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United States Government Accountability Office
Washington, DC 20548

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April 22, 2005

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

The Honorable Christopher Cox
Chairman
The Honorable Bennie G. Thompson
Ranking Minority Member
Committee on Homeland Security
House of Representatives

Subject: *Department of Homeland Security, Bureau of Customs and Border Protection: Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft*

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 “Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft” (RIN: 1651-AA37). We received the rule on March 29, 2005. It was published in the Federal Register as a final rule on April 7, 2005. 70 Fed. Reg. 17820.

The final rule requires the electronic transmission of manifest information (1) for passengers and crew members onboard commercial vessels and aircraft, in advance of arrival in and departure from the United States, and (2) for crew members and non-crew members onboard commercial aircraft that continue within (foreign air carriers only) and overfly the United States, in advance of the departure of those flights.

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 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

ENCLOSURE

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
"ELECTRONIC TRANSMISSION OF PASSENGER AND
CREW MANIFESTS FOR VESSELS AND AIRCRAFT"
(RIN: 1651-AA37)

(i) Cost-benefit analysis

CBP estimates the cost of the final rule to be approximately \$1 billion over a 10-year period (7-percent discount rate). The first year of the rule's effectiveness is estimated to cost \$166 million (undiscounted) and \$135 million (undiscounted) annually thereafter.

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

CBP performed a Final Regulatory Flexibility Analysis in connection with the final rule that complies with the requirements of the Act. In attempting to minimize the impact on small entities, alternative submission methods were developed for small entities to comply with the requirements of 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

The final rule contains a mandate, as defined in title II, of more than \$100 million in any one year on the private sector. CBP prepared the required statement as part of its regulatory impact analysis as permitted under the Act.

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

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

CBP has found "good cause" to dispense with notice and public comment because the manifest reporting requirements for crew and non-crew members now being issued publicly were already in place with respect to the carriers (under the privately issued Security Directives and Emergency Amendments) and a terrorism threat still exists.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act. The collections had been reviewed by OMB and issued OMB Control Nos. 1651-0088 and 1651-0104. On March 17, 2005, CBP submitted revised annual burden hours for consideration by OMB based on a new estimate of the number of respondents.

Statutory authorization for the rule

The final rule is promulgated under the authority found in the Aviation and Transportation Security Act (49 U.S.C. 44909), the Enhanced Border Security and Enhanced Bias Entry Reform Act of 2002 (8 U.S.C. 1221), and applicable aviation security laws and regulations enforced by the Transportation Security Administration (49 U.S.C. 114; 49 CFR parts 1544, 1546, and 1550).

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 sufficient federalism implications to warrant the preparation of a federalism impact statement.