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United States General Accounting Office  
Washington, DC 20548

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B-293394

December 9, 2003

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
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 Aviation Administration: Reduced Vertical Separation Minimum in Domestic United States Airspace*

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 (DOT), Federal Aviation Administration, entitled "Reduced Vertical Separation Minimum in Domestic United States Airspace" (RIN: 2120-AH68). We received the rule on November 25, 2003. It was published in the Federal Register as a final rule on October 27, 2003. 68 Fed. Reg. 61304.

The final rule permits the initiation of Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 states of the United States, the District of Columbia, Alaska, that portion of the Gulf of Mexico where the Federal Aviation Administration provides air traffic services, the San Juan Flight Information Region (FIR), and the air space between Florida and the San Juan FIR. The RVSM program allows the use of 1,000-foot vertical separation at certain altitudes between aircraft that meet stringent altimeter and autopilot performance requirements.

The final rule has an announced effective date of November 26, 2003. 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 published in the Federal Register on October 27, 2003, and was received by Congress on

November 25, 2003. Therefore, the rule does not have the required 60-day delay in its effective date. However, our Office has been advised by DOT that a correction to the effective date allowing the 60-day delay will be published shortly in the Federal Register.

Enclosed is our assessment of the DOT'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 the DOT 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 Michael Gryszkowiec, Managing Director, Physical Infrastructure. Mr. Gryszkowiec can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Nancy Molitor  
Program Analyst  
Department of Transportation

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION  
ENTITLED  
"REDUCED VERTICAL SEPARATION MINIMUM IN  
DOMESTIC UNITED STATES AIRSPACE"  
(RIN: 2120-AH68)

(i) Cost-benefit analysis

DOT estimates that the final rule will cost U.S. operators \$869.2 million for the 15-year period 2002-2016 or \$764.9 million discounted. Benefits would begin accruing on January 20, 2005, and the estimated fuel savings for the U.S. aircraft fleet over the years 2005 to 2016, would be \$5.3 billion or discounted at \$3.0 billion.

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

DOT prepared a Final Regulatory Flexibility Analysis that complies with the requirements of Act. The analysis includes a discussion of the impact of the rule on the small entities and the four alternatives that were considered in promulgating 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

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On May 10, 2002, DOT published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 31920. Subsequently, on February 28, 2003, a Supplemental Notice of Proposed Rulemaking was published to better define the RVSM airspace. 68 Fed. Reg. 9818. DOT received a total of 87 comments in response to the notices. The comments are discussed in the preamble to the final rule.

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

The final rule contains information collections that have previously been approved by the Office of Management and Budget under the Paperwork Reduction Act. The collections have been assigned OMB Control No. 2120-0679.

Statutory authorization for the rule

The final rule is promulgated under the authority found in 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, and articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

DOT has determined that the final rule does not have federalism implications.