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AVIATION RULEMAKING

Incomplete Implementation Impaired FAA's Reform Efforts

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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the results of our work for you on the Federal Aviation Administration's (FAA) rulemaking process and ways to improve its efficiency. As you know, FAA develops rules, or regulations, to enhance aviation safety and security and to promote the efficient use of airspace. In doing so, it must balance opposing pressures. On the one hand, rulemaking is time-consuming and complex, requiring careful consideration of the impact of proposed rules on individuals, industries, the economy, and the environment. On the other hand, threats to public safety and the rapid pace of technological development in the aviation industry demand timely action.

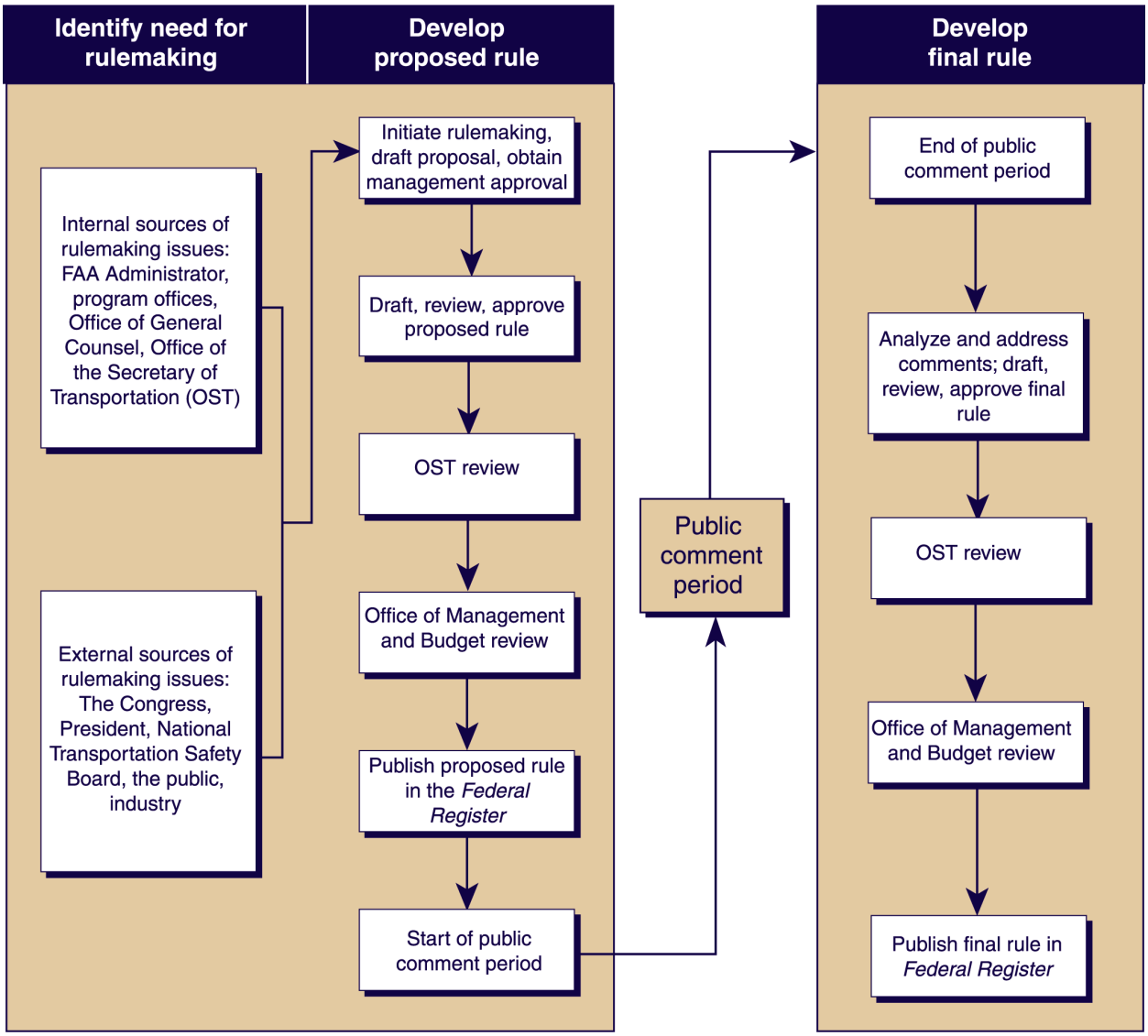
Over the past 40 years, numerous reports have documented and assessed the causes of delays in FAA's rulemaking process. In 1996, the Congress enacted legislation that established time frames for publishing significant rules—that is, rules whose potential impact on the economy and affected parties meets certain criteria established by the Office of Management and Budget. In 1997, FAA conducted a study on ways to improve the rulemaking process, and in 1998, it began implementing reforms to address the factors that affect the pace of rulemaking and respond to the congressional time frames. You asked that we review the efficiency of FAA's rulemaking in light of these reforms. Accordingly, in our report to you today[1] and in this statement, we address (1) the time frames for FAA's rulemaking, (2) the 1998 reforms and their effects on the pace of FAA's rulemaking, and (3) the effectiveness of the reforms in addressing the factors that affect the pace of rulemaking.

