DEPARTMENT OF HOMELAND SECURITY (DHS)

Statement of Regulatory Priorities

The Department of Homeland Security (DHS) was created in 2003 pursuant to the Homeland Security Act of 2002, Pub. L. 107-296. DHS has a vital mission: to secure the nation from the many threats we face. This requires the dedication of more than 225,000 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 — keeping America safe.

Our mission gives us five main areas of responsibility:

1. Guarding against Terrorism,
2. Securing our Borders,
3. Enforcing our Immigration Laws,
4. Improving our Readiness for, Response to and Recovery from Disasters, and
5. Maturing and Unifying the Department.

In achieving these goals, we are continually strengthening our partnerships with communities, first responders, law enforcement, and government agencies — at the State, local, tribal, Federal 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 five main areas of responsibility, see the DHS website at http://www.dhs.gov/xabout/responsibilities.shtm.

The regulations we have summarized below in the Department's Fall 2009 Regulatory Plan and in the Unified Agenda support the Department's five responsibility areas listed above. These regulations will improve the Department's ability to accomplish its mission.

The regulations we have identified in the this year's Fall Regulatory Plan continue to address recent legislative initiatives including, but not limited to, the following acts: the Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act), Pub. L. 110-53 (Aug. 3, 2007); the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Pub. L. 109-295 (Oct. 4, 2006); the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-220 (May 7, 2008); the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347 (Oct. 13, 2006); and the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. 110-329 (Sept. 30, 2008).

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 Unified Regulatory Agenda and Regulatory Plan. In addition, DHS senior leadership reviews each significant regulatory project to ensure that the project fosters and supports the Department's mission.

DHS 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. DHS is also committed to the principles described in Executive Order 12,866, as amended, such as promulgating regulations that are cost-effective and maximizing the net benefits of regulations. The Department values public involvement in the development of its Regulatory Plan, Unified Agenda, and regulations, and takes particular concern with the impact its rules have on small businesses. DHS and each of its components continue to emphasize the use of plain language in our notices and rulemaking documents to promote a better understanding of regulations and increased public participation in the Department's rulemakings.

The Fall 2009 Regulatory Plan for DHS includes regulations from the Department's major offices and directorates such as the National Protection and Programs Directorate (NPPD). In addition, it includes regulations from DHS components — including U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (Coast Guard), U.S. Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), the U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA) — that have active regulatory programs. Below is a discussion of the Fall 2009 Regulatory Plan for DHS offices and directorates as well as DHS regulatory components.

United States Citizenship and Immigration Services

U.S. Citizenship and Immigration Services (USCIS) administers immigration services and benefits through the rule of law while ensuring that no one is admitted to the United States who is a threat to public safety or national security. As a nation of immigrants, the United States has a strong commitment to welcoming those individuals who seek legal entry through our immigration system, and to also assist those in need of humanitarian protection against harm. USCIS seeks to welcome lawful immigrants while preventing exploitation of the immigration system and to create and maintain a high-performing, integrated, public service organization.

Based on a comprehensive review of the USCIS planned regulatory agenda, USCIS will promulgate several rulemakings to directly support these commitments and goals.

Regulations Related to the Commonwealth of Northern Mariana Islands

During 2009, USCIS issued a series of regulations to implement the transition of U.S. immigration law to the Commonwealth of Northern Mariana Islands (CNMI) as required under title VII of the Consolidated Natural Resources Act of 2008. USCIS will be issuing the following CNMI final rules during Fiscal Year 2010: ''CNMI Transitional Worker Classification,'' E-2 Nonimmigrant Status for Aliens of the CNMI with Long-Term Investor Status, and the joint USCIS/Department of Justice regulation ''Application of Immigration Regulations to the CNMI.''

Improvements to the Immigration System

USCIS strives to provide efficient, courteous, accurate, and responsive services to those who seek and qualify to come to our country, as well as to provide seamless, transparent, and dedicated customer support services. To improve our customer service goals, USCIS is pursuing a regulatory initiative that will provide for visa number lottery selection of H-1B petitions based on electronic registration.

Registration Requirements for Employment-Based Categories Subject to Numerical Limitations. USCIS is considering proposing a revised registration process for cap-subject H-1B petitioners. The rule would propose to create a process by which USCIS would randomly select a sufficient number of

timely filed registrations to meet the applicable cap. Only those petitioners whose registrations are randomly selected would be eligible to file an H-1B petition for a cap-subject prospective worker. Enhancing customer service, the rule would eliminate the need for petitioning employers to prepare and file complete H-1B petitions before knowing whether a prospective worker has ''won'' the H-1B lottery. The rule would also reduce the burden on USCIS of entering data and subsequently returning non-selected petitions to employers once the cap is reached.

