

## **DEPARTMENT OF HOMELAND SECURITY (DHS)**

### **Fall 2020 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; (5) strengthen preparedness and resilience; and (6) 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 2020 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 to 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 2021, based on current schedules and expectations, DHS plans to finalize the following actions:

- 3 Executive Order 13771 regulatory actions;
- 9 Executive Order 13771 deregulatory actions (including information collections and policy changes);
- 4 Executive Order 13771-exempt regulations; and
- 21 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 2020 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), the Federal Emergency Management Agency (FEMA), and the

Cybersecurity and Infrastructure Security Agency (CISA). We next describe the regulations that comprise the DHS fall 2020 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. In the coming year, USCIS will promulgate several regulatory and deregulatory actions to directly support this mission.

*Heightened Screening and Vetting of Immigration Programs Regulations.* USCIS will finalize 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. (*Affidavit of Support on Behalf of Immigrants*). USCIS will 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 rule is to establish consistent identity enrollment and verification policies and processes, and to provide clear direction on how biometrics will be used in the immigration process. (*Collection and Use of Biometrics by U.S. Citizenship and Immigration Services*).

In order to improve U.S. worker protections as well as to address the requirements of Executive Order 13788, *Buy American and Hire American*, and Presidential Proclamation 10052, *Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak*, USCIS will issue regulations with the focus of improving the H-1B nonimmigrant program and petitioning process. Such initiatives include a rule that will revise the definition of specialty occupation and revise the definition of employment and employer-employee relationship to help better protect U.S. workers and wages. (*Strengthening the H-1B Nonimmigrant Visa Classification Program*). In addition, USCIS also published a rule that changes the manner by which H-1B cap-subject registrations are selected to first select registrations of beneficiaries who will be paid according to the highest wage level that corresponds to their Standard Occupational Classification code. (*Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions*).

*Discretionary Employment Authorization.* In order to reduce the incentive for aliens to remain in the United States after receiving a final order of removal and to strengthen protections for U.S. workers, USCIS proposed to amend its regulations to eliminate employment authorization eligibility for aliens who have final orders of removal but are temporarily released from custody on an order of supervision. (*Employment Authorization for Certain Classes of Aliens With Final Orders of Removal*).

*Mitigating the Introduction and Spread of Disease at the Border.* DHS and DOJ will seek to finalize the proposal published on July 9, 2020. The Departments will review and consider public comments received on the proposed rule in the issuance of a final rule. The Departments proposed amending existing regulations to clarify that the Departments may consider emergency public health concerns based on the threat of communicable disease or spread of a pandemic as to whether there are reasonable grounds for regarding an alien as a danger to the security of the United States and, thus, ineligible to be granted asylum or the protection of withholding of removal in the United States. To streamline the protection review process and minimize the spread and possible introduction of communicable and widespread disease in the United States, the rule provides for the application of the statutory bars to eligibility for asylum and withholding of removal to determinations made at the credible fear screening stage for aliens in expedited removal proceedings. The rule also modifies the process for evaluating the eligibility of aliens who are ineligible for withholding of removal for presenting a danger to the security of the United States for deferral. (*Security Bars and Processing*).

### **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 and regulatory actions in progress:

*Clarification of Certain Mariner Training Requirements.* The Coast Guard will propose to remove certain Coast Guard merchant mariner training requirements related to International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended (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.

*Safety Management Systems for Domestic Passenger Vessels.* The Coast Guard is evaluating the potential for a Safety Management System (SMS) requirement to improve safety and reduce marine casualties on board certain U.S.-flagged passenger vessels. Vessels transporting more than 12 passengers on foreign voyages are already required to have an SMS. The Coast Guard will seek public input on the scope and content of a potential SMS requirement for other passenger and small passenger vessels, and will invite responses to specific questions on the feasibility and applicability of potential use on those vessels. The Coast Guard is taking this action consistent with 46 U.S.C. Chapter 32 and in consideration of passenger vessel safety.

*Shipping Safety Fairways Along the Atlantic Coast.* The Coast Guard published an advance notice of proposed rulemaking on June 19, 2020 and will next propose to establish shipping safety fairways (fairways) along the Atlantic Coast of the United States to facilitate the direct and unobstructed transit of ships. Fairways are marked routes for vessel traffic in which any obstructions are prohibited. The proposed fairways will be based on studies about vessel traffic along the Atlantic Coast. The Coast Guard is taking this action to ensure that obstruction-free routes are preserved to and from US ports and along the Atlantic coast and to reduce the risk of collisions, allisions and grounding, as well as alleviate the chance of increased time and expenses in transit.

## **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 – Automation of 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. This rule is included in this narrative because it is a deregulatory action under Executive Order 13771.

