

U.S. Department of Homeland Security

# Retrospective Review of Existing Regulations – Progress Report

January 2014



# U.S. Department of Homeland Security

## Retrospective Review Plan Report

### January 2014

Component	RIN/ OMB Control Number	Rule/ICR	Brief Description	Actual or Target Completion Date	Anticipated Savings in Costs and/or Information Collection Burdens, together with any Anticipated Changes in Benefits (please quantify, to the extent feasible, & also specify baseline, time horizon, & affected groups)	Progress Updates & Anticipated Accomplishments	Updated Responses to (a) Substantive Public Comments received on DHS's Retrospective Review Plan (if applicable) or (b) Subsequent Requests for Comments (if applicable)
USCIS	1615-AB95	<u>Immigration Benefits Business Transformation: Nonimmigrants; Students and Exchange Visitor Program</u>	This rulemaking primarily focuses on 8 CFR Part 214, which covers the nonimmigrant classes, including the requirements for admission, extension, maintenance of status, and the Student and Exchange Visitor Information System (SEVIS).	Publication of the NPRM expected in Summer 2014.	<ul style="list-style-type: none"> <li>• Provide the public with a more user-friendly organization of regulatory requirements.</li> <li>• Reduce public confusion.</li> </ul>	USCIS is developing a Notice of Proposed Rulemaking (NPRM). There are no previous rulemakings.	USCIS is drafting business transformation rules, which incorporate many of the suggestions that the public provided to DHS during the development of the DHS Retrospective Review Plan. For example, a commenter had recommended that DHS revise 8 CFR 212.8 to remove outdated language and cross-references. DHS addressed this comment through publication of USCIS's Immigration Benefits Business Transformation, Increment I; Final Rule (see 76 FR 53763).
USCIS	1615-AB92	<u>Employment Authorization for Certain H-4 Spouses</u>	This rule will propose to extend the availability of employment authorization to H-4 dependent spouses of principal H-1B nonimmigrants who have begun the process of seeking lawful permanent resident status through employment.	Publication of the NPRM expected in Summer 2014.	<ul style="list-style-type: none"> <li>• Would increase incentives of H-1B nonimmigrant workers to continue to contribute to the U.S. economy as they complete the process to adjust status to that of a lawful permanent resident by providing parallel employment incentives to the H-4 spouse.</li> </ul>	On 12/6/12, DHS submitted the NPRM to OMB for review under Executive Order 12866.	
USCIS	1615-AA58	<u>Professional Conduct for Practitioners: Rules, Procedures, Representation and Appearance</u>	On February 2, 2010, DHS published an interim rule with request for comments, implementing amendments to its regulations to conform the grounds of discipline and procedures regulations with those promulgated by the Department of Justice (DOJ); clarify who is authorized to represent applicants and petitioners in cases before DHS; remove duplicative rules, procedures, and authority; improve the clarity and uniformity of existing regulations; make technical and procedural changes; and conform terminology. The final rule will finalize the interim rule and will made additional changes to terminology and clarifications for those attorneys that are engaged in limited legal services.	Publication of the Final Rule expected in Spring 2014.	<ul style="list-style-type: none"> <li>• Not expected to result in any costs to applicants or practitioners.</li> <li>• Expected to provide qualitative benefits in that the amendments provide clarification and consistency with DOJ regulations.</li> <li>• Expected to reduce the information collection burden for practitioners that are engaged in limited legal services.</li> </ul>	USCIS is developing the final rule. (OMB has determined that this rulemaking will be non-significant under Executive Order 12866.)	