Before I summarize the results of our work, let me briefly describe the phases of rulemaking, the rules, and the time frames we used for our analysis. As shown in figure 1, rulemaking consists of a preliminary period prior to initiation and two formal phases

[1] *Aviation Rulemaking: Further Reform Is Needed to Address Long-standing Problems* (GAO)-01-821, July 2001).

separated by a public comment period. During the preliminary period, FAA studies the issue and decides whether to initiate rulemaking. The first, or proposed rule, phase extends from the initiation of rulemaking through the publication for public comment of a proposed rule in the *Federal Register*. The second, or final rule, phase begins at the close of the public comment period and concludes with the publication of a final rule in the *Federal Register*.

Figure 1: FAA's Rulemaking Process for Significant Rules



Source: Based on FAA's Rulemaking Manual, Dec. 1998.

To analyze the time frames for FAA's rulemaking, we looked at the history of 76 significant rules that constituted the majority of FAA's workload of significant rules from fiscal year 1995 through fiscal year 2000. When we could identify a starting point for the preliminary period—namely, the date of a congressional mandate or an NTSB recommendation—we analyzed how long FAA took to initiate rulemaking. To evaluate the effects of FAA's 1998 reforms on the pace of the agency's rulemaking, we compared the median times that FAA took to complete both the proposed rule phase and the final rule phase during the 3-year period before the reforms and the 3-year period after them. We also determined how well FAA met rulemaking time frames established by statute or its own guidance. Finally, to assess the effectiveness of FAA's reforms in addressing the factors that affect the pace of rulemaking, we surveyed FAA rulemaking staff, interviewed rulemaking management and staff, and observed rulemaking projects. Let me turn now to the results of our work.

In summary:

The time FAA took to formally initiate a rule in response to a congressional mandate or an NTSB recommendation varied widely. Between fiscal year 1995 and fiscal year 2000, FAA initiated most such rules within 2 years, but some rules were initiated many years later. After formally initiating a rule, FAA took a median time of approximately 2-½ years to complete the rulemaking, although 20 percent of the rules took 10 years or longer to complete. Over the entire 6-year period of our review, FAA's median time for the final rule phase—about 15 months—was comparable to that of four other federal regulatory agencies. Over a shorter, more recent period, FAA took longer to complete this phase. From October 1996, when the Congress established a 16-month statutory requirement for completing the final rule phase, through March 2001, FAA completed this phase within 16 months for fewer than half of its rulemaking projects.

FAA's 1998 reforms were designed to address problems affecting the pace of rulemaking, including the timing of management's involvement, the administration of the process, and human capital management issues. However, the reforms have not yet shortened the

rulemaking process. The median times FAA took to complete both the proposed rule phase and the final rule phase increased in the 3-year period since the reforms, even though FAA published fewer rules then than it did during the 3-year period before the reforms.

FAA's 1998 reforms have not improved the efficiency of the rulemaking process primarily because they have not been fully or effectively implemented. Shifting priorities, some brought about by external events and some by internal circumstances, have continued to delay the pace of rulemaking. In addition, difficult policy issues have sometimes remained unresolved late in the process, and management has retained several layers of internal review. Rulemaking participants are not clear about their job responsibilities, and FAA's updated rulemaking information system contains consistent data on only the highest-priority rules. Recommended human capital management initiatives, including the establishment of a system for measuring and evaluating performance and creating performance incentives, have not yet been implemented.