Regulatory Changes Involving Humanitarian Benefits

USCIS offers protection to individuals who face persecution by adjudicating applications for refugees and asylees. Other humanitarian benefits are available to individuals who have been victims of severe forms of trafficking or criminal activity.

Asylum and Withholding Definitions. USCIS plans a regulatory effort to amend the regulations that govern asylum eligibility. The amendments are expected to focus on portions of the regulations that deal with determinations of whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This effort should provide greater stability and clarity in this important area of the law.

''T'' and ''U'' Nonimmigrants. USCIS plans additional regulatory initiatives related to T nonimmigrants (victims of trafficking), U nonimmigrants (victims of criminal activity), and Adjustment of Status for T and U status holders. By promulgating additional regulations related to these victims of specified crimes or severe forms of trafficking in persons, USCIS hopes to provide greater stability for these vulnerable groups, their advocates, and the community. These rulemakings will contain provisions that seek to ease documentary requirements for this vulnerable population and provisions that provide clarification to the law enforcement community. As well, publication of these rules will inform the community on how their petitions are adjudicated.

United States Coast Guard

The U.S. Coast Guard (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 and delivers daily value to the Nation through multi-mission resources, authorities, and capabilities.

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. The Coast Guard's ability to field versatile capabilities and highly-trained personnel is the U.S. Government's most significant and important strength 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 new millennium. 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. In performing its duties, the Coast Guard fulfills its three broad roles and responsibilities - maritime safety, maritime security, and maritime stewardship.

The rulemaking projects identified for the Coast Guard in the Unified Agenda, and the two rules appearing in the Fall 2009 Regulatory Plan below, contribute to the fulfillment of those responsibilities and reflect our regulatory policies. The Coast Guard has issued many rules supporting maritime safety, security and environmental protection as indicated by the wide range of topics covered in its rulemaking projects in this Unified Agenda.

Inspection of Towing Vessels. In 2004, Congress amended U.S. law by adding towing vessels to the types of commercial vessels that must be inspected by the Coast Guard. Congress also provided guidance relevant to the use of a safety management system as part of the inspection regime. The intent of the proposed rule is to promote safer work practices and reduce casualties on towing vessels by ensuring that towing vessels adhere to prescribed safety standards and safety management systems. The proposed rule was developed in cooperation with the Towing Vessel Safety Advisory Committee (TSAC). It would establish a new subchapter dedicated to towing vessels and covering vessel equipment, systems, operational standards, and inspection requirements. To implement this change, the Coast Guard is developing regulations to prescribe standards, procedures, tests, and inspections for towing vessels. This rulemaking supports maritime safety and maritime stewardship.

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters. This rule would set performance standards for the quality of ballast water discharged in U.S. waters and require that all vessels that operate in U.S. waters, are bound for ports or places in the U.S., and are equipped with ballast tanks, install and operate a Coast Guard approved Ballast Water Management System (BWMS) before discharging ballast water into U.S. waters. This would include vessels bound for offshore ports or places. As the effectiveness of ballast water exchange varies from vessel to vessel, the Coast Guard believes that setting performance standards would be the most effective way for approving BWMS that are environmentally protective and scientifically sound. Ultimately, the approval of BWMS would require procedures similar to those located in title 46, subchapter Q, of the Code of Federal Regulations, to ensure that the BWMS works not only in the laboratory but under shipboard conditions. These would include: pre-approval requirements, application requirements, land-based/shipboard testing requirements, design and construction requirements, electrical requirements, engineering requirements, and piping requirements. This requirement is intended to meet the directive from the National Invasive Species Act (NISA) requiring the Coast Guard to ensure to the maximum extent practicable that nonindigenous species (NIS) are not discharged into U.S. waters. This rulemaking supports maritime stewardship. As well, this rulemaking provides additional benefits. Ballast water discharged from ships is a

significant pathway for the introduction and spread of non-indigenous aquatic nuisance species. These organisms, which may be plants, animals, bacteria or pathogens, have the potential to displace native species, degrade native habitats, spread disease and disrupt human economic and social activities that depend on water resources.

The Coast Guard has supported the e-rulemaking initiative and, starting on the day of the first Federal Register publication in a rulemaking project, the public can submit comments electronically and view agency documents and public comments on the Federal Register's Document Management System, which is available online at http://www.regulations.gov/search/Regs/home.html#home. The Coast Guard endeavors to reduce the paperwork burden it places on the public and strives to issue only necessary regulations that are tailored to impose the least burden on society.

