

441 G St. N.W.  
Washington, DC 20548

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November 23, 2021

The Honorable Maria Cantwell  
Chairwoman  
The Honorable Roger F. Wicker  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Peter A. DeFazio  
Chairman  
The Honorable Sam Graves  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Department of Transportation, Federal Aviation Administration: Extension of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV)*

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 “Extension of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (UKDV)” (RIN: 2120-AL68). We received the rule on November 9, 2021. It was published in the *Federal Register* as a final rule on October 6, 2021. 86 Fed. Reg. 55485. The effective date is October 6, 2021.

According to FAA, this final rule amends and extends the Special Federal Aviation Regulation (SFAR) prohibiting certain flights in the specified areas of the Dnipro Flight Information Region (FIR) (UKDV) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. FAA stated it finds this action necessary to address hazards to persons and aircraft engaged in such flight operations due to the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine.

The Congressional Review Act (CRA) 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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 553(b)(3)(B). Here, although FAA did not specifically mention the CRA’s 60-day delay in effective date requirement, FAA found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Specifically,

FAA stated extending the flight prohibition for U.S. civil aviation operations in the specified areas of the Dnipro FIR (UKDV) is necessary due to continuing safety-of-flight hazards associated with the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. FAA further stated inadvertent risk to U.S. civil aviation operations continues to exist due to the potential for miscalculation or misidentification and that such circumstances establish that engaging in notice and comment for this rule would be impracticable and contrary to the public interest.

Enclosed is our assessment of 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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style with a large initial 'S'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Kimberly Young  
Management & Program Analyst

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION  
ENTITLED  
“EXTENSION OF THE PROHIBITION AGAINST CERTAIN  
FLIGHTS IN SPECIFIED AREAS OF THE DNIPRO FLIGHT  
INFORMATION REGION (FIR) (UKDV)”  
(RIN: 2120-AL68)

(i) Cost-benefit analysis

The Department of Transportation, Federal Aviation Administration (FAA) conducted an analysis of the economic impacts of this final rule. FAA stated it has determined this rule has benefits that justify its costs. FAA further stated it acknowledges the continued prohibition of U.S. civil aviation operations in the specified areas of the Dnipro Flight Information Region (FIR) (UKDV) might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, FAA concluded that it expects the benefits of this action to exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the specified areas of the Dnipro FIR (UKDV).

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

FAA stated it concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. FAA further stated that because 5 U.S.C. § 553 does not require notice and comment in this situation, 5 U.S.C. §§ 603 and 604 similarly do not require regulatory flexibility analyses.

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

FAA stated this final rule does not contain a mandate that may result in an expenditure of \$155 million or more in any one year by state, local, and tribal governments, in the aggregate, or by the private sector.

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

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

FAA concluded that good cause exists to forgo notice and comment and to not delay the effective date of this final rule. FAA stated extending the flight prohibition for U.S. civil aviation operations in the specified areas of the Dnipro FIR (UKDV) is necessary due to continuing safety-of-flight hazards associated with the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. FAA further stated inadvertent risk to U.S. civil aviation operations continues to exist due to the potential for miscalculation or misidentification and that such circumstances establish

that engaging in notice and comment for this rule would be impracticable and contrary to the public interest.

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

FAA stated it has determined no new requirement for information collection is associated with this final rule.

Statutory authorization for the rule

FAA promulgated this final rule pursuant to various sections of title 49, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FAA stated this final rule is a significant regulatory action, as defined in section 3(f) of the Order.

Executive Order No. 13132 (Federalism)

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