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November 12, 2008

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 Aviation Administration:
Reduction of Fuel Tank Flammability in Transport Category Airplanes*

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 Aviation Administration (FAA), entitled "Reduction of Fuel Tank Flammability in Transport Category Airplanes" (RIN: 2120-AI23). We received the rule on October 27, 2008. It was published in the *Federal Register* as a final rule on July 21, 2008. 73 Fed. Reg. 42,444.

The final rule amends FAA regulations to require operators and manufacturers of transport category airplanes to take steps that, in combination with other required actions, should reduce the chances of a catastrophic fuel tank explosion. The final rule does not direct the adoption of specific inerting technology either by manufacturers or operators, but establishes a performance-based set of requirements that set acceptable flammability exposure values in tanks most prone to explosion or require the installation of an ignition mitigation means in an affected fuel tank.

The final rule has an effective date of September 19, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). We did not receive the rule until

October 27, 2008, which means that the final rule did not have the required 60-day delay in its effective date.

Enclosed is our assessment of the FAA'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, except for the delay in the effective date, FAA 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Nancy Molitor
Program Analyst
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION
ENTITLED
"REDUCTION OF FUEL TANK FLAMMABILITY IN
TRANSPORT CATEGORY AIRPLANES"
(RIN: 2120-AI23)

(i) Cost-benefit analysis

FAA conducted a cost-benefit analysis and determined that this final rule has benefits that justify its costs. FAA notes that when modeling discrete rare events such as fuel tank explosions, it is important to evaluate the distribution around the mean value rather than to rely only on a single point estimated value. This variability analysis indicates there is a substantial (23 percent) probability that the quantified benefits will be greater than the costs.

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

FAA concluded that this final rule will have a significant economic impact on a substantial number of small entities and conducted a regulatory flexibility analysis for this final rule. FAA detailed in the final rule alternatives considered to minimize adverse impacts on small entities. FAA concluded that the final rule provided the best balance of cost and benefits for the United States society.

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

FAA concluded that the final rule contains a federal mandate that will impose expenditures of \$136.1 million or more in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. FAA evaluated the costs and benefits of eight alternatives to the final rule.

(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 November 23, 2005, FAA published a Notice of Proposed Rulemaking in the *Federal Register* entitled "Reduction of Fuel Tank Flammability in Transport Category Airplanes." 70 Fed. Reg. 70,922. On November 28, 2005, FAA published a

Notice of Availability of Proposed Advisory Circular (AC), Fuel Tank Flammability, and request for comments in the *Federal Register*. 70 Fed. Reg. 71,365. The notice announced the availability of a proposed AC that would set forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of the airworthiness standards set forth in the proposed rule. On March 21, 2006, FAA published a notice in the *Federal Register* that extended the comment period for the proposed rule to May 8, 2006. 71 Fed. Reg. 14,281. FAA received over 100 comment letters to the proposed rule and guidance material. FAA responded to those comments in the final rule.

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

The final rule contains new or modified information collection requirements subject to the Paperwork Reduction Act. FAA submitted a copy of these collection requirements to the Office of Management and Budget (OMB) for review. OMB approved the information collection and assigned OMB Control Number 2120-0710.

Statutory authorization for the rule

The final rule is promulgated under the authority in 49 U.S.C. §§ 106(g), 40113, 44701, 44702, and 44704.

Executive Order No. 12,866

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

Executive Order No. 13,132 (Federalism)

FAA determined that this final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it will not have federalism implications.