United States Customs and Border Protection

U.S. 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 and at official crossings 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 priority 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 also is responsible for administering laws concerning the importation into the United States of goods, 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 U.S.; maintaining export controls; and protecting American businesses from theft of their intellectual property.

In carrying out its priority 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 published several final and proposed rules during the last fiscal year and intends to propose and finalize others during the next fiscal year that are intended to improve security at our borders and ports of entry. We have highlighted some of these rules below.

Electronic System for Travel Authorization. On June 9, 2008, CBP published an interim final rule amending DHS regulations to implement the Electronic System for Travel Authorization (ESTA) for aliens who wish to enter the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. This rule is intended to fulfill the requirements of section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act). The rule establishes ESTA and delineates the data fields DHS has determined will be collected by the system. The rule requires that each alien traveling to the United States under the VWP must obtain electronic travel authorization via the ESTA System in advance of such travel. VWP travelers may obtain the required ESTA authorization by electronically submitting to CBP biographic and other information as currently required by the I-94W Nonimmigrant Alien Arrival/Departure Form (I-94W). By Federal Register notice dated November 13, 2008, the Secretary of Homeland Security informed the public that ESTA would become mandatory beginning January 12, 2009. This means that all VWP travelers must either obtain travel authorization in advance of travel under ESTA or obtain a visa prior to traveling to the United States.

By shifting from a paper to an electronic form and requiring the data in advance of travel, CBP will be able to determine before the alien departs for the U.S., the eligibility of nationals from VWP countries to travel to the United States and to determine whether such travel poses a law enforcement or security risk. By modernizing the VWP, the ESTA is intended to increase national security and provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays based on lengthy processes at ports of entry. CBP intends to issue a final rule during the next fiscal year.

Importer Security Filing and Additional Carrier Requirements. The Security and Accountability for Every Port Act of 2006 (SAFE Port Act), calls for CBP to promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting. See Pub. L. No. 109-347, § 203 (Oct. 13, 2006). This includes appropriate security elements of entry data for cargo destined for the United States by vessel prior to loading of such cargo on vessels at foreign seaports. Id. The SAFE Port Act requires that the information collected reasonably improve CBP's ability to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. Id.

On November 25, 2008, CBP published an interim final rule ''Importer Security Filing and Additional Carrier Requirements,'' amending CBP Regulations to require carriers and importers to provide to CBP, via a CBP approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. This rule, which became effective on January 26, 2009, improves CBP's risk assessment and targeting capabilities, facilitates the prompt release of legitimate cargo following its arrival in the United States, and assists CBP in increasing the security of the global trading system. The comment period for the interim final rule concluded on June 1, 2009. CBP is analyzing comments and conducting a structured review of certain flexibilities provided in the interim final rule. CBP intends to publish a final rule during the next fiscal year.

Implementation of the Guam-CNMI Visa Waiver Program. CBP published an interim final rule in November 2008 amending the DHS Regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver program. This rule implements portions of the Natural Resources Act of 2008 (CNRA), which extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and among other things, provides for a visa waiver program for travel to Guam and the CNMI. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI

without a visa. The rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver program.

Global Entry Program. Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, in the fall of 2009, CBP issued a notice of proposed rulemaking (NPRM), proposing to establish an international trusted traveler program, called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP now proposes to establish Global Entry as a permanent voluntary regulatory program. CBP will evaluate the public comments received in response to the NPRM, in order to develop a final rule.

The rules discussed above foster DHS's mission. 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. It is noted that certain regulatory authority of the United States Customs Service relating to customs revenue functions was retained by the Department of the Treasury (see the Department of the Treasury Regulatory Plan). In addition to its plans to continue issuing regulations to enhance border security, CBP, during fiscal year 2010, expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. CBP regulations regarding the customs revenue function are discussed in the Regulatory Plan of the Department of the Treasury.

Federal Emergency Management Agency

FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. In fiscal year 2010, FEMA will continue to serve that mission and promote the Department of Homeland Security's goals. In furtherance of the Department and agency's goals, in the upcoming fiscal year, FEMA will be working on regulations to implement provisions of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) (Public Law 109-295, Oct. 4, 2006), the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28, May 25, 2007), and to implement lessons learned from past events.

