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December 6, 2006

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

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

Subject: *Department of Homeland Security and Department of State: Documents
Required for Travelers Departing From or Arriving in the United States at
Air Ports-of-Entry From Within the Western Hemisphere*

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 (DHS) and Department of State (DOS), entitled “Documents Required for Travelers Departing From or Arriving in the United States at Air Ports-of-Entry From Within the Western Hemisphere” (RINs: 1651-AA66; 1400-AC10). We received the rule on November 21, 2006. It was published in the Federal Register as a final rule on November 24, 2006. 71 Fed. Reg. 68412.

The final rule contains the first phase of a joint DHS and DOS plan known as the Western Hemisphere Travel Initiative, to implement new documentation requirements for certain U.S. citizens and nonimmigrant aliens entering the United States. Beginning January 23, 2007, all United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico departing from or entering the U.S. from within the Western Hemisphere at air ports-of-entry will be required to present a valid passport.

Enclosed is our assessment of DHS’s and DOS’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 the agencies 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: Craig T. Clark
Chief, Border Security
Regulations Branch, CBP
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 AND
DEPARTMENT OF STATE
ENTITLED
"DOCUMENTS REQUIRED FOR TRAVELERS DEPARTING FROM OR
ARRIVING IN THE UNITED STATES AT AIR PORTS-OF-ENTRY
FROM WITHIN THE WESTERN HEMISPHERE"
(RINS: 1651-AA66; 1400-AC10)

(i) Cost-benefit analysis

It is estimated that the final rule will require 4 million passports to be issued in the first year of the rule's effectiveness at a direct cost to traveling individuals of \$649 million.

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

The agencies have certified that the final rule will not have a significant economic 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

Since the final rule will impose a private sector mandate, as defined in title II, of more than \$100 million in any one year, the agencies have prepared the required statement as part of the rule's regulatory impact analysis.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On September 1, 2005, an Advanced Notice of Proposed Rulemaking was published in the Federal Register. 70 Fed. Reg. 52037. On August 11, 2006, a Notice of Proposed Rulemaking was published. 71 Fed. Reg. 46155. In response, the agencies received 2,062 comments regarding the advanced notice and 104 comments regarding the proposed rule. The comments are discussed in the preamble to the final rule.

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

The final rule does not contain a new information collection subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, but it does alter the annual burden for an already approved collection. DOS has submitted the required information to OMB for its review and approval.

Statutory authorization for the rule

The final rule is promulgated under the authority found at section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108-458, Dec. 17, 2004).

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)

The final rule does not have sufficient federalism implications to warrant the preparation of a federalism impact statement.