USCIS	1615-AC00	<u>Enhancing Opportunities for H-1B1, CW-1, and E-3 Nonimmigrants and EB-1 Immigrants</u>	DHS is considering changes that would harmonize the regulations for E-3, H-1B1, and CW-1 nonimmigrant classifications with existing regulations for other similarly situated nonimmigrant classifications. In addition, DHS is considering amending the regulations affecting the immigration classification for employment-based first preference (EB-1) outstanding professors and researchers by expanding the types of evidence that can support these petitions.	Publication of the NPRM expected in Spring 2014.	<ul style="list-style-type: none"> <li>• Harmonize continued employment provisions for E-3, H-1B1, and CW-1 nonimmigrant classifications with other similarly situated nonimmigrants.</li> <li>• Avoid potential interruptions in employment, thereby avoiding lost wages for nonimmigrant employees and lost productivity for employers, while the extension of stay petition is pending.</li> <li>• Harmonize the evidentiary requirement for outstanding professors and researchers with other comparable employment-based immigrant classifications.</li> </ul>	DHS anticipates submission of this NPRM to OMB in the near future.	During development of DHS's Retrospective Review Plan, DHS received a comment from the public, requesting specific changes to the DHS regulations that govern continued work authorization for E-3 and H-1B1 nonimmigrants when an extension of status petition is timely filed, and to expand the types of evidence allowable in support of immigrant petitions for outstanding researchers or professors. While considering the specific request, USCIS realized that CW-1 workers seeking to continue with the same employer were facing a similar disadvantage by not having continued work authorization automatically extended during the pendency of an extension of status petition. USCIS is taking these comments into consideration as USCIS develops the rulemaking.
USCG	1625-AA16	<u>Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and Changes to Domestic Endorsements</u>	The STCW sets forth minimum training and demonstrations of proficiency requirements for merchant mariners. It provides a consistent set of training and competencies for merchant mariners operating in U.S. and international waters. The Coast Guard has codified these Convention standards in the U.S. CFR. The Coast Guard develops these standards with other international parties at the International Maritime Organization of the United Nations. The Coast Guard also develops similar standards of training and proficiency requirements for mariners that work only in U.S. waters.	Final Rule published on 12/24/2013.	<ul style="list-style-type: none"> <li>• Update requirements to address gaps in minimum training requirements for seafarers.</li> <li>• Provide a societal benefit by clarifying STCW requirements in response to requests for interpretation and guidance.</li> <li>• Provide additional flexibility for sea service and training requirements.</li> </ul>	Coast Guard published the Final Rule on 12/24/13.	

