

DEPARTMENT OF HOMELAND SECURITY (DHS)

Fall 2019 Statement of Regulatory Priorities

The Department of Homeland Security (DHS or Department) was established in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107-296. The DHS mission statement provides the following: “With honor and integrity, we will safeguard the American people, our homeland, and our values.”

Fulfilling that mission requires the dedication of more than 240,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. Our duties are wide-ranging, but our goal is clear: keep America safe.

There are six overarching homeland security missions that make up DHS’s strategic plan: (1) counter terrorism and homeland security threats; (2) secure U.S. borders and approaches; (3) secure cyberspace and critical infrastructure; (4) preserve and uphold the Nation’s prosperity and economic security; (4) strengthen preparedness and resilience; and (5) champion the DHS workforce and strengthen the Department. See also 6 U.S.C. 111(b)(1) (identifying the primary mission of the Department).

In achieving those goals, we are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the Federal, State, local, tribal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure, and we are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. For a further discussion of our mission, see the DHS website at <https://www.dhs.gov/mission>.

The regulations we have summarized below in the Department’s Fall 2019 regulatory plan and agenda support the Department’s mission. These regulations will improve the Department’s ability to accomplish its mission. Also, these regulations address legislative initiatives such as the ones found in the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), FAA Extension, Safety, and Security Act of 2016, and the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act).

DHS strives for organizational excellence and uses a centralized and unified approach in managing its regulatory resources. The Office of the General Counsel manages the Department’s regulatory program, including the agenda and regulatory plan. In addition, DHS senior leadership reviews each significant regulatory project in order to ensure that the project fosters and supports the Department’s mission.

The Department is committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to protect civil rights and civil liberties, integrate our actions, build coalitions and partnerships, develop human resources, innovate, and be accountable to the American public.

Executive Order 13771 Requirements

In fiscal year 2020, based on current schedules and expectations, DHS plans to finalize the following actions:

- 9 Executive Order 13771 regulatory actions;
- 8 Executive Order 13771 deregulatory actions (including information collections and policy changes);
- 4 Executive Order 13771-exempt regulations; and
- 7 regulations for which we are unsure of their Executive Order 13771 designation.

(Note: These are regulations that we designated as “other” in the Executive Order 13771 designation data field in the Unified Agenda entries).

We provide further information about those actions in the DHS Regulatory Plan and Unified Agenda.

DHS is also committed to the principles described in Executive Orders 13563 and 12866 (as amended). Both Executive Orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Finally, the Department values public involvement in the development of its regulatory plan, agenda, and regulations, and is particularly concerned with the impact its regulations have on small businesses. DHS and its components continue to emphasize the use of plain language in our regulatory documents to promote a better understanding of regulations and to promote increased public participation in the Department’s regulations.

The Fall 2019 regulatory plan for DHS includes regulations from several DHS components, including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (the Coast Guard), U.S. Customs and Border Protection (CBP), Transportation Security Administration (TSA), the U.S. Immigration and Customs Enforcement (ICE), and the Federal Emergency Management Agency (FEMA). We describe next the regulations that comprise the DHS fall 2019 regulatory plan.

United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) is the government agency that administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

USCIS is committed to the principles and direction to deregulate and reduce burden on the public as much as possible, while balancing our needs to ensure well founded policies that are aimed at protecting American workers, strengthening our legal immigration system, reducing fraud, and protecting our national security. Importantly, USCIS has been taking steps to reduce burdens and enhance operational efficiencies. This is most apparent in our continued effort to centralize immigration policies into a comprehensive online tool, the USCIS Policy Manual, on our public website. In addition, we are actively working towards creating more online filing options for USCIS immigration requests.

In the coming year, USCIS will promulgate several regulatory actions to directly support our mission.

Asylum Reforms. USCIS and DOJ will jointly propose revisions to existing asylum procedures in response to the growing affirmative and defensive asylum backlogs. The amendments aim to address frivolousness in the asylum caseload and increase efficiency in the resolution of applications for aliens who are barred from applying for asylum. (*Asylum Eligibility and Procedural Modifications; Procedures for Asylum and Withholding of Removal, Credible Fear and Reasonable Review; Procedures for Asylum and Bars to Asylum Eligibility*). In addition, USCIS will propose amendments to the reasonable fear determination process to take into account operational realities. (*Procedures for Asylum Applications and Reasonable Fear Determinations*). USCIS will propose regulations aimed at deterring the fraudulent filing of asylum applications for the purpose of obtaining Employment Authorization Documents. (*Asylum Application, Interview, and Employment Authorization for Applicants*). USCIS will propose to remove the regulatory provision requiring that USCIS has 30 days from the date an asylum applicant files the initial Application for Employment Authorization to grant or deny that application (*Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*).

