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B-327047

June 23, 2015

The Honorable Orrin G. Hatch
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
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: Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program and the Fee for Use of the System*

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 "Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program and the Fee for Use of the System" (RINs: 1651-AA72; 1651-AA83). We received the rule on June 8, 2015. It was published in the *Federal Register* as a final rule on June 8, 2015. 80 Fed. Reg. 32,267.

The final rule finalizes the interim rule that governs the Electronic System for Travel Authorization (ESTA). ESTA is the online system through which nonimmigrant aliens intending to enter the United States under the Visa Waiver Program (VWP) must obtain a travel authorization in advance of travel to the United States. After a review of the comments submitted on the interim rule, DHS made one substantive regulatory change allowing the Secretary of DHS to adjust ESTA travel authorization validity periods on a per country basis to the 3-year maximum or to a lesser period of time. This rule also finalizes another interim rule which imposed a \$4 ESTA fee on each ESTA applicant meant to ensure recovery of the full costs of providing and administering the system.

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 final rule has a stated effective date of July 8, 2015. The rule was received by the House of Representatives and the Senate on June 3, 2015, and published in the *Federal Register* on June 8, 2015. 161 Cong. Rec. H4000 (June 9, 2015); 161 Cong. Rec. S4135 (June 15, 2015); 80 Fed. Reg. 32,267. Therefore, the final rule does not have the required 60-day delay in its effective date.

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, other than the 60-day delay requirement, 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: Lorrie Rodbart
Branch Chief, Border Security Regulations
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
“CHANGES TO THE VISA WAIVER PROGRAM TO
IMPLEMENT THE ELECTRONIC SYSTEM FOR
TRAVEL AUTHORIZATION (ESTA) PROGRAM AND
THE FEE FOR USE OF THE SYSTEM”
(RINs: 1651-AA72; 1651-AA83)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) analyzed the costs and benefits of this final rule. DHS estimates that the annualized costs for U.S. entities for 2008 to 2018 for systems carriers to be \$22 million with a 3 percent discount rate and \$24 million under a 7 percent discount rate. DHS estimates that the quantified benefits of this rule are \$69 million to \$74 million to U.S. entities (carriers and DHS), which represent forgone costs associated with processing and transporting inadmissible travelers and forgone form administration costs. There are also non-quantified costs to the travel and tourism industry if the U.S. receives fewer visitors as a result of this rule. Conversely, there are non-quantified benefits to the travel and tourism industry if this rule results in more visitors. Additional non-quantified benefits are enhanced security and efficiency.

In addition to costs and benefits to U.S. entities, DHS estimates that this rule will impose costs of \$263 million to \$441 million and provide benefits of \$238 million to \$394 million on foreign entities. Costs to foreign entities include the cost (the \$14 fee and related expenses) and time burden for foreign travelers to obtain a travel authorization, and the cost and time burden for foreign travelers to obtain a B-1/B-2 visa if a travel authorization is denied. Benefits to foreign entities include the savings to foreign travelers in new Visa Waiver Program (VWP) countries for no longer needing to apply for visas and the savings to foreign travelers in no longer needing to fill out a paper Form I-94W or Form I-94.

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

DHS determined that it did not need to prepare a regulatory flexibility analysis because a general notice of proposed rulemaking was not necessary. Nonetheless, DHS found that the individuals to whom this rule applies are not small entities under the Act.

(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 this 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.

On June 9, 2008, DHS published an interim final rule in the *Federal Register* announcing the creation of the Electronic System for Travel Authorization (ESTA) program for nonimmigrant aliens traveling to the United States by air or sea under VWP. 73 Fed. Reg. 32,440. On November 13, 2008, DHS published a notice in the *Federal Register* announcing that ESTA would be mandatory for all VWP participants traveling to the United States at air or sea ports of entry beginning January 12, 2009. 73 Fed. Reg. 67,354. On August 9, 2010, DHS published an interim final rule in the *Federal Register* announcing that, beginning September 8, 2010, a \$4 ESTA fee would be charged to each ESTA applicant to ensure recovery of the full costs of providing and administering the system. 75 Fed. Reg. 47,701. DHS received a total of 39 submissions in response to the June 9, 2008, and August 9, 2010, interim final rules. After a review of the comments submitted on the interim rule, DHS made one substantive regulatory change allowing the Secretary of DHS to adjust ESTA travel authorization validity periods on a per country basis to the 3-year maximum or to a lesser period of time.

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

DHS reported that the Office of Management and Budget (OMB) has already approved the collection of the ESTA information in accordance with the Act under OMB Control Number 1651-0111.

Statutory authorization for the rule

DHS promulgated this final rule under the authority of sections 1103 and 1187 of title 8, United States Code.

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

DHS determined that this final rule is an economically significant regulatory action as it has an annual effect on the economy of \$100 million or more in any one year. As a result, this rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

DHS determined that this final rule will not have substantial direct effects 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.