



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-296402

May 18, 2005

The Honorable Arlen Specter
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, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security, U.S. Citizenship and Immigration Services: Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004*

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, U.S. Citizenship and Immigration Services (USCIS), entitled "Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004" (RIN: 1615-AB32). We received the rule on May 5, 2005. It was published in the Federal Register as an "interim rule with request for comments" on May 5, 2005. 70 Fed. Reg. 23775.

The interim rule implements changes made by the Omnibus Appropriations Act for Fiscal Year 2005 (Public Law 108-447) to the numerical limits of the H-1B nonimmigrant visa category and the fees for filing H-1B petitions. The rule also contains the procedures USCIS will use to allocate, in fiscal year 2005 and in future fiscal years, the additional 20,000 H-1B numbers made available by the exemption created pursuant to the Act and the process to allocate all petitions subject to the numerical limitations of the Immigration and Nationality Act. Finally, the rule announces the additional fees that must be filed with certain H-1B petitions.

Enclosed is our assessment of the USCIS'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 USCIS 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: Richard A. Sloan
Director, Regulatory Management Division
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,
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
ENTITLED
"ALLOCATION OF ADDITIONAL H-1B VISAS CREATED
BY THE H-1B VISA REFORM ACT OF 2004"
(RIN: 1615-AB32)

(i) Cost-benefit analysis

USCIS estimates that the interim rule will provide it with an additional \$36,200,000 in fiscal year 2005 in annual fee revenue over the fee revenue that would be collected under the current fee structure, based on a projected annual fee-paying volume of 20,000 approved petitions. In fiscal year 2006, there would be an additional \$138,425,000 in fee revenue based on projected annual fee-paying volume of 85,000 approved petitions (20,000 new exemptions and 65,000 petitions).

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

As the interim rule was not preceded by a Notice of Proposed Rulemaking, the requirements of the Regulatory Flexibility Act do not apply.

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

USCIS states that the interim rule will result in the expenditure by the private sector of \$100 million or more in any one year. USCIS points out that the costs do not accrue to the general public, but only to those who choose to participate in the H-1B program, and that the fees are mandated by statute.

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

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

USCIS has found "good cause" under 5 U.S.C. 553(b) to forego public notice and comment as impracticable and contrary to the public interest. U.S. employers have been unable to hire new H-1B workers since October 1, 2004, and workers with a fiscal year 2006 cap number cannot begin work until October 1, 2005. Therefore, USCIS has found immediate implementation of these provisions is necessary to alleviate burdens on both employers and workers.

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

USCIS states that the interim rule does not contain any new information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The interim rule is promulgated under the authority found in 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185, 1186a, 1187, 1221, 1281, 1282, 1301-1305, 1372, 1379, 1731-32; section 643, Public Law 104-208; and 48 U.S.C. 1901 note and 1931 note.

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

The USCIS has determined that the interim rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.