Heightened Screening and Vetting in Immigration Programs. USCIS will propose regulations to better track, and enforce obligations under the contractual agreements that sponsors enter into with the federal government by signing an Affidavit of Support. (*Enhancing the Integrity of the Affidavit of Support*). USCIS will propose to update its regulations to eliminate multiple references to specific biometric types, and to allow for the expansion of the types of biometrics required to establish and verify an identity. The goals of this proposal will be to establish consistent identity enrollment and verification policies and processes,

and to provide clear proposals on how biometrics will be used in the immigration process. (*Collection and Use of Biometrics by U.S. Citizenship and Immigration Services*). USCIS will also propose updates to its regulations to improve the efficiency and integrity of the Medical Certification for Disability Exceptions process. (*Improvements to the Medical Certification for Disability Exceptions Processing*).

Removal of International Entrepreneur Parole Program. Pursuant to the direction in Executive Order 13767, *Border Security and Immigration Enforcement*, to ensure that parole authority is exercised on a case-by-case basis, USCIS issued a proposed rule in May 2018. The rule proposed to remove the international entrepreneur parole program and solicited public comments on the proposal. USCIS is reviewing the public comments received in response to the proposed rule.

Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization. USCIS will propose to rescind the final rule published in the Federal Register on February 25, 2015. The 2015 final rule amended DHS regulations by extending eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident status.

H-1B Nonimmigrant Program and Petitioning Process Regulations. To improve U.S. worker protections as well as to address the requirements of Executive Order 13788, *Buy American and Hire American*, USCIS will propose regulations aimed at improving the H-1B nonimmigrant program and petitioning process. Such initiatives include a proposed rule that would require petitioners seeking to file H-1B cap-subject petitions to pay a fee for each registration they submit to USCIS for the H-1B cap selection process (*Fee for Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap Subject Aliens*); and a proposed rule that would revise the definition of “specialty occupation” and definition of “employment and employer-employee relationship” to help better protect U.S. workers and wages. (*Strengthening the H-1B Nonimmigrant Visa Classification Program*).

Improvements to the Overall Immigration System. USCIS will propose to amend its regulations to provide a process for mandating digital processing of immigration benefits. If finalized, this proposal will enhance efficiency and efficacy in USCIS operations, and improve the experience for those applying for immigration benefits (*Electronic Processing of Immigration Benefit Requests*). In addition, USCIS has performed its required biennial fee review and as a result, will propose adjustments to certain immigration and naturalization benefit fees to ensure that the fees recover full costs borne by the agency (*U.S. Citizenship and Immigration Services Fee Schedule*).

United States Coast Guard

The Coast Guard is a military, multi-mission, maritime service of the United States and the only military organization within DHS. It is the principal Federal agency responsible for maritime safety, security, and stewardship in U.S. ports and waterways.

Effective governance in the maritime domain hinges upon an integrated approach to safety, security, and stewardship. The Coast Guard's policies and capabilities are integrated and interdependent, delivering results through a network of enduring partnerships with maritime stakeholders. Consistent standards of universal application and enforcement, which encourage safe, efficient, and responsible maritime commerce, are vital to the success of the maritime industry. The Coast Guard's ability to field versatile capabilities and highly-trained personnel is one of the U.S. Government's most significant and important strengths in the maritime environment.

America is a maritime nation, and our security, resilience, and economic prosperity are intrinsically linked to the oceans. Safety, efficient waterways, and freedom of transit on the high seas are essential to our well-being. The Coast Guard is leaning forward, poised to meet the demands of the modern maritime environment. The Coast Guard creates value for the public through solid prevention and response efforts. Activities involving oversight and regulation, enforcement, maritime presence, and public and private partnership foster increased maritime safety, security, and stewardship.