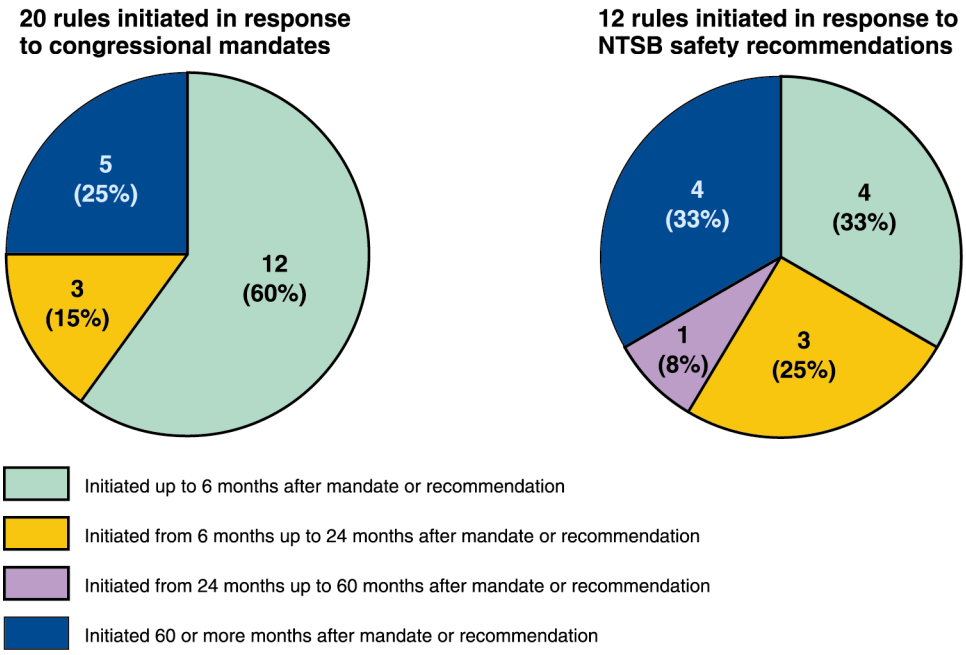
To strengthen FAA's rulemaking process, we are recommending management's earlier and more effective participation in setting priorities and making policy decisions; better use of information management systems; and the implementation of human capital strategies to measure and evaluate performance and create performance incentives for participants.

FAA's Rulemaking Time Frames Varied

Between fiscal year 1995 and fiscal year 2000, FAA formally initiated rulemaking actions within 6 months for about 60 percent of the congressional mandates and about 33 percent of the NTSB safety recommendations calling for such actions. However, FAA took more than 5 years for about one-fourth of the mandates and one-third of the recommendations. Two examples illustrate the wide variation in FAA's rulemaking time frames. FAA responded within 1 month to a 1999 NTSB recommendation that flight data recorders be required on Boeing 737 aircraft, but the agency took more than 7 years to respond to an NTSB recommendation calling for the use of child safety seats. Figure 2

shows the time FAA took to initiate the rulemaking process in response to 20 congressional mandates and 12 NTSB recommendations.

Figure 2: Time Elapsed Between 20 Congressional Mandates and 12 NTSB Safety Recommendations and FAA's Initiation of the Rulemaking Process



Note: The time until initiation was measured from the date the legislation containing a mandate was enacted or the date a safety recommendation was issued to the initiation date identified in FAA's rulemaking information system. No rules in response to congressional mandates were initiated from 24 months up to 60 months after the mandate. Due to rounding, totals may not add up to 100 percent.

Source: GAO's analysis of FAA data.

From fiscal year 1995 through fiscal year 2000, FAA completed 29 significant rules, taking from less than 1 year to almost 15 years for the entire rulemaking process. The median time for completing a rule was 2-½ years, but six rules took 10 years or more to complete. The median time for the proposed rule phase was approximately 20 months, and the median time for the final rule phase was about 15 months. FAA's median time for the final rule phase was comparable to that of four other federal regulatory agencies–the Animal and Plant Health Inspection Service (APHIS), the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the National Highway Transportation Safety Administration (NHTSA). Except for APHIS, which completed

this phase for all of its significant rules within 2 years, the agencies generally completed this phase for two-thirds to three-fourths of their significant rules within that time frame.

