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United States Government Accountability Office
Washington, DC 20548

B-294653

October 15, 2004

The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable John Conyers
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security: United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry*

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 "United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"); Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry" (RIN: 1650-AA00). We received the rule on October 6, 2004. It was published in the Federal Register as an "interim rule with request for comments" on August 31, 2004. 69 Fed. Reg. 53318.

DHS has established the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT), an integrated, automated entry-exit system that records the arrival and departure of aliens. It also verifies aliens' identities and authenticates aliens' travel documents through comparison of biometric identifiers. The interim rule expands the US-VISIT to the 50 most highly trafficked land border ports of entry in the United States.

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 indicates that DHS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Mary Kate Whalen
Senior Attorney, Regulations Division
Office of the General Counsel
Department of Homeland Security

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY
ENTITLED
"UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY
PROGRAM ("US-VISIT"); AUTHORITY TO COLLECT BIOMETRIC DATA FROM
ADDITIONAL TRAVELERS AND EXPANSION TO THE 50 MOST HIGHLY
TRAFFICKED LAND BORDER PORTS OF ENTRY"
(RIN: 1650-AA00)

(i) Cost-benefit analysis

DHS states that the additional costs to the government and the public to implement the rule are approximately \$155 million during fiscal year 2004, or \$3.1 million at each port.

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

DHS has certified that the interim rule will not have a significant economic impact on a substantial number of small entities.

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

The interim rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

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

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

DHS has found "good cause" for implementing the interim rule without notice and the opportunity for public comment under the exception found at 5 U.S.C. 553(b). According to DHS, the interim rule is integral to strengthening the security of United States and assist in meeting the goals and recommendations of the 9/11 Commission.

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

The interim rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the collection and assigned OMB Control No. 1600-0006 to the collection following the submission by DHS of a Paperwork Reduction Change

Worksheet reflecting the new category of aliens who must be photographed, fingerprinted, and who may be required to provide other biometric identifiers.

Statutory authorization for the rule

The interim rule is promulgated under the authority found at section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Pub. L. 106-215); section 205 of the Visa Waiver Permanent Program Act of 2000 (Pub. L. 106-396); section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107-56); and section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173).

Executive Order No. 12866

The interim rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

According to DHS, the interim rule does not have federalism implications under the order.