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United States Government Accountability Office  
Washington, DC 20548

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June 10, 2008

The Honorable Carl Levin  
Chairman  
The Honorable John McCain  
Ranking Minority Member  
Committee on Armed Services  
United States Senate

The Honorable Ike Skelton  
Chairman  
The Honorable Duncan Hunter  
Ranking Minority Member  
Committee on Armed Services  
House of Representatives

Subject: *Department of Defense, Office of the Secretary: User 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 Defense (DOD), Office of the Secretary, entitled "User Fees" (RIN: 0790-AH93). We received the rule on May 27, 2008. It was published in the *Federal Register* as a final rule on May 1, 2008. 73 Fed. Reg. 23,953.

The final rule revises DOD's guidelines for establishing appropriate fees for authorized services supplied by DOD organizations when such services provide special benefits to an identifiable recipient beyond those that accrue to the general public. These revisions are meant to better align the guidelines with the Office of Management and Budget's Circular A-25, "User Charges."

The final rule has an announced effective date of May 1, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following 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 on May 1, 2008, and received on May 27, 2008, which means that the final rule will not have the required 60-day delay in its effective date.

Enclosed is our assessment of the DOD'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, except for the delay in the effective date, DOD 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Patricia Toppings  
OSD Federal Register Liaison Officer  
Department of Defense

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF DEFENSE,  
OFFICE OF THE SECRETARY  
ENTITLED  
"USER FEES"  
(RIN: 0790-AH93)

(i) Cost-benefit analysis

The Department of Defense (DOD) determined that this final rule will have an annual effect on the economy of over \$100 million.

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

DOD determined that this final 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

DOD determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, or the private sector.

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

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

DOD promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On January 26, 2006, DOD published a proposed rule. 71 Fed. Reg. 4332. According to DOD, all relevant comments were accepted.

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

This final rule does not impose any information collection burdens under the Act.

Statutory authorization for the rule

DOD promulgated this rule under the authority of section 9701 of title 31, United States Code.

Executive Order No. 12,866

DOD determined that this final rule will have an annual effect on the economy of over \$100 million.

Executive Order No. 13,132 (Federalism)

DOD determined that this rule does not have any federalism implications under the Order.