Disaster Assistance; Federal Assistance to Individuals and Households. FEMA intends to update the current interim rule titled ''Disaster Assistance; Federal Assistance to Individuals and Households.'' This rulemaking would implement section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) (42 U.S.C. 5121-5207). It would also make further revisions to 44 CFR part 206, subparts D (the Individuals and Households Program (IHP)) and remove subpart E (Individual and Family Grant Programs). Among other things, it would implement section 686 of PKEMRA to remove the IHP subcaps; implement section 685 regarding semi-permanent and permanent housing construction eligibility; revise FEMA's regulations related to individuals with disabilities pursuant to PKEMRA section 689; and revise FEMA's regulations to allow for the payment of security deposits and the costs of utilities, excluding telephone service, in accordance with section 689d of PKEMRA. This regulation also would propose to implement section 689f of PKEMRA by authorizing assistance to relocate individuals displaced from their predisaster primary residence, to and from alternate locations for short-or long-term accommodations.

Public Assistance Program regulations. FEMA will also work to revise the Public Assistance Program regulations in 44 CFR part 206 to reflect changes made to the Stafford Act by PKEMRA, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act) (Public Law 109-308, Oct., 2006), the Local Community Recovery Act of 2006 (Public Law 109-218, Apr. 20, 2006), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) (Public Law 109-347, Oct. 13, 2006), and to make other substantive and nonsubstantive clarifications and corrections to the Public Assistance regulations. The proposed changes would expand eligibility to include performing arts facilities and community arts centers pursuant to section 688 of PKEMRA; include education in the list of critical services pursuant to section 689h of PKEMRA, thus allowing private nonprofit educational facilities to be eligible for restoration funding; add accelerated Federal assistance to available assistance and precautionary evacuations to activities eligible for reimbursement pursuant to section 681 of PKEMRA; include household pets and service animals in essential assistance pursuant to section 689 of PKEMRA and section 4 of the PETS Act; provide for expedited payments of grant assistance for the removal of debris pursuant to section 610 of the SAFE Port Act; and allow for a contract to be set aside for award based on a specific geographic area pursuant to section 2 of the Local Community Recovery Act of 2006. Other changes would include adding or changing requirements to improve and streamline the Public Assistance grant application process.

Special Community Disaster Loans. In addition, FEMA intends to address public comments and publish a final rule that would implement loan cancellation provisions for Special Community Disaster Loans (SCDLs). FEMA provided SCDLs to local governments in the Gulf region following Hurricanes Katrina and Rita. This rule would not result in the automatic cancellation of all SCDLs. It would finalize the procedures and requirements for governments who received SCDLs to apply for cancellation of loan obligations as authorized by section 4502 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. The final rule would establish the procedures by which loan holders would provide FEMA with information that would then be used to determine when cancelation of a SCDL, in whole or in part, is warranted. The final rule would not apply to any loans made under FEMA's traditional Community Disaster Loans Program which is governed under separate regulations.

Federal Law Enforcement Training Center

The Federal Law Enforcement Training Center (FLETC) does not have any significant regulatory actions planned for fiscal year 2010.

United States Immigration and Customs Enforcement

The mission of the U.S. Immigration and Customs Enforcement (ICE) is to protect national security by enforcing our nation's customs and immigration laws. During fiscal year 2010, ICE will

pursue rulemaking actions that improve three critical subject areas: the processes for the Student and Exchange Visitor Program (SEVP); the detention of aliens who are subject to final orders of removal; and the electronic signature and storage of Form I-9, Employment Eligibility Verification.

Processes for the Student and Exchange Visitor Program. ICE will improve SEVP processes by publishing the Optional Practical Training (OPT) final rule, which will respond to comments on the OPT interim final rule (IFR). The IFR increased the maximum period of OPT from 12 months to 29 months for nonimmigrant students who have completed a science, technology, engineering, or mathematics (STEM) degree and who accept employment with employers who participate in the U.S. Citizenship and Immigration Services E-Verify employment verification program.

In addition, ICE will publish proposed revisions of 8 CFR 214.1-4 in a regulation that will clarify the criteria for F, M and J nonimmigrant status and for schools certified by SEVP, update policy and procedure for SEVP, remove obsolete provisions, and support the implementation of a major reprogramming of the Student and Exchange Visitor Information System (SEVIS), known as ''SEVIS II.''

Detention of Aliens Subject to Final Orders of Removal. ICE will also improve the post order custody review process in the final rule related to the Continued Detention of Aliens Subject to Final Orders of Removal in light of the Supreme Court's decisions in *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Clark v. Martinez*, 543 U.S. 371 (2005). ICE will also make conforming changes as required by the Homeland Security Act of 2002.

