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United States Government Accountability Office  
Washington, DC 20548

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B-310088

September 6, 2007

The Honorable Joseph I. Lieberman  
Chairman

The Honorable Susan M. Collins  
Ranking Minority Member

Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Bennie G. Thompson  
Chairman

The Honorable Peter T. King  
Ranking Minority Member  
Committee on Homeland Security  
House of Representatives

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

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 “Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels” (RIN: 1651-AA62). We received the rule on August 14, 2007. It was published in the *Federal Register* as a final rule on August 23, 2007. 72 Fed. Reg. 48,320.

The final rule amends CBP’s regulations regarding electronic manifest transmission requirements for travelers aboard international commercial flights and voyages arriving in and departing from the United States. The final rule amends these regulations so that all passengers on commercial aircraft and all passengers and crew on commercial vessels will be vetted against a terrorist watch list prior to the departure of the aircraft or vessel.

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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. 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

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Craig T. Clark  
Chief, Border Security Regulations Branch  
Department of Homeland Security

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION  
ENTITLED  
"ADVANCE ELECTRONIC TRANSMISSION OF PASSENGER  
AND CREW MEMBER MANIFESTS FOR  
COMMERCIAL AIRCRAFT AND VESSELS"  
(RIN: 1651-AA62)

(i) Cost-benefit analysis

CBP performed a cost-benefit analysis and estimates that the present value costs of the final rule will range from \$827 million to \$1.2 billion over 10 years. The estimated benefits of the final rule include a present value monetary benefit of \$105 million over 10 years, in addition to the qualitative benefit of enhancing security.

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

CBP performed a regulatory assessment under the Regulatory Flexibility Act and has determined that the final rule will not have a significant impact on a substantial number of small entities.

(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 the final rule did not contain an intergovernmental mandate. The final rule does contain a federal private sector mandate as it would result in the expenditure of more than \$100 million by the private sector. CBP incorporated the cost benefit analysis prepared under Executive Order 12,866 to satisfy the requirements of the Unfunded Mandates Reform Act of 1995.

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

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

On July 14, 2006, CBP published a notice of proposed rulemaking in the *Federal Register* proposing amendments to the CBP regulations governing the advance transmission of passenger manifests for commercial aircraft arriving in and departing from the United States, as well as passenger and crew manifests for commercial vessels departing from the United States. 71 Fed. Reg. 40,035. CBP received 54 comments in response to the proposed rule. On August 23, 2007, CBP

published the final rule in the *Federal Register* and responded to the comments. 72 Fed. Reg. 48,320.

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

The final rule amends only the time and manner of submission of information required to be submitted under the regulations. The collection of information under the regulations has been approved by the Office of Management and Budget (OMB), OMB No. 1651-0088. CBP submitted an Information Collection Report reflecting the change in the collection burden to OMB for review. CBP has estimated the total annual reporting burden to be 30,669 hours.

Statutory authorization for the rule

The final rule was promulgated under the direction of sections 4012 and 4071 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638.

Executive Order No. 12,866

The final rule was considered to be an economically significant regulatory action under the executive order and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CBP concluded that this final rule did not have federalism implications that would require a federalism summary impact statement.