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United States Government Accountability Office  
Washington, DC 20548

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B-320862

October 8, 2010

The Honorable Patrick J. Leahy  
Chairman  
The Honorable Jeff Sessions  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable John Conyers, Jr.  
Chairman  
The Honorable Lamar Smith  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Subject: *Department of Homeland Security: U.S. Citizenship and Immigration Services Fee Schedule*

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), entitled “U.S. Citizenship and Immigration Services Fee Schedule” (RIN: 1615-AB80). We received the rule on September 22, 2010. It was published in the *Federal Register* as a final rule on September 24, 2010. 75 Fed. Reg. 58,962.

The final rule adjusts the fee schedule for the U.S. Citizenship and Immigration Services to fully recover costs and maintain adequate service. The final rule increases the fees by a weighted average of 10 percent; establishes three new fees covering costs related to processing the Regional Center Designation under the Immigration Investor Pilot Program, Civil Surgeon Designation, and DHS Processing of Immigrant Visa requests; and adjusts the premium processing service by the percentage increase in inflation according to the Consumer Price Index- Urban Consumers, published as of July 2010. The final rule also finalizes the interim rule that established the premium processing service and fees. The final rule is effective November 23, 2010, and the new fees will apply to all applications or petitions mailed, postmarked, or otherwise filed on or after November 23, 2010.

Enclosed is our assessment of the DHS'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 DHS 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Liana M. Miranda-Valido  
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U.S. Citizenship and Immigration Services  
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  
ENTITLED  
"U.S. CITIZENSHIP AND IMMIGRATION SERVICES FEE SCHEDULE"  
(RIN: 1615-AB80)

(i) Cost-benefit analysis

The final rule will provide DHS with an average of \$209 million in FY 2010 and FY 2011 annual fee revenue, based on a projected annual fee-paying volume of 4.4 million immigration benefit requests and 1.9 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. The increased revenue will be used to fund the full cost of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to others at no charge.

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

DHS determined that the increase in fees in the final rule will not have a significant economic impact on a substantial number of small entities; however, DHS prepared a regulatory flexibility analysis. The final rule will affect entities that file and pay fees for certain immigration benefit applications on behalf of an alien, including the Petition for a Nonimmigrant Worker (Form I-129); Immigrant Petition for an Alien Worker (Form I-140); Civil Surgeon Designation; and the new Application for Regional Center under the Immigrant Investor Pilot Program (Form I-924). The final rule applies to small entities including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. DHS estimates that the fee increases will impact 87,220 small entities filing Form I-129; 44,500 entities filing Form I-140; 1,200 entities filing the Civil Surgeon Designation; and 132 entities filing Form I-924.

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

DHS determined that while the final rule may result in expenditure of more than \$100 million by the private sector annually, the final rule is not a mandate for purposes of the Act because associated costs arise from participation in a voluntary federal program, applying for immigration status in the United States. Therefore, no actions were necessary under the Unfunded Mandates Reform Act.

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

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

DHS published a notice of proposed rulemaking on June 11, 2010. 75 Fed. Reg. 33,445. DHS received 225 comments on the proposed rule from a broad spectrum of individuals and organizations, including refugee and immigrant service and advocacy organizations, public policy and advocacy groups, Members of Congress, and private citizens. DHS responded to those comments in the final rule. 75 Fed. Reg. 58,962.

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

The final rule creates two new information collections under the Paperwork Reduction Act, which were submitted to the Office of Management and Budget (OMB) for review. The Application for Civil Surgeon Designation was approved by OMB and assigned OMB Control No. 1615-0114.

DHS made some edits to Forms I-924 and I-924A, Application for Regional Center under the Immigrant Investor Pilot Program, and has resubmitted these forms to OMB for review and approval. DHS estimates that Form I-924 will have 132 respondents at 40 hours per response and that Form I-924A will have 116 respondents at 3 hours per response. DHS estimates that the total annual reporting burden will be 4,428 hours.

Statutory authorization for the rule

The final rule is authorized by section 286 of the Immigration and Nationality Act, as codified at 8 U.S.C. §1356.

Executive Order No. 12,866 (Regulatory Planning and Review)

DHS considered this final rule to be economically significant under the Executive Order, and the final rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

DHS determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.