Electronic Signature and Storage of Form I-9, Employment Eligibility Verification. A final rule on the Electronic Signature and Storage of Form I-9, Employment Eligibility Verification will respond to comments and make minor changes to the IFR that was published in 2006.

National Protection and Programs Directorate

The goal of the National Protection and Programs Directorate (NPPD) is to advance the Department's risk-reduction mission. Reducing risk requires an integrated approach that encompasses both physical and virtual threats and their associated human elements.

Secure Handling of Ammonium Nitrate Program

The Secure Handling of Ammonium Nitrate Act, section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act, P.L. 110-161, amended the Homeland Security Act of 2002 to provide DHS with the authority to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.''

The Secure Handling of Ammonium Nitrate Act directs DHS to promulgate regulations requiring potential buyers and sellers of ammonium nitrate to register with DHS. As part of the registration process, the statute directs DHS to screen registration applicants against the Federal Government's Terrorist Screening Database. The statute also requires sellers of ammonium nitrate to verify the identities of those seeking to purchase it; to record certain information about each sale or transfer of ammonium nitrate; and to report thefts and losses of ammonium nitrate to DHS.

The rule would aid the Federal Government in its efforts to prevent the misappropriation of ammonium nitrate for use in acts of terrorism. By preventing such misappropriation, this rule will limit terrorists' abilities to threaten the public and to threaten the Nation's critical infrastructure and key resources. By securing the nation's supply of ammonium nitrate, it will be more difficult for terrorists to obtain ammonium nitrate materials for use in terrorist acts.

DHS published an advance notice of proposed rulemaking (ANPRM) for the Secure Handling of Ammonium Nitrate Program on October 29, 2008, and has received a number of public comments on that ANPRM. DHS is presently reviewing those comments and is in the process of developing a notice of proposed rulemaking (NPRM), which the Department hopes to issue in Spring 2010.

US-VISIT

The U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) is an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies aliens' identities, and verifies aliens' travel documents by comparison of biometric identifiers. The goals of US-VISIT are to enhance the security of U.S. citizens and visitors to the United States, facilitate legitimate travel and trade, ensure the integrity of the U.S. immigration system, and protect the privacy of visitors to the United States.

The US-VISIT program, through CBP officers or Department of State (DOS) consular offices, collects biometrics (digital fingerprints and photographs) from aliens seeking to enter the United States. DHS checks that information against government databases to identify suspected terrorists, known criminals, or individuals who have previously violated U.S. immigration laws. This system assists DHS and DOS in determining whether an alien seeking to enter the United States is, in fact, admissible to the United States under existing law. No biometric exit system currently exists, however, to assist DHS or DOS in determining whether an alien has overstayed the terms of his or her visa or other authorization to be present in the United States.

NPPD published an NPRM on April 24, 2008, proposing to establish an exit program at all air and sea ports of departure in the United States. Congress subsequently enacted the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110-329, 122 Stat. 3574, 3669 – 70 (Sept. 30, 2008), requiring DHS to delay issuance of a final rule until the conclusion of pilot tests to analyze the collection of biometrics from at least two air exit scenarios. DHS currently is reviewing the results of those tests. DHS continues to work to ensure that the final air/sea exit rule will be issued during fiscal year 2010.

Transportation Security Administration

The Transportation Security Administration (TSA) protects the Nation's transportation systems to ensure freedom of movement for people and commerce. TSA is committed to continuously setting the standard for excellence in transportation security through its people, processes, and technology as we work to meet the immediate and long-term needs of the transportation sector.

In fiscal year 2010, TSA will promote the DHS mission by emphasizing regulatory efforts that allow TSA to better identify, detect, and protect against threats against various modes of the transportation system, while facilitating the efficient movement of the traveling public, transportation workers, and cargo.

Screening of Air Cargo. TSA will finalize an interim final rule that codifies a statutory requirement of Implementing Recommendations of the 9/11 Commission Act of 2008 (9/11 Act)

that TSA establish a system to screen 100 percent of cargo transported on passenger aircraft by August 3, 2010. TSA is working to finalize the interim rule by November 2010. To assist in carrying out this mandate, TSA is establishing a voluntary program under which it will certify cargo screening facilities to screen cargo according to TSA standards prior to its being tendered to aircraft operators for carriage on passenger aircraft.

