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November 3, 2016

The Honorable Chuck Grassley
Chairman
The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Bob Goodlatte
Chairman
The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security, U.S. Customs and Border Protection: Establishment of the Electronic Visa Update System (EVUS)*

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 (DHS), U.S. Customs and Border Protection (CBP) entitled “Establishment of the Electronic Visa Update System (EVUS)” (RIN: 1651-AB08). We received the rule on October 18, 2016. It was published in the *Federal Register* as a final rule on October 20, 2016. 81 Fed. Reg. 72,481.

The final rule amends the Department of Homeland Security's regulations to establish the Electronic Visa Update System (EVUS). This system will allow for the collection of biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to these regulations must periodically enroll in EVUS and obtain a notification of compliance with EVUS prior to travel to the United States. Individuals subject to the EVUS regulations must comply with EVUS in order to maintain the validity of their visas falling within a designated category. CBP notes that the Department of State is publishing a parallel rule to amend its visa regulations to reflect the new EVUS requirements.

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 has a stated effective date of October 20, 2016. The compliance date is November 29, 2016, or as set forth in 215.24(c). The rule was published in the *Federal Register* on October 20, 2016, and received on October 19, 2016. Therefore, this final rule does not have a 60-day delay in its effective date. 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(d)(3), 808(2). CBP found good cause for not delaying the effective date. CBP stated that the rule improves the security of issuing certain visas with longer validity periods to nonimmigrant aliens who hold a passport issued by an identified country. Specifically, by requiring covered aliens to provide regular updated biographic and other information, CBP is better positioned to obtain updated information from these individuals and to screen them before they embark on travel to the United States. CPB stated that implementation of this rule as soon as possible is necessary to protect the national security of the United States and to prevent potential wrongdoers from exploiting visas with longer validity periods when they are issued to nonimmigrant aliens who hold a passport issued by a country identified by the Secretary of Homeland Security. Therefore, CBP found for good cause that notice and public comment are impractical and contrary to the public interest. Accordingly, CBP and DHS concluded that the rule will take effect immediately upon publication, but the compliance date is November 29, 2016.

Enclosed is our assessment of 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 of the procedural steps taken indicates that CBP 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: Lorrie R. Rodbart
Chief, Border Security Regulations Branch
Department of Homeland Security

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION
ENTITLED
“ESTABLISHMENT OF THE ELECTRONIC VISA UPDATE SYSTEM (EVUS)”
(RIN: 1651-AB08)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), analyzed the costs and benefits associated with the final rule. CBP presented the costs and benefits of the Electronic Visa Update System (EVUS) in two ways: (1) on a per-alien and per-carrier basis and (2) on an aggregate basis for the population of covered aliens initially required to enroll in EVUS—nonimmigrant aliens holding unrestricted, maximum validity B-1, B-2, or B-1/B-2 nonimmigrant visas contained in a passport issued by the People’s Republic of China (PRC) and who seek travel to the United States. CBP states that it also anticipates that currently proposed U.S. legislation establishing an \$8.00 EVUS fee will pass in FY 2017. Such fee legislation would require covered aliens to pay an \$8.00 EVUS fee per enrollment request, while allowing CBP to cover its costs of providing and administering EVUS. CBP included the EVUS fee revenue in this analysis as a proxy for CBP’s expected costs of setting up and administering EVUS.

According to CBP, covered aliens, CBP, and air and sea carriers will bear all the direct costs of this rule. CBP states that this EVUS rule will require covered aliens to periodically submit up-to-date biographical and other information through an EVUS enrollment request and receive a notification of compliance indicating successful enrollment in advance of travel or admission to the United States. Each EVUS enrollment request is estimated to take a covered alien an estimated 25 minutes to complete, at an opportunity cost of \$19.21 per request. CBP expects to sustain costs from providing and administering EVUS approximately equal to the \$8.00 EVUS fee that CBP anticipates covered aliens will pay beginning in FY 2017. CBP also states that it anticipates that each covered alien will incur a foreign transaction fee of \$0.02 per enrollment request. Together, CBP and covered aliens will incur undiscounted opportunity costs and fee or government administration costs totaling \$27.23 per EVUS enrollment request, which will translate to an overall undiscounted cost to the population of covered aliens initially affected by this rule of \$1.6 billion between FY 2017 and FY 2026 under CBP’s primary estimation method. CBP further estimates that air and sea carriers will each spend an average of \$1.35 million during this rule’s first year of implementation to test and modify their Advance Passenger Information System systems to allow for EVUS compliance checks, and \$150,000 in subsequent years on system operation and maintenance related to EVUS verifications. During the 10-year period of analysis, these costs will total \$2.7 million (undiscounted). Using the number of carriers initially affected by this rule and their estimated EVUS-related costs, the overall undiscounted cost of this rule to carriers will measure \$216.0 million over the entire period of analysis. CBP states that to the extent that carriers use their existing systems for EVUS compliance verifications, the cost of this rule to carriers will be lower. Collectively, the undiscounted costs of this rule will total \$1.8 billion under CBP’s primary estimation method. In present value terms, the overall cost will equal \$1.3 billion to \$1.5 billion, while its annualized cost will measure \$168.9 million to \$173.1 million (using 7 and 3 percent discount rates,

respectively). These costs vary according to the projection method and discount rate applied. CBP included a table summarizing these costs.

