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United States General Accounting Office
Washington, DC 20548

B-293424

December 18, 2003

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable William M. Thomas
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Homeland Security, Bureau of Customs and Border
Protection: Required Advance Electronic Presentation of Cargo Information*

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 Homeland Security, Bureau of Customs and Border Protection (CBP), entitled "Required Advance Electronic Presentation of Cargo Information" (RIN: 1651-AA49). We received the rule on December 3, 2003. It was published in the Federal Register as a final rule on December 5, 2003. 68 Fed. Reg. 68140.

The final rule requires that the CBP must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before it is either brought into or sent from the United States by any mode of commercial transportation. The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

The final rule has an announced effective date of January 5, 2004. The Congressional Review Act 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). As the rule was published in the Federal Register on December 5, 2003, it does not have the required 60-day delay in its effective date for congressional review. However, we do note that pursuant to section 343(a) of the

Trade Act of 2002 (19 U.S.C. 2071 note), CBP transmitted a copy of the rule to the committees of jurisdiction 15 days prior to publication for their review. Also, while the rule's effective date is announced as January 5, 2004, compliance with the rule's various requirements is delayed at least 90 days.

Enclosed is our assessment of the CBP'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 the CBP complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Harold M. Singer
Chief, Regulations Branch
Department of Homeland Security

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION
ENTITLED
"REQUIRED ADVANCE ELECTRONIC PRESENTATION
OF CARGO INFORMATION"
(RIN: 1651-AA49)

(i) Cost-benefit analysis

CBP estimates that the final rule will impose new costs of \$91 million on the trucking industry, which will be offset by savings of \$142 million. The analysis indicated that the total annualized cost to U.S. air carriers could range from \$345 million to \$4.7 billion depending on which of the four options CBP selected. Based on the option that required information on all cargo except documents, the costs range from \$422 million to \$2.24 billion.

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

CBP, following completion of a Final Regulatory Impact Analysis, has determined that the final rule could have a significant economic impact on a substantial number of small air carriers. Since most of the costs on small air carriers are driven by the cost of electronic data entry, which was mandated by statute, CBP states that mitigating these costs and thereby lessening the economic impact is difficult.

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

The final rule contains a mandate, as defined in title II, of more than \$113 million in any one year on the private sector. Therefore, CBP prepared the required analysis under the Act, which assesses the rule's effect on, among other things, future costs, national productivity, job creation and exports.

(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 July 23, 2003, the CBP published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 43574. In response, CBP received 128 comments that are discussed in the preamble to the final rule.

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

The final rule's collection of information requirements have been approved by the Office of Management and Budget (OMB) and assigned Control No. 1651-0001 (Transportation Manifest Cargo Declaration).

Statutory authorization for the rule

The final rule is being issued under the authority contained in section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

CBP has determined that the final rule does not have federalism implications.