Large Aircraft Security Program (General Aviation). TSA plans to issue a supplemental notice of proposed rulemaking (SNPRM) to propose amendments to current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements and by adding new requirements for certain General Aviation (GA) aircraft operators. To date, the government's focus with regard to aviation security generally has been on air carriers and commercial operators. As vulnerabilities and risks associated with air carriers and commercial operators have been reduced or mitigated, terrorists may perceive that GA aircraft are more vulnerable and may view them as attractive targets. This rule would yield benefits in the areas of security and quality governance by expanding the mandatory use of security measures to certain operators of large aircraft that are not currently required to have a security plan. TSA published a notice of proposed rulemaking on October 30, 2008, and received over 7,000 public comments, generally urging significant changes to the proposal. The SNPRM will respond to the comments and contain proposals on addressing security in the GA sector.

Security Training for Non-Aviation Modes. TSA will propose regulations to enhance the security of several non-aviation modes of transportation, in accordance with the requirements of the 9/11 Act. In particular, TSA will propose regulations requiring freight railroads, passenger railroads, public transportation system operators, over-the-road bus operators, and motor carriers transporting certain hazardous materials to conduct security training for certain of their employees. Requiring security training programs of these employees is important, because it will prepare these employees, including frontline employees, for potential security threats and conditions.

Aircraft Repair Station Security. TSA will propose regulations to require repair stations that are certificated by the Federal Aviation Administration (FAA) under 14 CFR part 145 to adopt and implement standard security programs and to comply with security directives issued by TSA. The rule will also propose to codify the scope of TSA's existing inspection program and to require regulated parties to allow DHS officials to enter, inspect, and test property, facilities, and records relevant to repair stations. This rulemaking action implements section 1616 of the 9/11 Act.

Vetting, Adjudication, and Redress Process and Fees. TSA is developing a proposed rule to revise and standardize the procedures, adjudication criteria, and fees for most of the security threat assessments (STA) of individuals for which TSA is responsible. The scope of the rulemaking will include transportation workers from all modes of transportation who are required to undergo an STA in other regulatory programs. In addition, TSA will propose fees to cover the cost of the STAs, and credentials for some personnel. TSA plans to improve efficiencies in processing STAs and streamline existing regulations by simplifying language and removing redundancies. Standardized procedures and adjudication criteria will allow TSA to reduce the need for certain individuals to undergo multiple STAs; streamlined processes are intended to reduce the time needed for TSA to complete the adjudication of STAs.

United States Secret Service

The United States Secret Service does not have any significant regulatory actions planned for fiscal year 2010.

DHS Regulatory Plan for Fiscal Year 2010

A more detailed description of the priority regulations that comprise DHS's Fall 2009 Regulatory Plan follows.

DHS—Office of the Secretary (OS)

PROPOSED RULE STAGE

56. SECURE HANDLING OF AMMONIUM NITRATE PROGRAM

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

Sec 563 of the 2008 Consolidated Appropriations Act, Subtitle J—Secure Handling of Ammonium Nitrate, PL 110–161

CFR Citation:

6 CFR 31

Legal Deadline:

NPRM, Statutory, May 26, 2008, Publication of Notice of Proposed Rulemaking.

Abstract:

This rulemaking will implement the December 2007 amendment to the Homeland Security Act entitled the Secure Handling of Ammonium Nitrate. The amendment requires the Department of Homeland Security to ''regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . .to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.''

Statement of Need:

Pursuant to section 563 of the 2008 Consolidated Appropriations Act, the Secure Handling of Ammonium Nitrate Act, P.L. 110-161, the Department of Homeland Security is required to promulgate a rulemaking to create a registration regime for certain buyers and sellers of ammonium nitrate. The rule, as proposed by this NPRM, would create that regime, and will aid the Federal Government in its efforts to prevent the misappropriation of ammonium nitrate for use in acts of terrorism. By preventing such misappropriation, this rule will limit terrorists' abilities to threaten the public and to threaten the Nation's critical infrastructure and key resources. By securing the nation's supply of ammonium nitrate, it will be much more difficult for terrorists to obtain ammonium nitrate materials for use in improvised explosive devices (IEDs). As a result, there is a direct value in the deterrence of a catastrophic terrorist attack using ammonium nitrate such as the Oklahoma City attack that killed over 160, injured 853 people, and is estimated to have caused $652 million in damages ($921 million in $2009).

Summary of Legal Basis:

Section 563 of the 2008 Consolidated Appropriations Act, Subtitle J — Secure Handling of Ammonium Nitrate, PL 110-161, authorizes and requires this rulemaking.

