



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

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December 3, 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 Commerce, United States Patent and Trademark Office: Setting and Adjusting Trademark Fees During Fiscal Year 2025*

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 Commerce, United States Patent and Trademark Office (USPTO) titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025” (RIN: 0651-AD65). We received the rule on November 18, 2024. It was published in the *Federal Register* on November 18, 2024. 89 Fed. Reg. 91062. The effective date of the rule is January 18, 2025.

According to USPTO, this rule sets or adjusts trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). See *generally* AIA, Pub. L. No. 112-29, 125 Stat. 284 (Sept. 16, 2021); SUCCESS Act, Pub. L. No. 115-273, 132 Stat. 4158 (Oct. 31, 2018). USPTO stated that the fee adjustments will provide sufficient aggregate revenue to recover the aggregate costs of trademark operations in future years (based on assumptions and estimates found in the agency’s fiscal year 2025 congressional justification), including implementing the USPTO 2022–2026 strategic plan.

Enclosed is our assessment of USPTO’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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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 a distinct 'A'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Juliana Lee  
Agency Representative  
United States Patent and Trademark Office

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF COMMERCE,  
UNITED STATES PATENT AND TRADEMARK OFFICE  
TITLED  
“SETTING AND ADJUSTING TRADEMARK FEES DURING FISCAL YEAR 2025”  
(RIN: 0651-AD65)

(i) Cost-benefit analysis

In its submission to us, the Department of Commerce, United States Patent and Trademark Office (USPTO), indicated that it was not required to prepare an analysis of the costs and benefits of this rule.

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

USPTO determined that this rule will have a significant economic impact on substantial numbers of small entities and prepared a Final Regulatory Flexibility Analysis. 89 Fed. Reg. 91062, 91086–91088 (Nov. 18, 2024).

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

USPTO determined that this rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 89 Fed. Reg. at 91089.

(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, USPTO indicated the Act is not applicable to this rule.

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

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

On March 26, 2024, USPTO issued a proposed rule. 89 Fed. Reg. 20897. USPTO stated that it responded to comments in this rule. 89 Fed. Reg. at 91063, 91072–91084.

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

USPTO determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. at 91089.

Statutory authorization for the rule

USPTO promulgated this rule pursuant to sections 1113 and 1123 of title 5; sections 2 and 41 note of title 35; and sections 1066 and 1067 of title 15, United States Code, and the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182.

Executive Order No. 12866 (Regulatory Planning and Review)

USPTO stated that this rule is significant under the Order. 89 Fed. Reg. at 91088.

Executive Order No. 13132 (Federalism)

USPTO determined that this rule does not have federalism implications. 89 Fed. Reg. at 91088.