters from 21 entities to which it responded in the final rule. 73 Fed. Reg. 76,474–76,480.

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

FMCSA has determined there are three currently approved information collections that will be affected by this final rule. These three information collection requirements are entitled “Motor Carrier Identification Report”; “Designation of Agents, Motor Carriers, Brokers and Freight Forwarders”; and “Licensing Applications for Motor Carrier Operating Authority” with Office of Management and Budget (OMB) Control Numbers of 2126–0013, 2126–0015, and 2126–0016 respectively. FMCSA estimates that the changes to these three currently-approved information collections will result in a net decrease of 10,251 burden hours.

Statutory authorization for the rule

FMCSA promulgated this final rule under the authority of section 31144 of title 49, United States Code. This final rule amends regulations promulgated under the authority of sections 553 and 559 of title 5; 1456 of title 16; 113, 504, 508, 521, 5105, 5109, 5113, 13101, 13301, 13901–13906, 14701, 14708, 31133, 31136, 31138, 31139, 31144, 31148, 31502 of title 49, United States Code.

National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. sections 4321–4370f

FMCSA determined that this final rule is categorically excluded from review under the Act.

Executive Order 12,630 (Taking of Private Property)

FMCSA determined that this final rule will not result in a taking of private property or otherwise have taking implications under the Order.

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

FMCSA determined that this final rule is economically significant under the Order because it may result in the expenditure of over \$100 million in any one year. OMB reviewed the rule. This final rule has been reviewed by the Office of Management and Budget.

Executive Order No. 12,988 (Civil Justice Reform)

FMCSA determined that this final rule meets the applicable standards of the Order to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order No. 13,045 (Protection of Children)

FMCSA determined that this final rule does not concern a risk to the environmental health or safety that would disproportionately affect children.

Executive Order No. 13,132 (Federalism)

FMCSA determined that this final rule will not have a substantial direct effect on states, the relationship between the federal government and states, or on the distribution of power and responsibilities among the levels of government.