Alternatives:

The Department of Homeland Security is required by statute to publish regulations implementing the Secure

Handling of Ammonium Nitrate Act. As part of its notice of proposed rulemaking, the Department will seek public comment on the numerous alternative ways in which the final Secure Handling of Ammonium Nitrate Program could carry out the requirements of the Secure Handling of Ammonium Nitrate Act.

Anticipated Cost and Benefits:

There will be costs to ammonium nitrate (AN) purchasers, including farms, fertilizer mixers, farm supply wholesalers and coops, golf courses, landscaping services, explosives distributors, mines, retail garden centers, and lab supply wholesalers. There will also be costs to AN sellers, such as ammonium nitrate fertilizer and explosive manufacturers, fertilizer mixers, farm supply wholesalers and coops, retail garden center, explosives distributors, fertilizer applicator services, and lab supply wholesalers. Costs will relate to the point of sale requirements, registration activities, recordkeeping, inspections/audits, and reporting of theft or loss. DHS plans to provide an initial regulatory flexibility analysis, which covers the populations and cost impacts on small business.

Because the value of the benefits of reducing risk of a terrorist attack is a function of both the probability of an attack and the value of the consequence, it is difficult to identify the particular risk reduction associated with the implementation of this rule. When the proposed rule is published, DHS will provide a break even analysis. The program elements that would help achieve the risk reductions will be discussed in the break even analysis. These elements and related qualitative benefits include point of sale identification requirements and requiring individuals to be screened against the TSDB resulting in known bad actors being denied the ability to purchase ammonium nitrate.

Risks:

Explosives containing ammonium nitrate are commonly used in terrorist attacks. Such attacks have been carried out both domestically and internationally. The 1995 Murrah Federal Building attack in Oklahoma City claimed the lives of 167 individuals and demonstrated firsthand to America how ammonium nitrate could be misused by terrorists. In addition to the Murrah Building attack, the Provisional Irish Republican Army used ammonium nitrate as part of its London, England bombing campaign in the early 1980s. More recently, ammonium nitrate was used in the 1998 East African Embassy bombings and in November 2003 bombings in Istanbul, Turkey. Additionally, since the events of 9/11, stores of ammonium nitrate have been confiscated during raids on terrorist sites around the world, including sites in Canada, England, India, and the Philippines.

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By preventing the misappropriation or use of ammonium nitrate in acts of terrorism, this rulemaking will support the Department's efforts to prevent terrorist attacks and to reduce the Nation's vulnerability to terrorist attacks. This rulemaking is complementary to other Department programs seeking to reduce the risks posed by terrorism, including the Chemical Facility Anti-terrorism Standards program (which seeks in part to prevent terrorists from gaining access to dangerous chemicals) and the Transportation Worker Identification Credential program (which seeks in part to prevent terrorists from gaining access to certain critical infrastructure), among other programs.

Timetable:

Action	Date	FR Cite
ANPRM	10/29/08	73 FR 64280
Correction	11/05/08	73 FR 65783
ANPRM Comment Period End	12/29/08	
NPRM	04/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Dennis Deziel
Infrastructure Security Compliance Division
Department of Homeland Security
Washington, DC 20528
Phone: 703 235–5263
Email: dennis.deziel@dhs.gov

RIN: 1601–AA52

DHS—OS

FINAL RULE STAGE

57. COLLECTION OF ALIEN BIOMETRIC DATA UPON EXIT FROM THE UNITED STATES AT AIR AND SEA PORTS OF DEPARTURE; UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (US–VISIT)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184 to 1185 (pursuant to EO 13323); 8 USC 1221; 8 USC 1365a, 1365b; 8 USC 1379; 8 USC 1731 to 1732

CFR Citation:

8 CFR 215.1; 8 CFR 231.4

Legal Deadline:

None

Abstract:

DHS established the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) in accordance with a series of legislative mandates requiring that DHS create an integrated automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates travel documents. This rule requires aliens to provide biometric identifiers at entry and upon departure at any air and sea port of entry at which facilities exist to collect such information.

Statement of Need:

This rule establishes an exit system at all air and sea ports of departure in the United States. This rule requires aliens subject to United States Visitor and Immigrant Status Indicator Technology Program biometric requirements upon entering the United States to also provide biometric identifiers prior to departing the United States from air or sea ports of departure.

Alternatives:

The proposed rule would require aliens who are subject to US-VISIT biometric requirements upon entering the United

States to provide biometric information before departing from the United States at air and sea ports of entry. The rule proposed a performance standard for commercial air and vessel carriers to collect the biometric information and to submit this information to DHS no later than 24 hours after air carrier staff secure the aircraft doors on an international departure, or for sea travel, no later than 24 hours after the vessel's departure from a U.S. port. DHS is considering numerous alternatives based upon public comment on the alternatives in the NPRM. Alternatives included various points in the process, kiosks, and varying levels of responsibility for the carriers and government. DHS may select another variation between the outer bounds of the alternatives presented or another alternative if subsequent analysis warrants.