The Federal Aviation Reauthorization Act of 1996 established a 16-month time frame for FAA's final rule phase. From October 1996 through March 2001, FAA met this deadline for 7 of the 18 significant rules it completed during this period.

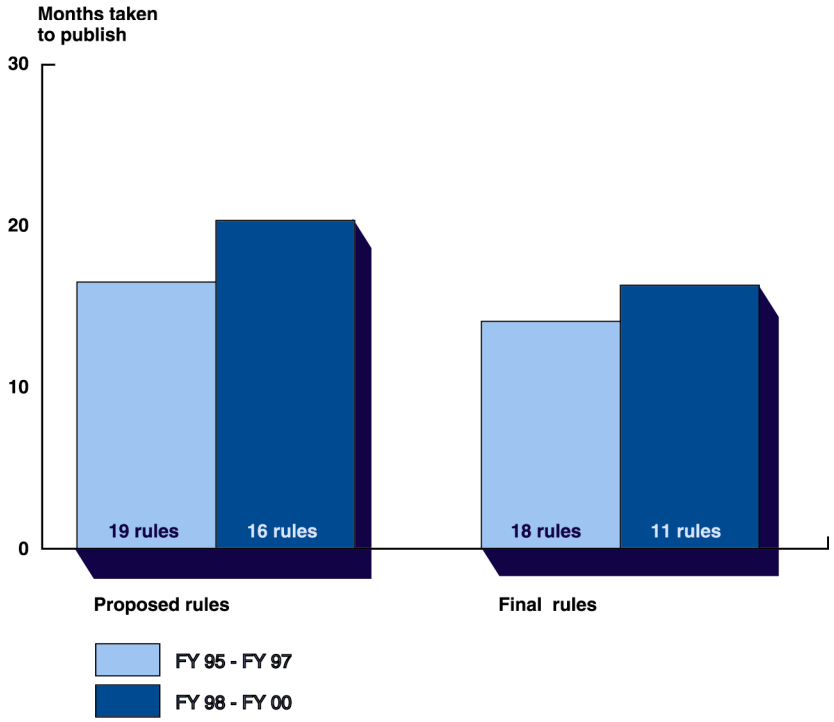
FAA's Reforms Have Not Expedited Rulemaking as Intended

FAA's 1998 reforms established organizational structures, guidance, and systems to improve the efficiency of the rulemaking process. To strengthen management's ability to coordinate and set priorities, resolve policy questions, and streamline the review process, FAA established a rulemaking steering committee to determine rulemaking priorities and a rulemaking management council to manage the rulemaking process. In addition, FAA developed a new rulemaking manual that suggested time frames for each step in the rulemaking process and included a system for prioritizing rulemaking projects. FAA also planned to limit reviews to those that added value and proposed delegating more responsibility for rulemaking decisions to rulemaking teams.

To strengthen the administration of the rulemaking process, FAA implemented reforms designed to clarify the roles and responsibilities of rulemaking staff, improve the monitoring of rules and the management of rulemaking documents, and ensure ongoing evaluation of the process. The new rulemaking manual outlined the roles and responsibilities for each member of the rulemaking team. A new system, the Integrated Rulemaking Management Information System, was designed to consolidate the functions of the existing project-tracking and document-management systems. To ensure ongoing evaluation of the rulemaking process, FAA developed quality standards and established teams responsible for monitoring and improving the quality of rulemaking documents and recommending improvements in the process to the rulemaking management council. Finally, FAA's 1997 study identified a need for human capital management strategies to increase accountability through training, evaluating, and rewarding the rulemaking staff.

FAA's 1998 reforms have not expedited the rulemaking process as intended. In fact, the median time FAA took to complete the entire process increased from about 30 months in the 3-year period before the reforms (fiscal years 1995-1997) to 38 months in the 3-year period since the reforms (fiscal years 1998-2000). Furthermore, the median times FAA took for both the proposed rule phase and the final rule phase increased since FAA began implementing the reforms, as shown in figure 3.

