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August 18, 2016

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

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

Subject: *Department of Transportation, Federal Aviation Administration: Operation and Certification of Small Unmanned Aircraft Systems*

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 "Operation and Certification of Small Unmanned Aircraft Systems" (RIN: 2120-AJ60). We received the rule on August 4, 2016. It was published in the *Federal Register* as a final rule on June 28, 2016. 81 Fed. Reg. 42,064.

The final rule amends regulations to allow the operation of small unmanned aircraft systems in the National Airspace System. These changes address the operation of unmanned aircraft systems and certification of their remote pilots. This rule will also prohibit model aircraft from endangering the safety of the National Airspace System.

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). This final rule was published in the *Federal Register* on June 28, 2016, and has a stated effective date of August 29, 2016. The rule was received by the Senate and House of Representatives on June 30, 2016. 162 Cong. Rec. S4827 (July 6, 2016); 162 Cong. Rec. H4924 (July 13, 2016). We originally received the rule on August 2, 2016, designated as nonmajor. We received the revised designation of major rule on August 4, 2016. Therefore, the final rule does not appear to have the required 60-day delay in its effective date.

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. Our review of the procedural steps taken indicates that, with the exception of the required 60-day delay in 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Kimberly Young
Management and 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
“OPERATION AND CERTIFICATION OF SMALL
UNMANNED AIRCRAFT SYSTEMS”
(RIN: 2120-AJ60)

(i) Cost-benefit analysis

The Federal Aviation Administration (FAA) analyzed the benefits and the costs associated with this final rule. FAA states that technological advances in small unmanned aircraft systems (UAS) have led to a potential commercial market for their uses by providing a safe operating environment for them and for other aircraft in the National Airspace System (NAS). In addition to enabling this industry to develop, FAA states that it anticipates that this final rule will provide an opportunity to substitute small UAS operations for some risky manned flights, such as inspection of houses, towers, bridges, or parks, thereby averting potential fatalities and injuries.

According to FAA, the estimated out-of-pocket cost for an individual to become FAA certificated as a remote pilot with a small UAS rating is \$150, which is less than the cost of any other airman certification that allows non-recreational operations in the NAS. FAA states that the final rule will enable a new industry to unfold while imposing relatively low individual costs. The private sector expected benefits exceed private sector expected costs because each entity voluntarily chooses to incur the compliance cost of this rule in anticipation that their benefits exceed the costs. According to FAA, the sum of these entities' actions results in societal benefits which exceed societal costs when government costs are also taken into account. FAA quantified these benefits by estimating consumer surplus resulting from future commercial operations. FAA states that benefits to society equal the consumer surplus minus certain additional costs discussed.

The regulatory analysis included by FAA for this final rule presents two scenarios in order to present a range for costs—a high case and a low case. The scenarios are based on two fleet forecasts that were prepared independently at separate times. As a result, FAA states that the high case and low case projections for small UAS sales, fleet, and pilots differ significantly. Depending on which small UAS forecast is used, FAA expects this rule will result in a net social benefit ranging from about \$733 million in the low case to about \$9.0 billion in the high case over 5 years.

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

FAA states that it has not quantified the number of small entities to which the final rule will apply because while FAA believes most would be small entities, some may evolve quickly to become large firms. FAA performed a regulatory flexibility analysis which included: (1) a statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the

proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

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

FAA states that the final rule is unlikely to result in expenditure by state, local, or tribal governments of more than \$150 million annually. However, FAA states that the final rule will potentially result in an expenditure of much more than that magnitude by pilots seeking remote pilot certificates. FAA states that it considered alternatives to this rulemaking, which were discussed.

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

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

On February 23, 2015, FAA issued the notice of proposed rulemaking (NPRM) proposing to amend its regulations to adopt specific rules for the operation of small UAS in the NAS. 80 Fed. Reg. 9,544. Over 4,600 public comments were submitted in response to the NPRM. FAA considered the comments and issued the final rule to integrate small UAS into the NAS.

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

The final rule contains the following four information collection requirements: (1) submission of an application for a remote pilot certificate with a small UAS rating; (2) reporting any accident that results in at least serious injury to any person or any loss of consciousness; or damage to any property, other than the small unmanned aircraft, for which the cost of repair (including materials and labor) exceeds \$500; or the fair market value of the property exceeds \$500 in the event of total loss; (3) application for certificate of waiver or authorization to allow a small UAS operation to deviate from certain operating provisions of part 107; (4) during an emergency requiring immediate action, each remote pilot in command who deviates from any rule in part 107 shall, upon request of the Administrator of FAA, send a written report of that deviation to the Administrator. FAA has submitted these proposed information collection amendments to the Office of Management and Budget for its review. FAA included a total annualized burden estimate of the information-collection requirements associated with the final rule in a table.

Statutory authorization for the rule

The final rule was promulgated under the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11, 73-77 (Feb. 14, 2012), specifically sections 332 and 333, codified at 49 U.S.C. § 40101 note.

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

FAA has determined that this final rule has benefits that justify its costs, and is an economically significant regulatory action as defined in section 3(f) of Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

FAA determined that this action 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, and, therefore, does not have federalism implications.