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October 7, 2014

The Honorable John D. Rockefeller IV
Chairman
The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Nick J. Rahall II
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Homeland Security, Transportation Security Administration: Cessation of the Aviation Security Infrastructure Fee (ASIF)*

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, Transportation Security Administration (TSA) entitled "Cessation of the Aviation Security Infrastructure Fee (ASIF)" (RIN: 1652-AA01). We received the rule on September 19, 2014. It was published in the *Federal Register* as a final rule on September 23, 2014. 79 Fed. Reg. 56,663.

The final rule amends TSA's regulations to conform with the repeal of the statutory authority to impose the Aviation Infrastructure Fee on air carriers and foreign air carriers in air transportation. The Bipartisan Budget Act of 2013 repealed TSA's authority to impose the fee effective October 1, 2014.¹

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 final rule has a stated effective time of 11:59 p.m. (Eastern Daylight Time) on September 30, 2014. The rule was received on September 19, 2014, and was published in the *Federal Register* on September 23, 2014. Therefore, the 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 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). TSA stated that because collection of the fee will end on October 1, 2014,

¹ Pub. L. No. 113-67, § 601, 127 Stat. 1165, 1187 (2013).

regardless of whether this rule is published, TSA found good cause for making this a final rule without notice and comment.

Enclosed is our assessment of TSA'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 TSA 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: Susan M. Prosnitz
Acting Deputy Chief Counsel for
Regulations and Security Standards
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,
TRANSPORTATION SECURITY ADMINISTRATION
ENTITLED
"CESSATION OF THE AVIATION SECURITY
INFRASTRUCTURE FEE (ASIF)"
(RIN: 1652-AA01)

(i) Cost-benefit analysis

The Transportation Security Administration (TSA) analyzed the costs and benefits of this final rule. TSA calculated that the annualized monetized benefits of this rule to be \$59,196 at a 7 percent discount rate. TSA did not identify any costs associated with this final rule. TSA also calculated that there would be an annualized reduction in transfer payments from industry to the government of \$373.2 million. For the 10-year analysis period, TSA estimates the total undiscounted reduction in transfer payments to the government of approximately \$3.2 billion using a 3 percent discount rate and \$2.6 billion using a 7 percent discount rate.

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

TSA did not conduct a Regulatory Flexibility Analysis for this final rule, as there was no notice of proposed rulemaking.

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

TSA did not conduct an assessment under the Act for this final rule, as there was no notice of proposed rulemaking.

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

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

TSA promulgated this final rule without providing the opportunity for notice and comment. The imposition of aviation security fees is exempt from notice and comment procedures. 49 U.S.C. § 44940(d). Additionally, TSA found good cause for making this rule final without notice and comment, as the collection of the fee will end on October 1, 2014, regardless of whether this rule is published. Finally, TSA also found notice and an opportunity for public comment on this rule unnecessary as this rule simply conforms TSA's regulations to statute.

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

TSA currently has an approved information collection related to the Aviation Security Infrastructure Fee records retention through March 31, 2016. With this final rule, TSA discontinues the information collection request by removing the requirement to retain these records. TSA estimates that the annual average burden associated with this recordkeeping

requirement is \$24,031. TSA has submitted to the Office of Management and Budget (OMB) a discontinuation request for the currently approved information collection.

Statutory authorization for the rule

TSA promulgated this rule under the authority of sections 114, 40113, 44901, and 44940 of title 49, United States Code.

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

TSA determined that this is an economically significant rule under the Order. The rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

TSA determined that this action will not have a substantial direct effect on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications under the Order.