Figure 3: Median Time FAA Took to Process Significant Proposed and Final Rules for Periods Before and Since FAA's Reforms



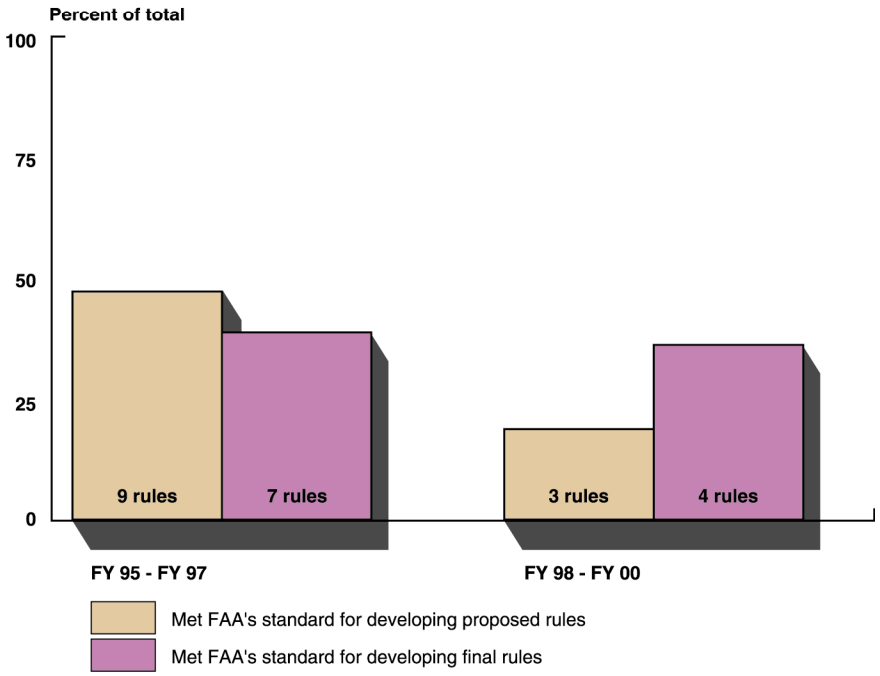
Source: GAO's analysis of FAA and *Federal Register* data.

Figure 3 also shows that FAA has published fewer rules since 1998. In the 3-year period before the reforms, FAA completed 18 significant rules, compared with 11 in the 3-year period since the reforms.

Among its reforms, FAA established its own time frames for the rulemaking process: 450 days for the proposed rule phase and 310 days for the final rule phase. While these time frames were not an applicable standard for rulemaking efforts that predated the reforms,

we found that FAA met these time frames more often before the reforms than afterwards. For example, it met its time frame for the proposed rule phase for 47 percent of its rulemaking projects in the 3-year period before the reforms but for only 19 percent of its projects in the 3-year period since the reforms. This is shown in figure 4.

Figure 4: Percentage of FAA's Significant Proposed and Final Rules Published Before and Since FAA's Reforms That Met Time Frames Suggested in FAA's Reform Guidance



Note: The time frame suggested in FAA's guidance for developing proposed rules is 450 days (about 15 months) while the time frame suggested for final rules is 310 days (about 10 months and 10 days).

Source: GAO's analysis of FAA data.

Incomplete Implementation Has Limited Effectiveness of Reforms

FAA's 1998 reforms have not been fully implemented, and the efficiency of the process has not improved, according to our survey of FAA rulemaking staff, interviews with FAA rulemaking management and staff, and observations of specific rulemaking projects. Fewer than 20 percent of the staff we surveyed thought that FAA had made the changes necessary to improve the process, and only about 20 percent believed that the process

had become more efficient and effective in the last 2 years. Our interviews and observations supported the staff's views.

Three problems associated with management's involvement in rulemaking continued to slow the process. First, an excessive number of top-priority rules impaired FAA's ability to allocate resources effectively, contributing to delays. The number of projects on FAA's top-priority list grew from 35 in February 1998, immediately after the reforms, to 49 by March 2001. According to the Director of the Office of Rulemaking, FAA can effectively manage only about 30 to 35 rulemaking projects. Changes in the informal relative ranking of "top" priorities created similar problems. According to 83 percent of the rulemaking staff that responded to our survey, changing priorities caused delays. Second, unresolved policy issues continued to slow the rulemaking process, as our study of a rulemaking effort related to FAA's Flight Operational Quality Assurance (FOQA) Programs showed. Third, multiple layers of review within the agency continued to delay the process after the reforms. We found that for five of six projects approved after the reforms, team members' decisions were reviewed and approved by the directors of the team members' offices, their immediate managers, and other managers. These multiple reviews occurred even though FAA concluded in 1997 that they fostered a lack of accountability in the rulemaking process that, in turn, led to milestones that were unrealistic or ignored because final responsibility for a project was unclear. According to the vast majority of the rulemaking team members responding to our survey (82 percent), layers of review interfere with the timely processing of rules.