The statutory responsibilities of the Coast Guard include ensuring marine safety and security, preserving maritime mobility, protecting the marine environment, enforcing U.S. laws and international treaties, and performing search and rescue. The Coast Guard supports the Department's overarching goals of mobilizing and organizing our Nation to secure the homeland from terrorist attacks, natural disasters, and other emergencies.

The Coast Guard highlights the following deregulatory action in progress:

Removal of Certain International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended (STCW) Training Requirements. The Coast Guard will propose to remove certain Coast Guard merchant mariner training requirements related to STCW officer and rating endorsements from its regulations. The Coast Guard has determined these training requirements exceed current international certification and training standards of the STCW and cause a misalignment between the training of U.S. mariners and of mariners of other countries. The Coast Guard is taking this action to reduce the regulatory burden on mariners and to promote equivalent compliance standards with international requirements.

United States Customs and Border Protection

Customs and Border Protection (CBP) is the Federal agency principally responsible for the security of our Nation's borders, both at and between the ports of entry into the United States. CBP must accomplish its border security and enforcement mission without stifling the flow of legitimate trade and travel. The primary mission of CBP is its homeland security mission, that is, to prevent terrorists and terrorist weapons from entering the United States. An important aspect of this mission involves improving security at our borders and ports of entry, but it also means extending our zone of security beyond our physical borders.

CBP is also responsible for administering laws concerning the importation of goods into the United States, and enforcing the laws concerning the entry of persons into the United States. This includes regulating and facilitating international trade; collecting import duties; enforcing U.S. trade, immigration and other laws of the United States at our borders; inspecting imports; overseeing the activities of persons and businesses engaged in importing; enforcing the laws concerning smuggling and trafficking in contraband; apprehending individuals attempting to enter the United States illegally; protecting our agriculture and economic interests from harmful pests and diseases; servicing all people, vehicles, and cargo entering the United States; maintaining export controls; and protecting U.S. businesses from theft of their intellectual property.

In carrying out its mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security. Consistent with its primary mission of homeland security, CBP intends to issue several regulations that are intended to improve security at our borders and ports of entry. During the upcoming year, CBP will also be working on various projects to streamline CBP processing, reduce duplicative processes, reduce various burdens on the public, and automate various paper forms. Below are descriptions of CBP's planned actions for the coming fiscal year.

Collection of Biometric Data from Aliens Upon Entry to and Departure from the United States. DHS is required by statute to develop and implement an integrated, automated entry and exit data system to match records, including biographic data and biometric identifiers, of aliens entering and departing the United States. In addition, Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*, states that DHS is to expedite the completion and implementation of a biometric entry-exit tracking system. Although the current regulations provide that DHS may require certain aliens to provide biometrics when entering and departing the United States, they only authorize DHS to collect biometrics from certain aliens upon departure under pilot programs at land ports and at up to 15 airports and seaports. To provide the legal framework for DHS to begin a seamless biometric entry-exit system, DHS intends to amend its existing regulations to remove the references to pilot programs and the port limitations. In addition, to enable CBP to make the process for verifying the identity of alien's more

efficient, accurate, and secure by using facial recognition technology, this rule would also provide that alien travelers may be required to provide photographs upon entry and/or departure.

Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders – Electronic CBP Form I-94W. CBP intends to amend existing regulations to implement the ESTA requirements under the Implementing Recommendations of the 9/11 Commission Act of 2007 for aliens who intend to enter the United States under the Visa Waiver Program (VWP) at land ports of entry. Currently, aliens from VWP countries must provide certain biographic information to U.S. CBP officers at land ports of entry on a paper I-94W Nonimmigrant Visa Waiver Arrival/Departure Record. Under this rule, these VWP travelers would instead provide this information to CBP electronically through ESTA prior to application for admission to the United States.