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USCG	1625-AB80	<u>Elimination of the Transportation Worker Identification Credential (TWIC) for Certain Mariner Populations. (Implementation of Section 809 of the 2010 Coast Guard Authorization Act)</u>	Section 809 of the Coast Guard Authorization Act of 2010 eliminated the requirement that certain mariners must obtain TWICs. This rule would implement section 809. As a related matter, the Coast Guard is also considering regulatory changes that would provide an exemption from paying certain fees for a subset of the above mariner population.	Publication of a rule expected in Summer 2014.	<ul style="list-style-type: none"> <li>Eliminate TWIC requirements for approximately 18,000 mariners annually.</li> <li>Eliminate trips to TWIC Enrollment Centers for approximately 18,000 mariners annually.</li> </ul>	Coast Guard issued a Letter of Policy in December 2011, which implements an interim process to provide burden relief to mariners until Coast Guard publishes the rule.	
USCG	1625-AB38	<u>Update to Maritime Security Regulations</u>	Coast Guard regulations implementing the Maritime Transportation Security Act of 2002 (MTSA) provide security measures for vessel and port facility operations in U.S. ports. Among other things, these regulations require owners or operators of vessels and port facilities to develop security plans. Since promulgation of the MTSA regulations, the Coast Guard has granted exemptions from MTSA provisions on an ad hoc, individual basis. Through this rule, the Coast Guard would formalize several categories of exemptions, which, in turn, will reduce the burden associated with the current ad hoc waiver process.	Publication of the NPRM expected in Summer 2014.	<ul style="list-style-type: none"> <li>Clarify MTSA requirements in response to requests for interpretation and guidance.</li> <li>Formalize exemptions from certain MTSA provisions, which would provide an annual savings of \$125,000 to society.</li> </ul>	Coast Guard is in the process of reviewing industry practice related to MTSA regulations and is compiling data with regard to the effect that clarifications (beyond the elimination of requests for interpretation and guidance) would have on current industry practice.	
USCG	No RIN Available	<u>Inland Waterways Navigation Regulations</u>	Coast Guard regulations in 33 CFR Part 162 establish waterway-specific speed limits, restricted areas, and communications rules for geographically limited inland waterways. Coast Guard identified the potential for a regulatory action to revise 33 CFR Part 162 to ensure these restricted navigation areas are accurate and up-to-date.	Undetermined	<ul style="list-style-type: none"> <li>Remove unnecessary or unused regulations in 33 CFR part 162.</li> </ul>	Coast Guard is in working with its field operators to review 33 CFR part 162 to determine if there are any additional requirements or restrictions that Coast Guard needs to update or remove.	
CBP	1651-AA96	<u>Definition of Form I-94 to Include Electronic Format</u>	Currently, CBP generally issues the Form I-94 to aliens at the time they lawfully enter the United States. CBP is transitioning to an automated process whereby it will create a Form I-94 in an electronic format based on passenger, passport, and visa information currently obtained electronically from air and sea carriers and the Department of State as well as through the inspection process. This rule will amend the regulations accordingly.	Publication of the Final Rule expected in Fall 2014.	<ul style="list-style-type: none"> <li>Is expected to reduce the burden to the public by 1,276,800 hours, once CBP rolls out the system.</li> </ul>	Interim Final Rule (IFR) published on 3/27/13.  Comment period for the IFR closed on 4/26/13. CBP is drafting the Final Rule.	During the development of the DHS Retrospective Review Plan, one public commenter recommended that CBP eliminate the I-94 paper form and the General Customs Declaration to simplify the overall arrival process for passengers. CBP is constantly working to enhance the passenger processing experience.  On March 27, 2013, DHS published an IFR allowing for the automation of the Form I-94 for aliens arriving by air or sea. This generally eliminated the need for these passengers to submit a paper Form I-94 upon arrival, thereby simplifying the arrival process. CBP received 18 comments in response to the IFR and is drafting a final rule.
CBP	No RIN Available	<u>Passenger List/Crew List I-418</u>	This form collects information for the identification of arriving passengers and crew and serves as a "traveling manifest" from the time a ship arrives in the United States until the time it departs. CBP is testing the use of eNOA/D Coast Guard data in lieu of the I-418 Form. CBP wants to eliminate this form; however, a rulemaking is needed to remove these requirements from federal regulations.	Publication of the NPRM expected in Fall 2014.	<ul style="list-style-type: none"> <li>Is expected to result in approximately \$600,000 in cost savings to the Federal government from not reviewing these forms.</li> </ul>		During the development of the DHS Retrospective Review Plan, CBP received requests to merge titles 8 (immigration) and 19 (customs) of the Code of Federal Regulations (CFR) to eliminate redundant regulations and to have one set of regulations that cover immigration and customs. In response, CBP is currently considering amending title 8 to eliminate the use of the paper I-418 Form (Passenger List/Crew List) that is collected from vessels arriving in the United States, when this information is submitted electronically via electronic Notice of Arrival/Departure (eNOA/D). This form collects information for the identification of arriving passengers and crew and serves as a "traveling manifest" from the time a ship arrives in the United States until the time it departs. In order to reduce the requirements on the trade community, CBP is testing the use of Coast Guard data in lieu of the I-418 Form.

