

The Impact of the Homeland Security Act Amendments of 2003 on Current Programs

The statutory amendment restores the funding for the asylum and refugee programs and assures the continued ability of the Service to adjudicate applications for these programs. This amendment also restores funding for the adjudication of other applications for which the Service grants a fee waiver or exemption under the relevant standards, and allows the Service to once again process those applications at no charge to designated applicants and petitioners.

Good Cause Exception

This interim rule is effective on February 27, 2003, although the Service invites post promulgation comments and will address any such comments in a final rule. The Service finds that good cause exists to adopt this rule without the prior notice and comment period and delayed effective date ordinarily required by 5 U.S.C. 553(b) and (d). The Service had set the pre-January 24, 2003, fee levels through a notice and comment rulemaking and this rule simply restores that same fee schedule now that Congress has reinstated the legal authority for the Service to collect fees at these levels.

Since section 107 of the Homeland Security Act Amendments of 2003 is effective upon enactment, and the past hiatus in funding the asylum and fee waiver programs has the potential for causing disruption of those programs, this rule is made effective upon publication. This rule merely restores the preexisting fee structure after a short lapse in statutory authority, and the surcharges set by this rule are needed in order to be able to fund asylum and refugee, fee waiver and exemption, and other humanitarian programs. It would be impracticable and contrary to the public interest to make this interim final rule effective 30 days after publication in the **Federal Register**.

Regulatory Flexibility Act

The Acting Commissioner, Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

The Service acknowledges that a number of small entities, particularly those filing business-related

applications and petitions, such as Form I-140, Immigrant Petition for Alien Worker; Form I-526, Immigrant Petition by Alien Entrepreneur; and Form I-829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule. For FY 2003, the INS projects approximately 110,000 Forms I-140, 300 Forms I-526, and 200 Forms I-829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multinational corporations to small domestic businesses. The Service does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. However, even if all of the employers applying for benefits met the definition of small businesses, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

This 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. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

The Service has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that although restoring

the surcharge will increase the costs to individual applicants and petitioners who submitted applications or petitions to the Service for adjudication, the benefit to other applicants and the public interest of the Service being able to continue to provide asylum, refugee, and other humanitarian programs at the funding levels intended by Congress through its repeal of section 457 substantially exceeds the costs.

The determination of the economic impact of the restoration of the immigration benefit application fee schedule to the levels that existed prior to January 24, 2003 depends on the baseline used for comparison. Although the difference in the fees collected would exceed \$100 million a year if compared to the fees contained in the schedule made effective on January 24, 2003, that fee schedule is not the appropriate baseline for purposes of determining whether this rule has a economically significant regulatory impact under Executive Order 12866. By striking section 457 of the Homeland Security Act of 2002, Congress has indicated that the Service should return to the fee schedule in place prior to January 24, 2003. This interim rule merely restores the previous fee schedule. Using the pre-January 24th fee schedule as a baseline, this interim rule will not have a significant economic impact.

Executive Order 13132

This 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires that the fees for application and petition forms identified in this interim rule be increased in light of section 107 of Homeland Security Act Amendments of 2003. Since this is merely a reinstatement of fees prior to Section 457 of Public Law 107-296, the net effect of the cost burden on the public is negligible, the Service has submitted