Modernization of the Customs Brokers Regulations. CBP will issue a proposed rule to amend the requirements for customs brokers. CBP will propose to expand the scope of the national permit authority to allow national permit holders to conduct any type of customs business throughout the customs territory of the United States. To accomplish this, CBP will propose to eliminate broker districts and district permits, which also eliminates the need for district permit waivers and for brokers to maintain district offices. Additionally, CBP will propose to update the responsible supervision and control oversight framework to better reflect the modern business environment. This rule is a deregulatory action under Executive Order 13771. (Note: There is no associated Regulatory Plan entry for this rule because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

Automation of CBP Form I-418 for Vessels. CBP intends to amend existing regulations regarding the submission of Form I-418, Passenger List - Crew List. Currently, the master or agent of every commercial vessel arriving in the United States, with limited exceptions, must submit a paper Form I-418 to CBP at the port where immigration inspection is performed. Most commercial vessel operators are also required to submit a paper Form I-418 to CBP at the final U.S. port prior to departing for a foreign port. Under this rule, most vessel operators would be required to electronically submit the data elements on Form I-418 to CBP through the National Vessel Movement Center in lieu of submitting a paper form. This rule would eliminate the need to file the paper Form I-418 in most cases. This rule is a deregulatory action under Executive Order 13771. (Note: There is no associated Regulatory Plan entry for this rule, because this rule is non-significant under Executive Order 12866. There is an entry, however, in the Unified Agenda.)

Mandatory Advance Electronic Information for International Mail Shipments. To address the threat of synthetic opioids and other dangerous items coming to the United States in international mail shipments and to implement the requirements of the Synthetics Trafficking and Overdose Prevention Act of 2018,

CBP will amend its regulations to require the United States Postal Service to transmit certain advance electronic information to CBP. Under this rule, for certain inbound international mail shipments, CBP must electronically receive from the USPS, within specified time frames, certain mandatory advance electronic data (AED). The rule describes the new mandatory AED requirements including the types of inbound international mail shipments for which AED is required, the time frame in which the USPS must provide the required AED to CBP, and the criteria for the exclusion from AED requirements for mail shipments from specific countries.

Harmonization of the Fees and Application Procedures for the Global Entry and SENTRI Programs and Other Changes. CBP operates several trusted traveler programs that allow certain pre-approved travelers dedicated processing into the United States: the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program, the Global Entry program, and the NEXUS program. CBP seeks to harmonize the fees and application procedures for these three programs. CBP intends to issue a proposed rule to change the Global Entry and SENTRI application fees to a uniform amount, provide a uniform standard regarding the payment of the Global Entry and SENTRI application fees for minors, change the fee payment schedule and certain aspects of the application process for the SENTRI program, and incorporate the SENTRI program into the DHS regulations. CBP also intends to propose changes to the Global Entry regulations that are consistent with the program's expansion to certain U.S. territories and preclearance facilities. CBP intends to issue a separate notice in the *Federal Register* regarding changes to the NEXUS fee.

In addition to the regulations that CBP issues to promote DHS's mission, CBP also issues regulations related to the mission of the Department of the Treasury. Under section 403(1) of the Homeland Security Act of 2002, the former-U.S. Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs Service inspection and trade functions were combined with the immigration and agricultural inspection functions and the Border Patrol and transferred into CBP. The Department of the Treasury retained certain regulatory authority of the U.S. Customs Service relating to customs revenue function. In addition to its plans to continue issuing regulations to enhance border security, in the coming year, CBP expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. For a discussion of CBP regulations regarding the customs revenue function, see the regulatory plan of the Department of the Treasury.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA applies an intelligence-driven, risk-based approach

to all aspects of its mission. This approach results in layers of security to mitigate risks effectively and efficiently. In fiscal year 2020, TSA is prioritizing the following actions that are required to meet statutory mandates and that are necessary for national security.

Security Training for Surface Transportation Employees. TSA will finalize a rule requiring higher-risk public transportation agencies (including rail mass transit and bus systems), railroad carriers (freight and passenger), and over-the-road bus owner/operators to conduct security training for frontline employees. This regulation will implement mandates of the *Implementing Regulations of the 9/11 Commission Act of 2007* (9/11 Act). The rule will identify which employees are required to receive security training and will identify the content of that training. The final rule will also propose definitions for transportation security-sensitive materials, as required by the 9/11 Act.

Vetting of Certain Surface Transportation Employees. TSA will propose a rule requiring security threat assessments for security coordinators and other frontline employees of certain public transportation agencies (including rail mass transit and bus systems), railroads (freight and passenger), and over-the-road bus owner/operators. The NPRM will also propose provisions to implement TSA's statutory requirement to recover its cost of vetting through user fees. While many stakeholders conduct background checks on their employees, their actions are limited based upon the data they can access. Through this rule, TSA will be able to conduct a more thorough check against terrorist watch-lists of individuals in security-sensitive positions.