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FEMA	1660-AA75	<a href="#"><u>Increased Federal Cost Share and Reimbursement for Force Account Labor for Public Assistance Debris Removal</u></a>	Currently, FEMA regulations do not allow for reimbursement of force account labor for debris removal activities and do not allow for increased cost share when an applicant has a debris management plan.	Publication of the NPRM expected in Spring 2015.	<ul style="list-style-type: none"> <li>Will likely result in cost savings due to the greater efficiency in managing debris operations.</li> <li>Provides public assistance applicants with additional flexibility to use a combination of contracting and force labor.</li> <li>Provides benefits, including reduced or eliminated delays in performing debris removal after a disaster.</li> </ul>	FEMA is developing the NPRM in conjunction with the debris pilot authorized by the Sandy Recovery Improvement Act of 2013 (SRIA).  Publication of the NPRM expected after implementation of the debris pilot authorized by SRIA.	
FEMA	1660-AA77	<a href="#"><u>State Standard and Enhanced Mitigation Plan</u></a>	Currently, FEMA regulations require applicants for hazard mitigation assistance to update the Standard and the Enhanced State Mitigation Plans every 3 years.	Publication of the Final Rule expected in Winter 2014.	<ul style="list-style-type: none"> <li>Will allow States to update their plans every 5 years instead of every 3 years, thereby matching the updated cycle for local and tribal governments.</li> <li>Cost savings are expected due to the fact that fewer updates will be required over time. Savings to society are estimated at \$18.8 million over 15 years at a seven percent discount rate.</li> </ul>	NPRM published on 3/1/13. Comment period for the NPRM closed 4/30/13. FEMA is developing the final rule.	
ICE	1653-AA44	<a href="#"><u>Amendment to Accommodate Process Changes with the Student and Exchange Visitor Information System (SEVIS) II Implementation</u></a>	SEVIS is an electronic filing and adjudication system for schools that seek to enroll foreign nonimmigrant students. The SEVIS NPRM improves data collection and reporting, enhances customer service, facilitates compliance with regulations, and helps ICE better monitor school and exchange programs.  ICE is working with the Department of State to implement the deployment of SEVIS II, the next generation of the system.	Publication of the NPRM expected in Fall 2014.	<ul style="list-style-type: none"> <li>Provide an estimated total annual burden reduction of approximately 11,000 hours.</li> <li>Incorporate language supporting a major reprogramming of SEVIS, known as SEVIS II, including setup and use of DHS accounts for F/M/J nonimmigrants, DSOs and ROs; requirements for DSO training, electronic signatures, limited new reporting responsibilities, and a variety of miscellaneous system-related clarifications of regulation.</li> <li>Provide an estimated total annual savings of approximately \$220,110.</li> </ul>	ICE is developing the rule. In addition, ICE is consulting with the Department of State regarding the draft rule.	
ICE	1653-AA63	<a href="#"><u>Adjustments to Limitations on Designated School Official Assignment and Study by F-2 and M-2 Nonimmigrants</u></a>	The proposed rule would grant school officials more flexibility in determining the number of designated school officials to nominate for the oversight of campuses. The rule also would permit accompanying spouses and children of academic and vocational nonimmigrant students with F-1 or M-1 nonimmigrant status to enroll in study at a Student and Exchange Visitor Program (SEVP) certified school so long as any study remains less than a full course of study.	Publication of the Final Rule expected in Fall 2014.	<ul style="list-style-type: none"> <li>Provide additional flexibility to SEVP-certified schools by eliminating the regulatory cap of ten (10) designated school officials (DSOs) at each campus at any one time. This would enable school offices to better manage their programs.</li> <li>Permit up to 45,000 F-2 spouses and 578 M-2 spouses, based on June 2012 SEVIS records, to engage in less than a full course of study at SEVP-certified schools. This new benefit is intended to provide greater incentive for international students to study in the United States.</li> </ul>	NPRM published on 11/21/13. Comment period for the NPRM is open until 1/21/14.	DHS received recommendations from Homeland Security Academic Advisory Committee (HSAAC), which informed DHS's development of a proposed rule to permit an increased number of designated school officials (DSOs) at schools certified by ICE's Student and Exchange Visitor Program (SEVP).
TSA	1652-AA61	<a href="#"><u>Revisions to the Alien Flight Student Program (AFSP) regulations within the Standardized Vetting, Adjudication, and Redress Services rulemaking</u></a>	The Alien Flight Student Program (AFSP) rulemaking, among other things, requires a prospective alien flight student to undergo a background check called a "security threat assessment" before each training event. TSA charges each alien flight student a fee intended to cover the costs of the vetting.	Publication of the NPRM expected in Summer 2014.	<ul style="list-style-type: none"> <li>Improve the accuracy of vetting fees and equity among fee payers.</li> <li>Provide an estimated total savings for alien flight students, over a five-year period, of approximately \$18 million at a seven percent discount rate to society.</li> <li>Increase efficiency by enabling existing threat assessment processes to be leveraged.</li> <li>Enable the implementation of new technologies to support vetting.</li> </ul>	TSA is accomplishing the review and improvement of AFSP regulations through its rulemaking on Standardized Vetting, Adjudication, and Redress (SVAR).	

