



441 G St. N.W.  
Washington, DC 20548

B-335847

January 12, 2024

The Honorable Richard J. Durbin  
Chairman  
The Honorable Lindsey Graham  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Jim Jordan  
Chairman  
The Honorable Jerrold Nadler  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Subject: *Department of Homeland Security: Adjustment to Premium Processing Fees*

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 “Adjustment to Premium Processing Fees” (RIN: 1615-ZC05). We received the rule on December 28, 2023. It was published in the *Federal Register* as a final rule on December 28, 2023. 88 Fed. Reg. 89539. The effective date is February 26, 2024.

According to DHS, this final rule increases premium processing fees charged by U.S. Citizenship and Immigration Services (USCIS) to reflect the amount of inflation from June 2021 through June 2023 according to the Consumer Price Index for All Urban Consumers. DHS stated that the adjustment increases premium processing fees from \$1,500 to \$1,685; \$1,750 to \$1,965; and \$2,500 to \$2,805.

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 was published in the *Federal Register* on December 28, 2023. 88 Fed. Reg. 89539. DHS sent us confirmation that the rule was received by both houses of Congress on December 29, 2023. Email from Deputy Chief, Regulatory Coordination Division, USCIS, DHS to Staff Attorney, GAO, *Subject: Congressional Review Act Submission (GAO) RIN 1615-ZC05* (Jan. 5, 2024). The rule has a stated effective date of February 26, 2024. Therefore, based on the dates of congressional receipt, the 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. 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 black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Samantha Deshommes  
Chief, Regulatory Coordination Division  
USCIS Office of Policy & Strategy  
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  
“ADJUSTMENT TO PREMIUM PROCESSING FEES”  
(RIN: 1615-ZC05)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) conducted an economic analysis of this final rule. DHS estimated that the rule will result in an additional annual transfer of \$184,715,135 in revenue to be collected from fee-paying applicants and petitioners (public) to DHS, due to the increase in premium processing fees subject to an adjustment for inflation. In addition to this estimate, DHS presented a prepared accounting statement in the rule that displayed the transfers, costs, and benefits to each individual affected by the rule. The prepared accounting statement DHS included in the rule reflected the \$184.7 million primary estimate in transfers, and also stated that costs and benefits were not applicable to the rule.

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

According to DHS, a final regulatory flexibility analysis is not required for this final rule because the rule is not subject to the notice-and-comment requirements under the Administrative Procedure Act. 5 U.S.C. §§ 551 *et seq.*

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

In this final rule, DHS stated that the rule is not subject to the written statement requirements under the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to

proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, DHS stated that with agreement from OMB, DHS determined this final rule is exempt from the Act because the rule does not increase direct spending beyond the applicable thresholds.

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

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

In this final rule, DHS stated that section 286(u)(3)(C) of the Immigration and Nationality Act (INA), *codified at* 8 U.S.C. § 1356(u)(3)(C), exempts DHS from the requirements of 5 U.S.C. § 553. DHS concluded that it is not required to issue a proposed rule when adjusting premium fees under section 286(u)(3)(C) of the INA.

DHS also noted that the regulations at 8 C.F.R. 106.4(d) provide that fees to request premium processing service may be adjusted by notice in the *Federal Register*. DHS stated, however, that the Federal Register Act, *codified at* 44 U.S.C. § 1510, and its implementing regulations (1 C.F.R. part 21) provide that publishing a notice document in the *Federal Register* announcing a new fee amount, without amending the regulations, does not effectuate a change of the Code of Federal Regulations (CFR). DHS concluded that because current premium processing fees are codified in the CFR, it is necessary for DHS to publish the rule to amend the regulatory text.

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

DHS determined that this final rule does not impose any reporting or recordkeeping requirements under the Act.

Statutory authorization for the rule

DHS promulgated this final rule pursuant to sections 1101, 1103, 1254a, 1254b, 1304, and 1356 of title 8, and section 1806 of title 48, United States Code. DHS also promulgated the rule pursuant to Public Law 107-296, Public Law 115-218, and Public Law 116-159.

Executive Order No. 12866 (Regulatory Planning and Review)

According to DHS, OMB has not designated this final rule as a “significant regulatory action” as defined under the Order, as amended by Executive Order No. 14094 (April 6, 2023). DHS stated that accordingly, OMB has not reviewed the rule.

Executive Order No. 13132 (Federalism)

DHS stated that this final rule does not require prior consultation with state, local, or tribal government officials as specified by the Order.