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United States General Accounting Office  
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B-289994

March 11, 2002

The Honorable Ernest F. Hollings  
Chairman  
The Honorable John McCain  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Don Young  
Chairman  
The Honorable James L. Oberstar  
Ranking Minority Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: Department of Transportation, Transportation Security Administration:  
Aviation Security Infrastructure Fees

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 (DOT), Transportation Security Administration, entitled "Aviation Security Infrastructure Fees" (RIN: 2110-AA02). We received the rule on February 25, 2002. It was published in the Federal Register as an interim final rule on February 20, 2002. 67 Fed. Reg. 7926.

The interim final rule announces a fee that will be imposed on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation. The fee, described as the Aviation Security Infrastructure Fee, is in addition to the September 11<sup>th</sup> Security Fee imposed on passengers and will help defray the Transportation Security Administration's costs of providing U.S. civil aviation security services.

Enclosed is our assessment of the DOT'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 DOT 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 John Anderson,

Managing Director, Physical Infrastructure. Mr. Anderson can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Jennifer Abdul-Wali  
Senior Regulations Analyst  
Department of Transportation

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF TRANSPORTATION,  
TRANSPORTATION SECURITY ADMINISTRATION  
ENTITLED  
"AVIATION SECURITY INFRASTRUCTURE FEES"  
(RIN: 2110-AA02)

(i) Cost-benefit analysis

DOT states that the rulemaking is made under an emergency situation within the meaning of section 6(a)(3)(D) of Executive Order 12866 and therefore no cost-benefit analysis was prepared. DOT will prepare such an assessment in the future.

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

Since the interim final rule did not follow the issuance of a Notice of Proposed Rulemaking, the requirements of the Regulatory Flexibility Act are not applicable.

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

Since the interim final rule did not follow the issuance of a Notice of Proposed Rulemaking, the requirements of the Unfunded Mandates Reform Act of 1995 are not applicable.

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

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

Section 118 of the Aviation and Transportation Security Act, 49 U.S.C. 44940(d)(1), exempts the imposition of civil aviation security service fees from the rulemaking requirements regarding notice and comment found at 5 U.S.C. 553. However, DOT is accepting comments on the interim final rule until March 18, 2002.

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

The interim final rule contains an information collection that is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. DOT has requested emergency temporary approval of the collection from OMB. The preamble to the interim final rule contains the required information, including the estimated annual burden. DOT estimates that the one-time collection of information will have 195 respondents with a one-time cost of \$3,900,218.40.

Statutory authorization for the rule

The interim final rule is promulgated under the authority contained in section 118 of the Aviation and Transportation Security Act, 49 U.S.C. 44940.

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

DOT has determined that the interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.