*Modernization of the Customs Brokers Regulations.* CBP will finalize a rule to amend the requirements for customs brokers. The rule expands 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 is eliminating regulatory requirements for broker districts and district permits, which also eliminates the need for district permit waivers and for brokers to maintain district offices. Additionally, the regulations will be updated with respect to the responsible supervision and control oversight framework to better reflect the modern business environment. This rule is included in this narrative because it is a deregulatory action under Executive Order 13771.

*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 included in this narrative because it is a deregulatory action under Executive Order 13771.

*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.

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 2021, TSA is prioritizing the following actions that are required to meet statutory mandates and that are necessary for national security.

*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 a rule to revise current vetting requirements to enhance eligibility and disqualifying criminal

offenses for individuals seeking or having unescorted access to any Security Identification Display Area of an airport.

*Indirect Air Carrier Security.* This deregulatory action will modify the renewal period for an Indirect Air Carrier (IAC) Security Program. Currently, TSA's regulations require annual renewal and prompt notification to TSA of any changes to operations-related to information previously provided to TSA. The deregulatory action will modify the regulation to allow for a three-year renewal schedule, rather than annual renewal. This change will align the security program renewal requirement with those applicable to other regulated entities within the air cargo industry. These changes will not have a negative impact on security as TSA will maintain the requirement to notify the agency of changes to operations and will continue its robust inspection and compliance program. TSA believes this action will provide immediate relief to an industry affected by the COVID-19 public health crisis and enhance their ability to focus limited human resources on the core tasks of moving air cargo rather than seeking to comply with an unnecessary administrative burden.

### **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. ICE does not have any deregulatory actions planned for the coming fiscal year. During the coming fiscal year, ICE will focus rulemaking efforts on regulations pertaining to foreign students, adjusting fees, including those mentioned below.

*Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media.* ICE will modify the period of authorized stay for certain categories of nonimmigrants visiting the United States. The rule would change the authorized period of stay from "duration of status" and replace it with a fixed period of authorized stay, and options for extensions, for each applicable visa category.

*Adjusting Program Fees for the Student and Exchange Visitor Program.* ICE will propose to adjust the fee for Student and Exchange Visitor Information System (SEVIS) Form I-901, Fee Remittance for Certain F, J, and M Nonimmigrants, for nonimmigrants seeking to become academic (F visa) or vocational (M visa) students. The fee adjustment would recover the full cost of current activities and planned enhancements of the Student and Exchange Visitor Program and add specialized personnel to conduct necessary compliance monitoring and implement SEVIS adaptations.

*Fee Adjustment for U.S. Immigration and Customs Enforcement Form I-246, Application for a Stay of Deportation or Removal.* ICE will propose a rule that would adjust the fee for adjudicating and handling Form I-246, Application for a Stay of Deportation or Removal. The Form I-246 fee was last adjusted in 1989. After a comprehensive fee review, ICE has determined that the current Form I-246 fee does not recover the full costs of processing and adjudicating Form I-246. Adjustments to the fee are necessary to recover the full costs associated with the form.

## **Federal Emergency Management Agency**

The Federal Emergency Management Agency (FEMA) is the government agency responsible for helping people before, during and after disasters. FEMA supports the people and communities of our Nation by providing experience, perspective, and resources in emergency management.

FEMA will issue a regulation titled *Update to FEMA's Regulations on Rulemaking Procedures*. It will revise FEMA regulations pertaining to rulemaking by removing sections that are outdated or do not affect the public, updating provisions that affect the public's participation in the rulemaking process, and modifying FEMA's waiver of the Administrative Procedure Act exemption for matters relating to public property, loans, grants, benefits, and contracts.

FEMA will propose a regulation titled *Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program*. It will substantively 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 the assistance" and "Recent multiple disasters" factors. FEMA proposes revisions to these two factors to more accurately assess the disaster response capabilities of the 50 States, the District of Columbia, and the U.S. territories (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.

## **Cybersecurity and Infrastructure Security Agency**

The Cybersecurity and Infrastructure Security Agency (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.

*Ammonium Nitrate Security Program.* This rulemaking seeks to implement direction in the Homeland Security Act for CISA to regulate sales of ammonium nitrate, which can be used to construct improvised explosives, but which also has many widespread legitimate uses. CISA intends to withdraw the Notice of Proposed Rulemaking issued on August 3, 2011 and propose a different approach to regulating the sale

and transfer of ammonium nitrate in accordance with 6 U.C.C. 448 et seq. Consistent with Administration priorities to reduce regulatory burdens, CISA's new proposed rule would implement the regulatory program required by statute in a manner that reduces the cost burden to the public as much as possible.

**DHS Regulatory Plan for Fall 2020**

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