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Washington, DC 20548

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March 29, 2021

The Honorable Gary Peters
Chairman
The Honorable Rob Portman
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Homeland Security, U.S. Customs and Border Protection: Mandatory Advance Electronic Information for International Mail Shipments*

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, U.S. Customs and Border Protection (CBP) entitled “Mandatory Advance Electronic Information for International Mail Shipments” (RIN: 1651-AB33). We received the rule on March 15, 2021. It was published in the *Federal Register* as an interim final rule; request for comments on March 15, 2021. 86 Fed. Reg. 14245. The stated effective date of the rule is March 15, 2021.

CBP states that this interim final rule requires the United States Postal Service (USPS) to transmit certain advance electronic information to CBP to address the threat of synthetic opioids and other dangerous items coming to the United States in international mail shipments and to implement the requirements of the Synthetic Trafficking and Overdose Prevention Act of 2018. Pub. L. No. 115-271, title VIII, subtitle A, §§ 8001-8009, 132 Stat. 3894, 4073 (Oct. 24, 2018), 19 U.S.C. 1 note. According to CBP, this rule provides that for certain inbound international mail shipments, CBP must electronically receive from USPS, within specified time frames, certain mandatory advance electronic data (AED) and updates thereto. CBP also states that the rule describes the new mandatory AED requirements, including the types of inbound international mail shipments for which AED is required, the time frame in which USPS must provide the required AED to CBP, and the criteria for the exclusion from AED requirements for mail shipments from specific countries. According to CBP, the rule also addresses compliance dates and necessary remedial actions that must be taken with respect to shipments for which USPS has not complied with AED 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). The 60-day delay in effective date can be waived,

however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). CBP states that good cause exists for issuing this interim final rule with an immediate effective date because a delay in effective date would be impracticable, unnecessary, and contrary to the public interest. According to CBP, given the critical public health and safety implications of continued shipments of illegal opioids into the United States, a delay in effective date of this rule would allow a regulatory gap that invites illegal and toxic drugs into U.S. communities.

Enclosed is our assessment of 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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Robert F. Altneu
Director, Regulations and
Disclosure Division
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,
U.S. CUSTOMS AND BORDER PROTECTION
ENTITLED
“MANDATORY ADVANCE ELECTRONIC INFORMATION
FOR INTERNATIONAL MAIL SHIPMENTS”
(RIN: 1651-AB33)

(i) Cost-benefit analysis

The Department of Homeland Security, U.S. Customs and Border Protection (CBP) analyzed the costs and benefits of this interim final rule. CBP estimated that the rule would result in net annualized monetized costs of \$8.3 million, at a 3 percent discount rate, and \$7.7 million, at a 7 percent discount rate. According to CBP, non-quantified costs of this rule would include costs to CBP and the United States Postal Service (USPS) to develop memoranda of understanding and standard operating procedures with each other and to train staff, as well as costs for USPS to negotiate advance electronic data (AED) sharing agreements with foreign posts.

CBP stated that the principal qualitative (non-quantified) benefit of the new rule will be more precise identification of mail shipments with illicit goods at an earlier time, improving CBP's effectiveness in preventing prohibited mail items from entering the commerce of the United States. According to CBP, in the pilot program, AED targeting increased the seizure rate per inspection from 9.29 percent under conventional targeting to 16.26 percent. CBP stated that the anticipated qualitative benefits of this rule are wide-ranging, given the breadth of prohibited items, but may include: reduced supply of illicit drugs and adverse drug-related outcomes; improved competitiveness for U.S. businesses facing counterfeit items from foreign markets; and reduced risks to the U.S. agricultural sector in the form of invasive pests, plants, and contagious diseases.

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

CBP stated that a regulatory flexibility analysis is not required under the Act because this rule is being issued as an interim final rule under the good cause exception to the Administrative Procedures Act. 5 U.S.C. § 553(b)(3)(B).

(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 this interim final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments.

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

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

CBP determined that it has good cause to forgo the notice and comment and delayed effective date procedures under the Act. According to CBP, given the critical public health and safety implications of continued international mail shipments of illegal opioids into the United States, to delay the implementation of this rule would be impracticable, unnecessary, and contrary to the public interest, as it would allow a regulatory gap that invites illegal and toxic drugs into our communities. CBP stated that there is particular urgency in view of recent and current events, connected with the COVID-19 pandemic and a significant spike in deaths as a result of opioids. CBP requested comments to this interim final rule by May 14, 2021.

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

CBP stated that there is no new information collection request burden on the public associated with this interim final rule because the burden is imposed on a partner government agency. As such, CBP determined that the provisions of the Act do not apply to this rule.

Statutory authorization for the rule

CBP promulgated this interim final rule pursuant to section 8003(a)(1) of the Synthetics Trafficking and Overdose Prevention Act of 2018. Pub. L. No. 115-271, title VIII, subtitle A, § 8003(a)(1), 132 Stat. 3894, 4074 (Oct. 24, 2018), 19 U.S.C. 1 note.

Executive Order No. 12866 (Regulatory Planning and Review)

CBP determined that this interim final rule is economically significant under the Order and stated that the rule has been reviewed by the Office of Management and Budget.

Executive Order No. 13132 (Federalism)

In its submission to us, CBP indicated that it did not discuss this Order in the preamble to the rule.