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United States Government Accountability Office
Washington, DC 20548

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November 10, 2008

The Honorable Daniel K. Inouye
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Homeland Security, Transportation Security
Administration: Secure Flight Program*

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 "Secure Flight Program" (RIN: 1652-AA45). We received the rule on October 27, 2008. It was published in the *Federal Register* as a final rule on October 28, 2008, with a stated effective date of December 29, 2008. 73 Fed. Reg. 64,018.

The final rule establishes TSA's Secure Flight program, under which TSA will receive passenger and certain non-traveler information, compare that information to the No Fly and Selectee portions of the federal government's consolidated terrorist watch-list, and transmit a printed boarding pass result to the aircraft operators. The rule requires aircraft operators to submit passenger information to the TSA through a single portal for both the Secure Flight and the Advanced Passenger Information System.

Enclosed is our assessment of the 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 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Mardi Ruth Thompson
Deputy Chief Counsel for Regulations
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
"SECURE FLIGHT PROGRAM"
(RIN: 1652-AA45)

(i) Cost-benefit analysis

TSA analyzed the costs and benefits of this final rule. TSA determined that the benefits of this rule will come in two phases. During the first phase the benefits may include increased aviation security resulting from the detection of additional threats. During the second phase the benefits will include more accurate, timely, and comprehensive screening, and a reduction in false positives. TSA estimates that the average annual costs over a 10-year period for this rule to be between \$289.6 million and \$382.7 million at a 3-percent discount rate and between \$290.3 million and \$383.5 million at a 7-percent discount rate.

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

TSA concluded that this final rule will not have a significant impact on a substantial number of small entities. Nonetheless, TSA prepared a Final Regulatory Flexibility Analysis.

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

TSA determined that this final rule does not contain any mandates on state, local, or tribal governments and that the overall impact on the private sector does not exceed \$100 million.

(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 using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On August 23, 2007, TSA published a notice of the proposed rule. 72 Fed. Reg. 48,356. TSA received over 337 comments on the proposed rule, and TSA responded to those comments in the final rule. 73 Fed. Reg. 64,026–64,052.

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

This rule contains information collection requirements subject to the Act and TSA has submitted these requirements to the Office of Management and Budget for review. TSA estimates that the total annual hour burden for this final rule to be 552,856 hours.

Statutory authorization for the rule

TSA promulgated this final rule under the authority of sections 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, and 46105 of title 49, United States Code.

Trade Agreement Act of 1979, 19 U.S.C. §§ 2501–2581

The Act prohibits federal agencies from engaging in standards-related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, including essential security, are not considered unnecessary obstacles. TSA determined that this final rule does not create barriers to international trade.

National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321–4370f

TSA analyzed this final rule under the Act and a related Department of Homeland Security directive. TSA determined that this final rule is excluded from further analysis under the Act by several categorical exclusions.

Energy Policy and Conservation Act (EPCA), 42 U.S.C. §§ 6201–6422

TSA determined that this final rule is not a major energy regulation action under the Act.

Executive Order No. 12,866

TSA determined that this is an economically significant rule under the Order because the estimated annual costs are greater than \$100 million.

Executive Order No. 13,132 (Federalism)

TSA determined that this final rule will not have a substantial direct effect on states, the relationship between the federal government and states, or on the distribution of power and responsibilities among the levels of government. TSA therefore concluded that this final rule will not have federalism impacts under the Order.