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TSA	1652-AA43	<u>Modification of the Aviation Security Infrastructure Fee (ASIF)</u>	The Aviation Security Infrastructure Fee (ASIF) rule provides that each air carrier pays fees based on what that carrier spent on certain security measures in the calendar year 2000. Under the statute, after fiscal year 2005, TSA may re-evaluate how much each carrier pays, including using market share or other appropriate measure.	Due to recent legislation, TSA no longer has plans to issue this rulemaking.	<ul style="list-style-type: none"> <li>Update the fee distribution among air carriers as a result of market share changes since 2000; this will result in a benefit to society.</li> </ul>	This rulemaking is no longer needed, because section 601 of H.J. Res 59 (Bipartisan Budget Act of 2013, which the President signed on December 26, 2013), repeals the Aviation Security Infrastructure Fee effective as of October 1, 2014.	

**DHS Paperwork and Reporting Burden Reduction Initiatives  
Implementation of Executive Order 13610 & OIRA's June 22, 2012 Memorandum**

Agency	Sub-Agency	Title & OMB Control Number	Paperwork and Reporting Burden Reduction Initiatives	Hours of paperwork/ reporting eliminated	Estimated effective date of the change	Notes
DHS	CBP	Arrival and Departure Record (I-94) (1651-0111)	CBP modified its operating systems to collect I-94 information electronically upon arrival of non-immigrant aliens in the air and sea environment. The modifications pull I-94 data elements from existing CBP data collection and create an electronic version of the form. CBP will no longer provide a paper Form I-94 to the traveler. The website now allows travelers access to their arrival information electronically if the traveler wishes to print out the information.	1,250,000	Interim Final Rule (IFR) published on 3/27/13. Automation began on April 30, 2013.  Completed 5/10/2013	mber
DHS	FEMA	Web-Based (e-Grants) Application and Reporting (1660-0072)	FEMA is continuing to move toward implementation of an integrated agency-wide e-Grants online application that will be available to the public via internet. The system will simplify submission of grant program applications across the agency by creating fillable online forms. By fully integrating and automating these systems, FEMA will obtain increased efficiency and effective operations to better serve the needs of internal and external stakeholders.	572,000	12/2016	There are no cost savings to the Federal Government.
DHS	FEMA	Standard Flood Hazard Determination Form (1660-0040)	This form collects information from prospective mortgagors necessary to assess the flood risk associated with a property. FEMA is investigating the possibility of offering more drop down menus to save time when describing the property to be used as collateral.	2,322,824	5/2015	FEMA indicates that drop down menus carry a risk of inexact information leading to costly underinsurance or overinsurance.
DHS	CBP	Passenger List/Crew List I-418 (1651-0103)	This form collects information for the identification of arriving passengers and crew and serves as a "traveling manifest" from the time a ships arrives in the United States until the time a ship departs. CBP is testing the use of eNOA/D Coast Guard data in lieu of the Form I-418. CBP would like to eliminate this form; a rulemaking will be needed to remove these requirements from federal regulations.	95,000	Fall 2014	Cost savings of over \$600,000 to the Federal Government from not reviewing these forms. CBP would incur small costs from re-using Coast Guard data.
DHS	USCG	Application for Merchant Mariner Credential (1625-0040)	These forms are used by mariners to apply for a merchant mariner credential. Coast Guard collects information about a merchant mariner's medical fitness, physical fitness, sea service, and drug testing to determine eligibility for a merchant mariner credential. The Coast Guard is in the process of converting this form to be web fillable and fileable.	2,101	Completed (01/03/2013)	There are no cost savings to the Federal Government.
DHS	CBP	Application for Exemption from Special Landing Requirements (Overflight) (1651-0088)	This collection will be discontinued due to the re-use of information already collected by CBP. (1651-0088).	1,478	Completed (10/26/2012)	There were no application fees or filing costs associated with this form.