Amending Vetting Requirements for Employees with Access to a Security Identification Display Area. The FAA Extension, Safety, and Security Act of 2016 mandates that TSA consider modifications to the list of disqualifying criminal offenses and criteria, develop a waiver process for approving the issuance of credentials for unescorted access, and propose an extension of the look back period for disqualifying crimes. Based on these requirements, and current intelligence pertaining to the "insider threat," TSA will propose revisions that enhance the eligibility requirements and disqualifying criminal offenses for individuals seeking or having unescorted access to any Security Identification Display Area of an airport.

Protection of Sensitive Security Information. This action will finalize an interim final rule for a statutorily-required regulation related to national security. The rule will amend TSA's regulations to provide three options for the sensitive security information distribution statement and address comments on the interim final rule that the current marking requirements are unduly burdensome. As required by statute, TSA will also align the requirement for the handling of Federal Flight Deck Officer names consistent with the handling of Federal Air Marshal names.

Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees. This rule will streamline regulations and reduce burden for the alien flight student program. This action will finalize an interim final rule and will address comments received in response to a reopening of the comment period on the interim final rule. The alien flight student program requires security threat assessments for aliens seeking flight training in the United States and imposes additional security measures on the flight schools training these individuals. In response to recommendations from industry through the Aviation Security Advisory Committee, TSA is considering revising these requirements to reduce costs and industry burden. A related change to the current information collection request pertaining to the alien flight student program will be part of this deregulatory action.

United States Immigration and Customs Enforcement

Immigration and Customs Enforcement (ICE) is the principal criminal investigative arm of DHS and one of the three Department components charged with the criminal and civil enforcement of the Nation's immigration laws. Its primary mission is to protect national security, public safety, and the integrity of our borders through the criminal and civil enforcement of Federal law governing border control, customs, trade, and immigration. During the coming fiscal year, ICE will focus rulemaking efforts on two priority regulations.

Establishing a Maximum Period of Authorized Stay for F-1 and Other Nonimmigrants. ICE will publish a proposed rule that modifies the period of authorized stay for certain categories of nonimmigrants traveling to the United States. The rule would change the authorized stay from "duration of status" and replace it with a maximum period of authorized stay, and options for extensions, for each applicable visa category. This change would help eliminate confusion over the length of authorized period of stay for nonimmigrants to lawfully remain in the United States. It would also assist with efforts to reduce overstay rates.

Visa Security Program Fee. ICE will propose a rule that would expand the Visa Security Program by moving it to a user-fee funded model. This change would enable ICE to expand visa security screening and vetting operations and investigative efforts to more visa-issuing posts overseas. This would enhance the U.S. government's ability to prevent travel to the United States by those who pose a threat to the national security interests of the U.S.

Federal Emergency Management Agency

The Federal Emergency Management Agency's (FEMA's) mission is helping people before, during, and after disasters. *Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program.* FEMA will publish a proposed rule to revise two disaster declaration factors that

FEMA uses to review a Governor's request for a major disaster under the Public Assistance Program. These two factors are the "estimated cost of assistance" and "recent multiple disasters" factors. FEMA proposes revisions to these two factors to more accurately assess the disaster response capabilities of States, and to respond to the direction of Congress in the Disaster Recovery Reform Act of 2018, which requires FEMA to review these factors and update them via rulemaking, as appropriate.

Federal Law Enforcement Training Center

The Federal Law Enforcement Training Center (FLETC) does not have any significant regulations planned for fiscal year 2020.

Cybersecurity and Infrastructure Security Agency

Pursuant to the Cybersecurity and Infrastructure Security Agency Act of 2018, the National Protection and Programs Directorate was redesignated as the Cybersecurity and Infrastructure Security Agency (CISA). CISA is responsible for leading the national effort to develop cybersecurity and critical infrastructure security programs, operations, and associated policy to enhance the security and resilience of physical and cyber infrastructure. CISA does not plan to finalize any significant regulations during the next fiscal year.

United States Secret Service

The United States Secret Service does not have any significant regulations planned for the coming fiscal year.

DHS Regulatory Plan for Fiscal Year 2020

A more detailed description of the priority regulations that comprise the DHS Fall 2020 regulatory plan follows.