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Washington, DC 20548

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April 21, 2008

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
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 and Department of State: Documents
Required for Travelers Departing From or Arriving in the United States at
Sea and Land 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 and Department of State, entitled “Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere” (RIN: 1651-AA69). We received the rule on April 4, 2008. It was published in the *Federal Register* as a final rule on April 3, 2008, with a stated effective date of June 1, 2009. 73 Fed. Reg. 18,384.

The final rule requires citizens of the U.S., Canada, Bermuda, and Mexico to present certain documents when entering the United States from within the Western Hemisphere at sea and land ports-of-entry.

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

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Joanne Roman Stump
Acting Chief, Border Security
Regulations Branch
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 AND
DEPARTMENT OF STATE
ENTITLED
"DOCUMENTS REQUIRED FOR TRAVELERS DEPARTING FROM
OR ARRIVING IN THE UNITED STATES AT SEA AND
LAND PORTS-OF-ENTRY FROM WITHIN THE WESTERN HEMISPHERE"
(RIN: 1651-AA69)

(i) Cost-benefit analysis

The Departments of Homeland Security and State (DHS and DOS) analyzed the costs and benefits of this final rule for the period of 2005 to 2018. The agencies estimated the total cost in the first year to be \$283 million and the total costs over the 14-year period to be \$3.3 billion, using a 3-percent discount rate, and \$2.7 billion, using a 7-percent discount rate. DHS and DOS noted that the benefits of this final rule relate to increased homeland security and cannot readily be quantified using traditional analytical methods, but did conduct a breakeven analysis to determine the level of critical risk reduction that would make the costs of the rule equal the benefits. They also estimated the benefits of this rule resulting from shorter wait times for border crossings. DHS and DOS estimated that the potential reductions in wait time could be valued at between \$2.4 billion and \$3.3 billion between 2009 and 2018.

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

DHS and DOS determined that this final rule does 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

DHS and DOS determined that this final rule does not contain any federal mandates under the Act.

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

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

DHS and DOS promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On September 1, 2005,

DHS and DOS published a notice of advanced rulemaking. 70 Fed. Reg. 52,037. On August 11, 2006, they published a proposed rule for air and sea arrivals. 71 Fed. Reg. 41,655. On June 26, 2007, the agencies published a proposed rule for land and sea arrivals. 72 Fed. Reg. 35,088. The final rule for air arrivals was published on November 24, 2006. 71 Fed. Reg. 68,412. DHS and DOS received over 3,412 comments to the notice of advanced rulemaking and the proposed rules related to arrivals by sea and land. They address these comments in this final rule. 73 Fed. Reg. 18388–403.

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

This final rule contains two information collection requirements which DHS and DOS have submitted to the Office of Management and Budget (OMB) under the Act. DHS and DOS estimated that the monitoring, reporting, and recordkeeping burden for the first collection, related to passports, to be 14.7 million labor hours per year and the second collection, related to groups of children, to be 1,625 labor hours per year.

Statutory authorization for the rule

DHS and DOS promulgated this final rule under the authority of sections 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1359 of title 8, United States Code and under section 1185 note of title 8, United States Code, as amended by section 546 of Public Law 109-295 and section 723 of Public Law 110-53.

Executive Order No. 12,866

DHS and DOS determined that this final rule surpasses the \$100 million threshold and, therefore, is a significant rulemaking under the Order.

Executive Order No. 13,132 (Federalism)

DHS and DOS determined that this final rule does not have sufficient federalism implications to warrant a federalism summary impact statement under the Order.