



GAO

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

---

B-324270

January 16, 2013

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

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

Subject: *Department of Homeland Security: Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives*

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 "Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives" (RIN: 1615-AB99). We received the rule on January 3, 2013. It was published in the *Federal Register* as a final rule on January 3, 2013. 78 Fed. Reg. 536.

The final rule implements the provisional unlawful presence waiver process, by allowing certain immediate relatives of U.S. citizens who are physically present in the United States to request provisional unlawful presence waivers prior to departing from the United States for consular processing of their immigrant visa applications.

Enclosed is our assessment of 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 Miranda-Valido  
Management and Program Analyst  
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  
"PROVISIONAL UNLAWFUL PRESENCE WAIVERS OF  
INADMISSIBILITY FOR CERTAIN IMMEDIATE RELATIVES"  
(RIN: 1615-AB99)

(i) Cost-benefit analysis

DHS prepared a cost-benefit analysis in conjunction with the final rule. DHS estimates that the discounted total 10-year cost of the final rule, at a 7 percent discount rate, will range from approximately \$196 million to approximately \$538.1 million. DHS estimates the annualized cost of the final rule will range from approximately \$27.9 million to \$76.6 million (7 percent discount rate) and approximately \$27.4 million to \$74.6 million (3 percent discount rate). The costs include the cost of collecting biometric information from applicants, the costs faced by those who choose to file a new provisional unlawful presence waiver application based on the same approved immediate relative petition if their original form is denied or withdrawn, and those costs associated with additional applications that will result from the streamlining of the process. DHS did not estimate any annualized monetized benefits. DHS determined the annualized quantified, but unmonetized benefits, of the final rule will be the reduction in the amount of time that U.S. citizens are separated from their alien immediate relatives, thus reducing the financial and emotional hardships for these families. DHS determined that the final rule will also have qualitative benefits for the federal government, by allowing the federal government to achieve increased efficiencies by streamlining the processing of immediate relative visas for individuals subject to the unlawful presence inadmissibility bar.

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

DHS certified that the final rule will not have a significant economic impact on a substantial number of small entities. DHS based this determination on the fact that the final rule directly regulates individuals who are the immediate relatives of U.S. citizens seeking to apply for an unlawful presence waiver, and individuals are not small entities for purposes of the Regulatory Flexibility Act.

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

The final rule does not address 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 in the *Federal Register* on April 2, 2012. 77 Fed. Reg. 19,902. DHS received over 4,000 public comments on the proposed rule. DHS considered and responded to the comments in the final rule. 78 Fed. Reg. 536.

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

The final rule contains a new information collection requirement under the Paperwork Reduction Act. DHS has submitted the *Application for Provisional Waiver of Unlawful Presence*, Form I-601A, to the Office of Management and Budget (OMB) for review and approval. OMB has temporarily assigned an OMB Control Number, 1615-0123, to the form. DHS estimates that there will be 62,348 respondents and total annual burden of 166,469 hours.

Statutory authorization for the rule

The final rule is authorized by 6 U.S.C § 112, and 8 U.S.C. §§ 1103 and 1182(a)(9)(B)(v).

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

DHS determined that the final rule was economically significant for purposes of the Executive Order. Accordingly, the final rule was 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, because the 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.