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August 12, 2009

The Honorable John D. Rockefeller IV
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: Part 121
Pilot Age Limit*

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 “Part 121 Pilot Age Limit” (RIN: 2120-AJ01). It was published in the *Federal Register* as a final rule on July 15, 2009. 74 Fed. Reg. 34,229. We received the rule on July 28, 2009.

The final rule amends certain regulations to conform with the “Fair Treatment for Experienced Pilots Act” by raising the upper age limit for pilots serving in domestic, flag, and supplemental operations from age 60 to age 65. The legislation became effective December 13, 2007.

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 of the procedural steps taken indicates that 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nancy Molitor
Program Analyst
Federal Aviation Administration
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
"PART 121 PILOT AGE LIMIT"
(RIN: 2120-AJ01)

(i) Cost-benefit analysis

FAA performed a cost-benefit analysis in conjunction with the final rule, analyzing the costs and benefits of the final rule over a 15-year period and summarizing the net benefits as the discounted present value of the stream of benefits and costs. FAA determined that the increase in the mandatory retirement age to age 65 will result in airlines and consumers incurring “real costs” (which reflect real resource use) and “transfer payments” (which are monetary payments from one group to another that do not affect total resources available to society) totaling \$1.8 billion (present value) over 15 years. FAA determined that society will have a cost savings or net benefit of \$334 million in terms of real resource use. In addition to the quantified benefits, FAA estimates that the final rule will result in an increase in the supply of pilots of approximately 12 percent over 5 years.

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

FAA certified that the final rule will not have any significant economic impact on any small entities.

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

FAA determined that the final rule does not fall within the requirements of the Unfunded Mandates Reform Act, because the final rule is not a mandate, but rather is permissive.

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

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

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. However, an agency may find good cause to issue a final rule without rulemaking procedures where withholding action would be impracticable, unnecessary, or contrary to the public

interest. 5 U.S.C. § 553. Because this final rule implements congressional mandates, FAA found that notice and public comment are unnecessary and contrary to the public interest. Therefore, FAA amended without notice its rules concerning pilot age limits.

Additionally, the Administrative Procedure Act generally requires an agency to have a 30-day delay in effectiveness for a final action. An agency may waive the 30-day delay if it finds good cause. 5 U.S.C. § 553(d). FAA found good cause to make this rule effective upon publication in order to minimize any possible confusion.

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

The final rule contains information collection requirements that were submitted to the Office of Management and Budget (OMB), as required by the Act. The final rule requires all pilots over the age of 60 who serve in part 121 operation to hold an FAA first-class medical certificate valid for 6 months, where previously second-in-command could hold an FAA second-class medical certificate valid for 12 months. The final rule also contains a requirement that all pilots serving in part 121 operation over age 60 be evaluated through a line check every 6 months, replacing a requirement that pilots in command be evaluated through a line check every 12 months. FAA estimates that over a 15-year period, total paperwork costs, consisting of record keeping costs and reporting costs, will be approximately \$11.7 million.

Statutory authorization for the rule

This final rule was promulgated under the authority of the Fair Treatment for Experienced Pilots Act, Pub. L. 110-135, codified at 49 U.S.C. § 44729.

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

FAA determined this final rule to be not an economically significant regulatory action under the Order, but to be significant as defined by the Department of Transportation's Policies and Procedures. FAA prepared a cost-benefit analysis in conjunction with the final rule, and determined that the final rule has benefits which justify its costs.

Executive Order No. 13,132 (Federalism)

FAA determined that this action would 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, and, therefore, would not have federalism implications under the Order.