



441 G St. N.W.
Washington, DC 20548

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December 20, 2018

The Honorable Orrin Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

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

The Honorable Kevin Brady
Chairman
The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Homeland Security, U.S. Customs and Border Protection, and
Department of the Treasury: Modernized Drawback*

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) and the Department of the Treasury entitled "Modernized Drawback" (RIN: 1515-AE23). We received the rule on December 7, 2018. It was published in the *Federal Register* as a final rule on December 18, 2018. 83 Fed. Reg. 64,942. The effective date of the final rule was December 17, 2018.

The final rule implements changes to the drawback regulations, as directed by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). This rule establishes new processes for drawback pursuant to TFTEA, which liberalized the merchandise substitution standard, simplified recordkeeping requirements, extended and standardized timelines for filing drawback claims, and required the electronic filing of drawback claims. This rule also provides details with respect to the process required to perfect TFTEA-based claims filed under CBP's Interim Guidance procedures. Further, the rule clarifies the prohibition on the filing of a substitution drawback claim for internal revenue excise tax in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax.

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). The rule was received by the Senate on December 7, 2018, and was published in the *Federal Register* on December 18, 2018. 83 Fed. Reg. 64,942. The rule has a stated effective date of December 17, 2018, with an exception for certain provisions of the rule concerning the drawback of excise taxes. Therefore, those provisions of the final rule with a stated effective date of December 17, 2018, do not have a 60-day delay in its effective date.

However, the 60-day delay in effective date can be waived, 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. § 808(2). CBP found good cause for most provisions of this rule to become effective immediately upon publication, so as to not further delay payments that Congress mandated to claimants. Therefore CBP determined that the effective date for those provisions of this rule is December 17, 2018.

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. 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

Julia C. Matta
Managing Associate General Counsel

Enclosure

cc: Robert F. Altneu
Chief, Trade & Commercial 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,
DEPARTMENT OF THE TREASURY
ENTITLED
“MODERNIZED DRAWBACK”
(RIN: 1515-AE23)

(i) Cost-benefit analysis

The U.S. Customs and Border Protection (CBP) analyzed the costs and benefits of this final rule. CBP estimates that under this rule the federal government will transfer between \$237.6 million and \$269.3 million in present value net revenue to trade members as a direct result of this rule, which will equal between \$31.6 million and \$35.8 million when annualized (using a 7 percent discount rate). In total, CBP estimates, this rule will generate \$62.3 million to \$62.4 million in monetized present value costs and \$9.6 million in monetized present value cost savings under the primary estimation method (using a 7 percent discount rate). CBP also estimates that, when annualized, the monetized cost of this rule equals \$8.3 million and its monetized cost saving will measure \$1.3 million (using a 7 percent discount rate). Altogether, CBP calculated, the total monetized present value net benefit of this rule under the primary estimation method is between -\$52.7 million and -\$52.8 million (*i.e.*, a net cost), while its annualized net benefit totals -\$7.0 million (using a 7 percent discount rate). Furthermore, CBP found that this rule will introduce non-monetized, non-quantified costs and benefits. Specifically, according to CBP, some aspects of this rule will make it potentially less attractive for some trade members to use the United States as a home base for a distribution facility and offer drawback rights to other parties, impose a new liability for importers, and offer less time for trade members to file drawback claims and documentation. Nonetheless, CBP believes that these costs will likely be minor when considering the rule's additional drawback opportunities. In contrast, CBP believes that the rule will introduce major non-monetized, non-quantified benefits to trade members and CBP. For example, the rule will provide streamlined claim submissions and processing for trade members and CBP, increased time for trade members to claim drawback, added administrative review time for CBP, a strengthened ability for CBP to validate drawback claims and recoup inaccurately over-claimed drawback, a simplified drawback process for trade members and CBP, added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption, and decreased business costs for trade members. CBP believes that this rule's non-monetized, non-quantified benefits will be much greater than this rule's non-monetized, non-quantified costs.

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

CBP determined that, because this final rule will presumably affect all drawback claimants, it will likely affect a substantial number of small entities in each industry submitting such claims. CBP did not determine whether the rule's economic impact on these entities may be considered significant under the Act due to data limitations. Therefore, CBP did not certify that this final rule will not have a significant economic impact on a substantial number of small entities. As a result, CBP conducted a Final Regulatory Flexibility Analysis of the final rule which included (1) a succinct statement of the need for, and objectives of, the rule; (2) a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis, a

summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) a description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record; and (5) a description of the steps CBP has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

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

In its submission to us, CBP indicated that it determined that the Act was not applicable.

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

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

On August 2, 2018, CBP published a notice of proposed rulemaking. 83 Fed. Reg. 37,886. CBP received 92 documents in response to the proposed rule and responded to comments in the final rule. CBP believes that there is good cause for most sections of this rule to become effective immediately upon publication, so as to not further delay payments to claimants. For this reason, CBP found that there is good cause for dispensing with a delayed effective date.

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

CBP determined that this final rule contains information collection requirements under the Act. The collections of information for this rulemaking are included in an existing collection for CBP Forms 7551, 7552, and 7553 (Office of Management and Budget (OMB) control number 1651-0075). CBP stated that this rule will, among other things, eliminate the submission requirement for Form 7552 for drawback claimants who file electronically under the new drawback regulations. Drawback claimants filing by paper under the current drawback regulations will still be required to submit the paper Form 7552 until this rule's requirements become mandatory in 2019. Based on this change, CBP estimates a decrease in Form 7552 responses and burden hours. Additionally, the estimated burden hours for Form 7551 decreased based on changes in CBP's estimate. CBP will submit to OMB for review the adjustments to the previously approved information collection under OMB control number 1651-0075 to account for this rule's changes. Furthermore, CBP expects to submit a request to eliminate Form 7552 to OMB in 2019 prior to this rule's mandatory requirement date.

Statutory authorization for the rule

CBP promulgated this final rule pursuant to sections 66, 1202, 1624, and 3314 of title 19, United States Code.

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

CBP determined that this final rule is an economically significant regulatory action under the Order and therefore it was reviewed by OMB.