According to CBP, this rule will offer benefits to covered aliens, the public, air and sea carriers, and CBP, with covered aliens enjoying the most monetized benefits from this rule. The lengthened visa validity periods negotiated based on implementation of this rule will allow PRC B-1, B-2, and B-1/B-2 visa holders to renew their visas on a less frequent basis in the future, saving covered aliens \$430.50 per visa renewal foregone and a total of \$3.6 billion (undiscounted) over the period of analysis according to this rule's decrease in visa issuances under CBP's primary estimation method. According to CBP, through its continual traveler screening and advance inadmissibility determinations, this rule will strengthen national security and facilitate legitimate travel, thereby providing important benefits to the public. Air and sea carriers and CBP will also enjoy benefits from EVUS's advance review of passengers to help avoid problems at ports of entry that could impose burdens on carriers. CBP states that each carrier will save an estimated \$1,500 in avoided return trip costs per unsuccessful EVUS enrollment. Such savings will total \$3.1 million (undiscounted) over the entire period of analysis based on the number of unsuccessful EVUS enrollments under CBP's primary estimation method. With an estimated 80 carriers initially affected by this rule, these benefits will average nearly \$39,000 per carrier. For each inadmissible covered alien arrival avoided, CBP will save \$170.94 in avoided processing and inspection time costs. Based on these processing and inspection time cost savings and the total number of potentially inadmissible covered alien arrivals avoided through the EVUS enrollment process, under CBP's primary estimation method, CBP states that it will save between \$325,000 and \$392,000 (undiscounted) with this rule from FY 2017 to FY 2026. CBP noted that these are not budgetary savings, but rather are savings that CBP will dedicate to other agency mission areas, such as improving security and expediting the processing of other travelers. Altogether, CBP concluded that the undiscounted monetized benefit of this rule will total \$3.7 billion under CBP's primary estimation method. The total benefit of this rule under this method will measure \$2.3 billion to \$3.0 billion in present value terms over the period of analysis and between \$299.6 million and \$336.3 million when annualized (using 7 and 3 percent discount rates, respectively).

CBP concluded that the total monetized present value net benefit of this rule over 10 years is \$981.8 million to \$1.4 billion, while its annualized net benefit totals \$130.6 million to \$163.2 million according to CBP's primary estimation method (using 7 and 3 percent discount rates, respectively). In addition to these benefits, the rule will strengthen national security and facilitate legitimate travel through continual traveler screening and advance inadmissibility determinations. These impacts vary according to the projection method and discount rate applied.

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

CBP states that since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

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

According to CBP, this rule would not impose a significant cost or uniquely affect small governments. CBP states that the rule does have an effect on the private sector of \$100,000,000 or more.

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

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

According to DHS, the final rule is excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals regarding the issuance of visas, involves a diplomatic arrangement with another country regarding reciprocal changes to temporary visitor for business and pleasure, student, and exchange visitor visas, and directly involves relationships between the United States and its alien visitors. See 5 U.S.C. 553(a)(1). According to DHS, this determination was reached after consulting with the Department of State, which is also asserting the foreign affairs function exception in their parallel rule. Accordingly, DHS states that is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule. However, DHS states that interested persons may submit comments on the final rule which must be received on or before January 18, 2017. DHS states that based on the comments received, DHS may revise this rule in the future.

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

CBP has submitted an information collection request to the Office of Management Budget (OMB) for review and approval in accordance with the review procedures of PRA. Approval and assigned OMB control number are pending. The proposed information collection requirements will result in the following estimated burden:

- estimated number of annual respondents: 3,595,904;
- estimated number of annual responses per respondent: 1;
- estimated total annual responses: 3,595,904;
- estimated time per response: 25 minutes (0.417 hours); and
- estimated total annual burden hours: 1,499,492.

Statutory authorization for the rule

According to CBP, the final rule was promulgated primarily under the authorities of the Immigration and Nationality Act sections 103 (8 U.S.C. § 1103), 214 (8 U.S.C. § 1184), 215 (8 U.S.C. §1185), and 221 (8 U.S.C. § 1201); and sections 402(4) and 428(b) of the Homeland Security Act, 6 U.S.C. §§ 202(4), 236(b).

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

CBP states that this rule is exempt from the requirements of Executive Orders 13,563 and 12,866. However, CBP states that it reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 13,563 and 12,866. CBP has prepared an economic analysis of the potential impacts of this final rule for public awareness.

Executive Order No. 13,132 (Federalism)

According to CBP, this rule will not have substantial direct effects 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. Therefore, in accordance with the Order, DHS determined that the final rule did not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.