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June 27, 2018

The Honorable Ron Johnson
Chairman
The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Michael McCaul
Chairman
The Honorable Bennie Thompson
Ranking Member
Committee on Homeland Security
House of Representatives

Subject: *Department of Homeland Security, U.S. Customs and Border Protection: Air Cargo Advance Screening (ACAS)*

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, U.S. Customs and Border Protection (CBP) entitled "Air Cargo Advance Screening (ACAS)" (RIN: 1651-AB04). We received the rule on June 7, 2018. It was published in the *Federal Register* as an interim final rule; request for comments on June 12, 2018. 83 Fed. Reg. 27,380. The effective date of the interim final rule is June 12, 2018.

The final rule amends the regulations pertaining to the submission of advance air cargo data to implement a mandatory Air Cargo Advance Screening (ACAS) program for any inbound air craft required to make entry under CBP regulations that will have commercial cargo aboard. The ACAS program requires the inbound carrier or other eligible party to electronically transmit specified advance cargo data (ACAS data) to CBP for air cargo transported onboard U.S.-bound aircraft as early as practicable, but not later than prior to loading of the cargo onto the aircraft. According to CPB, the ACAS program enhances the security of the aircraft and passengers on U.S.-bound flights by enabling CBP to perform targeted risk assessments on the air cargo prior to the aircraft's departure for the United States. CBP stated that these risk assessments will identify and prevent high-risk air cargo from being loaded on the aircraft that could pose a risk to the aircraft during flight.

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 interim final rule was received on June 7, 2018. It was published in the *Federal Register* on June 12, 2018, and has a stated effective date of June 12, 2018. 83 Fed. Reg. 27,380. Therefore, the interim final rule does not have the required 60-day delay in its effective date.

The 60-day delay in effective date can be waived, however, if the agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). CBP found good cause to issue this regulation effective upon publication in the *Federal Register*. CBP stated that delay of the final rule would leave the United States unnecessarily vulnerable to a specific terrorist threat and would be contrary to the public interest.

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 agency's submissions to us indicates that CBP complied with the applicable requirements discussed. The agency did not discuss the Regulatory Flexibility Act.

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 Rodbart
Chief, Border Security Regulations Branch
U.S. Customs and Border Protection
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
“AIR CARGO ADVANCE SCREENING (ACAS)”
(RIN: 1651-AB04)

(i) Cost-benefit analysis

The Department of Homeland Security, U.S. Customs and Border Protection (CBP) summarized the costs and benefits of this final rule. CBP estimated that during the pilot period, CBP and 38 pilot participants incurred costs totaling between \$112.8 million and \$122.7 million (in 2016 dollars) over the 6 years depending on the discount rate used (3 and 7 percent, respectively). CBP also estimated that this final rule will affect an estimated 215 entities and have an approximate total present value cost ranging from \$245.7 million and \$297.9 million (in 2016 dollars) over the 10-year period of analysis. CBP found the estimated annualized costs of the Air Cargo Advance Screening program (ACAS) to range from \$25.2 million to \$26.1 million (in 2016 dollars). CBP stated that the cost estimates include both the one-time, upfront costs and recurring costs of the activities undertaken by the affected entities to comply with the rule, both in the pilot and the post-pilot periods.

CBP stated that it is unable to monetize the benefits of the rule. Instead, CBP conducted a “break-even” analysis, which shows how often a terrorist event must be avoided due to the rule for the benefits to equal or exceed the costs of the ACAS program. CBP determined the benefits of this final rule include preventing unauthorized weapons, explosives, chemical and/or biological weapons; weapons of mass destruction; and other dangerous items from being loaded onto aircraft destined to the United States.

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

CBP did not discuss the Act in the final rule.

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

CBP determined that this final rule is exempt from the requirements of the Unfunded Mandates Reform Act of 1995 under 2 U.S.C. § 1503, which states that the Act “shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation” that “is necessary for the national security or the ratification or implementation of international treaty obligations.”

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

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

CBP published the interim final rule on June 12, 2018. 83 Fed. Reg. 27,380. CBP found good cause to publish the rule without notice and comment because delaying the implementation of the final rule pending the completion of notice and comment procedures would be contrary to the public interest. The comment period on the interim final rule is open until August 13, 2018.

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

CBP found that the collection of information contained in this rule was previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Act under OMB Control Number 1651-0001.

Statutory authorization for the rule

CBP stated that this rule was promulgated pursuant to 5 U.S.C. § 301; 19 U.S.C. §§ 58b, 66, 1202, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1627a, 1644, 1644a, 1646a, 1646b, 1646c, 2071 note.

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

CBP determined that this interim final rule has an impact of over \$100 million in the first year and is a significant regulatory action under the Order. CBP stated that OMB reviewed the rule.

Executive Order No. 13,132 (Federalism)

CBP did not discuss the Order in the interim final rule.