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October 27, 2015

The Honorable Ron Johnson
Chairman
The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Paul Ryan
Chairman
The Honorable Sander Levin
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: Automated Commercial Environment (ACE) Filings for
Electronic Entry/Entry Summary (Cargo Release and Related Entry)*

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 Department of the Treasury (Treasury) (collectively, the agencies) entitled "Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry)" (RIN: 1515-AE03). We received the rule on October 14, 2015. It was published in the *Federal Register* as an interim final rule on October 13, 2015. 80 Fed. Reg. 61,278.

The interim final rule amends the CBP regulations to reflect that on November 1, 2015, ACE will be a CBP-authorized Electronic Data Interchange (EDI) System. The interim final rule informs the public that the Automated Commercial System (ACS) is being phased out as a CBP-authorized EDI System for processing electronic entry and entry summary filings (also known as entry filings). ACE will replace ACS as the CBP-authorized EDI system for processing commercial trade data. It also announces the conclusion of the ACE Cargo Release and the Entry Summary, Accounts and Revenue tests with regard to the entry and entry summary requirements that are now part of the CBP regulations.

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 interim final rule has a stated effective date of November 1, 2015. The rule was received on October 14, 2015, and was published in the *Federal Register* on October 13, 2015. 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 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). CBP and Treasury stated that the transition from ACS to ACE does not substantively alter the underlying rights or interests of importers or filers, only the manner in which they present required information to the agency. CBP and Treasury state that by shifting to a modified electronic format for the submission of required data, CBP will be able to more efficiently determine whether merchandise presented for importation is admissible into the United States. CBP found good cause for making this an interim final rule and provided for notice and comment. The agencies stated that although the interim final rule will be codified on November 1, 2015, CBP anticipates that filers can continue to file in ACS or ACE until February 2016, when ACE will be fully functional for filing entry and entry summary. Accordingly, CBP and Treasury stated that they have determined that the requirements for prior notice and a delay in effective date are inapplicable. CBP and Treasury solicited comments in the interim final rule which will be accepted through November 12, 2015, and stated that all comments received will be considered before issuing a final rule.

Enclosed is our assessment of the agencies' 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 the agencies 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: Robert F. Altneu
Chief, Trade and Commercial Regulations Branch
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,
DEPARTMENT OF THE TREASURY
ENTITLED
“AUTOMATED COMMERCIAL ENVIRONMENT (ACE) FILINGS
FOR ELECTRONIC ENTRY/ENTRY SUMMARY
(CARGO RELEASE AND RELATED ENTRY)”
(RIN: 1515-AE03)

(i) Cost-benefit analysis

The agencies state that the cost of making software compatible with ACE will fall on the software developers and the 5 percent of importers who do not purchase a software product because they develop their own software. As stated in the interim final rule, CBP's ACE Business Office estimates that 150 businesses will need to make software modifications, including 112 importers who self-file and 38 software developers. According to the Technical Advisory Group, the cost of making these changes is covered by the existing fees software developers charge to their users. Many of these parties have already made the changes to take advantage of the added functionality available in ACE. According to CBP's ACE Business Office, of the 38 software developers that provide software to facilitate the filing of entries, 36 have already modified their systems to allow for filing in ACE. CBP states that it does not know how many of the 112 self-filers have already modified their systems, but it is likely that many of these self-filers have already made the necessary changes. According to CBP data, as of April 2015, 53 percent of entries were filed in Automated Broker Interface (ABI) in an ACE-compatible format. According to an estimate from a member of the Technical Advisory Group, it can cost from \$25,000 to \$90,000 to make the change to ACE formatting, including systems costs and training. This estimate also includes all the costs of converting to ACE, not just the cost of making the changes necessary to file entries in ACE format, so the actual costs necessary to file entries in ACE format is likely to be lower. Based on the range of costs to convert to ACE formatting, CPB estimates that it will cost the estimated 112 software vendors and 38 self-filers between \$3.75 million and \$13.5 million to file in ACE format. These estimates assume that all 150 software vendors and self-filers will incur costs to convert to ACE, which CPB states is unlikely given that many of these parties have already made the change to take advantage of ACE's additional functionality. The agencies invited comments on these estimates of system costs and on other transition costs.

The agencies state that this rule benefits the public by clarifying the information presented in the regulations regarding how importers interact with CBP via ABI. The broader regulatory and non-regulatory shift from ACS to ACE has substantial benefits to federal agencies and the public. Transitioning to ACE will expedite cargo processing; improve compliance with CBP and other government agency regulations; provide greater efficiency in receiving, processing, and sharing import data that will increase the effectiveness of federal agencies; and reduce redundant information requirements for the importing community. The agencies noted that these benefits of the transition to ACE are characterized by the same analytic difficulty as the costs; it is not clear what portion is attributable to this rule as opposed to other regulatory and

nonregulatory actions. The agencies invited comments that would allow for reasonable attribution of effects across these various actions.

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

CBP stated that since a general notice of proposed rulemaking is not necessary for this rule, it was not required to prepare a regulatory flexibility analysis for this rule.

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

The interim final rule does not address the Unfunded Mandates Reform Act.

(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 without providing prior public notice and comment. CBP has chosen to issue this rulemaking as an interim final rule to provide an opportunity for comments before the rule is finalized. CBP and Treasury solicited comments in the interim final rule, which will be accepted through November 12, 2015, and stated that all comments received will be considered before issuing a final rule.

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

CBP stated that because there is no collection of information proposed in this document, the provisions of PRA are inapplicable.

Statutory authorization for the rule

The interim final rule is authorized by section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), and title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act, or Mod Act, in particular, section 637 of the Mod Act that amended section 484(a)(1)(A) of the Tariff Act (19 U.S.C. 1484(a)(1)(A)), and section 634 of the Mod Act that amended section 401 of the Tariff Act (19 U.S.C. 1401).

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

CBP stated that OMB believes that this rule is an “economically significant regulatory action,” under section 3(f) of Executive Order 12,866.

Executive Order No. 13,132 (Federalism)

CBP invited comments that relate to federalism effects that might result from this interim final rule, but did not address the Executive Order on Federalism.

Executive Order No. 13,659 (Streamlining the Export/Import Process for America's Businesses)

CBP stated that Executive Order 13,659 was issued in order to reduce unnecessary procedural requirements to commerce while continuing to protect national security, public health and safety, the environment, and natural resources. Pursuant to EO 13,659, participating federal agencies shall have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as the Automated Commercial Environment, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export no later than by December 31, 2016. CBP states that it will complete the development of core trade processing capabilities in ACE and decommission corresponding capabilities in legacy systems by the end of 2016. At that time, ACE will provide a single window for processing trade data, become the primary system through which the international trade community will submit import and export data, and the government will determine admissibility.