



United States Government Accountability Office
Washington, DC 20548

B-322365

August 31, 2011

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

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

Subject: *Department of Homeland Security, Transportation Security Administration:
Air Cargo Screening*

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 “Air Cargo Screening” (RIN: 1652-AA64). We received the rule on August 11, 2011. It was published in the *Federal Register* as a final rule; request for comments on August 18, 2011. 76 Fed. Reg. 51,848.

This rule amends two provisions of the Air Cargo Screening Interim Final Rule (IFR) issued on September 16, 2009,¹ and responds to public comments on the IFR. The IFR established the Certified Cargo Screening Program, in which TSA certifies shippers, indirect air carriers, and other entities as Certified Cargo Screening Facilities (CCSFs) to screen cargo prior to transport on passenger aircraft. Under the IFR, each CCSF applicant had to successfully undergo an assessment of their facility by a TSA-approved validation firm or by TSA. In response to public comment, this final rule removes all validation firm and validator provisions, so that TSA will continue to conduct assessments of the applicant’s facility to determine if certification is appropriate. The IFR also required that if an aircraft operator or

¹ 74 Fed. Reg. 47,672.

foreign air carrier screens cargo off an airport, it must do so as a CCSF. The final rule eliminates this requirement, as aircraft operators are already screening cargo on airport under a TSA-approved security program, and do not need a separate certification to screen cargo off airport. Finally, this rule proposes a fee range for the processing of Security Threat Assessments, and seeks comment on the proposed fee range and the methodology used to develop the fee.

Enclosed is our assessment of 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 of the procedural steps taken indicates that TSA complied with the applicable requirements.

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). This rule was received on August 11, 2011, and published in the *Federal Register* on August 18, 2011. However, the rule has a stated effective date of September 19, 2011. Therefore, the rule does not have the required 60-day delay in effective date under the CRA.

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: Mardi Ruth Thompson
Deputy Chief Counsel
Regulations and Security Standards, TSA
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
"AIR CARGO SCREENING"
(RIN: 1652-AA64)

(i) Cost-benefit analysis

The Transportation Safety Administration (TSA) analyzed the costs and benefits of this final rule. TSA estimates that over 10 years, the aggregate costs of this final rule will be approximately \$1.5 billion discounted at 3 percent or \$1.3 billion discounted at 7 percent. TSA describes the benefits of this rule to be increased protection of passengers and cargo from acts of terrorism. Specifically, the prevention of the introduction of unauthorized persons, explosives, incendiaries, or other destructive substances or items into the air cargo supply chain, which will protect citizens on the ground, in buildings, and elsewhere from acts of terrorism involving the use of aircraft.

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

TSA determined that it was not required to perform a Regulatory Flexibility Analysis under the Act because TSA did not issue a proposed rule. However, TSA did analyze the impact of the costs of the program on all Certified Cargo Screening Facilities currently enrolled.

(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 is not likely to result in the expenditure by state, local, or tribal governments, in the aggregate, of \$100 million or more annually. However, TSA did determine that this rule will impose an unfunded mandate of greater than \$100 million or more on the private sector.

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

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

TSA issued an interim final rule with request for comments on September 16, 2009. 74 Fed. Reg. 47,672. TSA received approximately 40 comments from trade

associations, aircraft operators, and individuals. TSA discussed issues raised in the comments in the final rule. Also as part of this final rule, TSA requested comment on the proposed fee range and fee methodology for the processing of Security Threat Assessments.

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

TSA determined that this final rule contains an information collection requirement under the Act entitled “Certified Cargo Screening Program Final Rule.” The Office of Management and Budget (OMB) has reviewed this requirement and assigned it OMB Control Number 1652-0053. TSA estimates that there will be on average 106,964 respondents per year with a total annual burden of 143,768 hours.

Statutory authorization for the rule

TSA promulgated this final rule pursuant to the Implementing Recommendations of the 9/11 Commission Act. Pub. L. No. 110-53, § 1602, 121 Stat. 266, 478 (2007).

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

TSA determined that this final rule is an economically significant rule under the Order.

Executive Order No. 13,132 (Federalism)

TSA determined that this final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.