Problems related to the administration of the rulemaking process have also persisted since the 1998 reforms, continuing to contribute to delays. Although the reforms were designed to address confusion over roles and responsibilities, only about 40 percent of our survey respondents agreed that their roles and responsibilities were clearly understood. Rulemaking officials said, for example, that although the rulemaking manual clarified the specific role of the legal reviewer, legal reviewers sometimes continued to focus on nonlegal issues.

FAA's rulemaking management information system consolidated the functions of the agency's former project-tracking and document-management systems, but the system was not being used to its full potential. First, FAA used the project-tracking portion of the automated system only for its "A" list of priority projects, which included 24 significant rules. The system was missing complete and accurate data for FAA's other significant rulemaking projects, limiting FAA's ability to monitor and evaluate its rulemaking efforts. FAA rulemaking officials said they did not have the resources available to complete, correct, or update records of rules that were not being actively worked on from the agency's "A" list of rules. Second, the document-management portion of the automated system was limited in its usefulness because it had not been fully implemented across all offices involved in rulemaking. For example, only 1 of 27 rulemaking staff outside the Office of Rulemaking who were working on four significant rules included in our review had used the automated system and that use occurred on only 1 day in February 1998.

The 1998 reforms explicitly called for the establishment of systems to evaluate the new rulemaking process, but FAA has not fully implemented a continuous improvement or a quality review program. For example, rulemaking teams were to complete "lessons learned" evaluations to identify problem areas and opportunities to improve the entire rulemaking process. However, we found that since 1998, FAA has not documented any evaluations. The continuous improvement team was also expected to review sample rulemaking documents and perform periodic quality assurance reviews. None of these quality review functions has been accomplished.

FAA has generally not implemented planned human capital management reforms, including rulemaking training, performance measurement, evaluation, and rewards for efficiency. For example, only about half of our survey respondents agreed that they had received the training they needed to perform their jobs. Moreover, despite an agencywide effort to link performance with rewards in April 2000, FAA management has not established agencywide systems to measure and reward performance in rulemaking according to the quality or timeliness of the process. As a result, fewer than half of our

survey respondents (about 48 percent) indicated that senior management holds team members accountable when teams do not meet milestones. Only 20 percent indicated that senior management is held accountable when teams do not meet milestones.

Finally, the Office of Rulemaking has not developed a separate rulemaking award system as recommended. Not surprisingly, only 8 percent of our survey respondents agreed that their offices provide incentives based on the milestones of the rulemaking process.

Conclusion

In conclusion, Mr. Chairman, we recognize that rulemaking is a complex and time-consuming endeavor. We have not yet seen whether FAA's rulemaking reforms can effectively reduce delays in the process because many of the initiatives have not been fully implemented. FAA's attention to elements critical to achieving desired results—limiting the number of top-priority rules and the extent to which established priorities are shifted; maximizing the use of evaluation systems to establish baseline data and measure the agency's progress; and implementing performance incentives for meeting time-related goals—would facilitate more effective implementation of the reforms.

Recommendations for Executive Action

In our report, we recommend that the Secretary of Transportation direct the FAA Administrator to take a number of actions to improve the efficiency of FAA's rulemaking process. These actions include the following:

- Reduce the number of top-priority projects to a manageable number and provide the resources rulemaking teams need to focus their efforts and manage projects to timely completion. To do this, FAA must, among other things, hold managers accountable for making policy decisions as early as possible in the rulemaking process and hold team members accountable for limiting their reviews to established criteria.

- Ensure that the information systems used to track and coordinate rulemaking contain current, complete, and accurate data on the status of all significant rulemaking projects and that the proposed continuous improvement program and the resulting information are used to identify problems in the process and potential solutions.

- Establish a human capital management strategy for rulemaking that includes training, performance measures, and incentives that promote timeliness and quality in rulemaking.

Contacts and Acknowledgement

For future contacts regarding this testimony, please contact Gerald L. Dillingham at (202) 512-3650. Individuals making key contributions to this testimony were Chris Keisling, Sarah Lovering, Jason Schwartz, and Alwynne Wilbur.

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