Anticipated Cost and Benefits:

The proposed rule expenditure and delay costs for a ten-year period are estimated at $3.5 billion. Alternative costs range from $3.1 billion to $6.4 billion. US-VISIT assessed seven categories of economic impacts other than direct expenditures. Of these two are economic costs: social costs resulting from increased traveler queue and processing time; and social costs resulting from increased flight delays. Ten-year benefits are estimated at $1.1 billion. US-VISIT assessed seven categories of economic impacts other than direct expenditures. Of these five are benefits, which include costs that could be avoided, for each alternative: cost avoidance resulting from improved detection of aliens overstaying visas; cost avoidance resulting from improved U.S. Immigrations and Customs Enforcement (ICE) efficiency attempting apprehension of overstays; cost avoidance resulting from improved efficiency processing Exit/Entry data; improved compliance with NSEERS requirements due to the improvement in ease of compliance; and improved National Security Environment. These benefits are measured quantitatively or qualitatively.

Timetable:

Action	Date	FR Cite
NPRM	04/24/08	73 FR 22065
NPRM Comment Period End	06/23/08	
Final Rule	07/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Helen DeThomas
Management and Program Analyst
Department of Homeland Security
1616 N. Fort Myer Drive
Arlington, VA 22203
Phone: 202 298–5173
Email: helen.dethomas@dhs.gov

Related RIN: Previously reported as 1650–AA04

RIN: 1601–AA34

DHS—U.S. Citizenship and Immigration Services (USCIS)

PROPOSED RULE STAGE

58. ASYLUM AND WITHHOLDING DEFINITIONS

Priority:

Other Significant

Legal Authority:

8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation:

8 CFR 208

Legal Deadline:

None

Abstract:

This rule proposes to amend Department of Homeland Security regulations that govern asylum eligibility. The amendments focus on portions of the regulations that deal with the definitions of membership in a particular social group, the requirements for failure of State protection, and determinations about whether persecution is inflicted on account of a protected ground. This rule codifies long-standing concepts of the definitions. It clarifies that gender can be a basis for membership in a particular social group. It also clarifies that a person who has suffered or fears domestic violence may under certain circumstances be eligible for asylum on that basis. After the Board of Immigration Appeals published a decision on this issue in 1999, Matter of R-A-, Int. Dec. 3403 (BIA 1999), it became clear that the governing regulatory standards required clarification. The Department of Justice began this regulatory initiative by publishing a proposed rule addressing these issues in 2000.

Statement of Need:

This rule provides guidance on a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal (withholding) claims. The interpretive issues include whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This rule will aid in the adjudication of claims made by applicants whose claims fall outside of the rubric of the protected grounds of race, religion, nationality, or political opinion. One example of such claims which often fall within the particular social group ground concerns people who have suffered or fear domestic violence. This rule is expected to consolidate issues raised in a proposed rule in 2000 and to address issues that have developed since the publication of the proposed rule. This should provide greater stability and clarity in this important area of the law.

Summary of Legal Basis:

The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees (1951 Convention) contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin ''who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'' Section 101(a)(42) of the Immigration and Nationality Act.

Alternatives:

A sizable body of interpretive case law has developed around the meaning of the refugee definition. Historically, much of this case law has addressed

more traditional asylum and withholding claims based on the protected grounds of race, religion, nationality, or political opinion. In recent years, however, the United States increasingly has encountered asylum and withholding applications with more varied bases, related, for example, to an applicant's gender or sexual orientation. Many of these new types of claims are based on the ground of ''membership in a particular social group,'' which is the least well-defined of the five protected grounds within the refugee definition.

On December 7, 2000, a proposed rule was published in the Federal Register providing guidance on the definitions of ''persecution'' and ''membership in a particular social group.'' Prior to publishing a final rule, the Department will be considering how the nexus between persecution and a protected ground might be further conceptualized; how membership in a particular social group might be defined and evaluated; and what constitutes a State's inability or unwillingness to protect the applicant where the persecution arises from a non-State actor. This rule will provide guidance to the following adjudicators: USCIS asylum officers, Department of Justice Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals. The alternative to publishing this rule would be to allow the standards governing this area of law to continue to develop piecemeal through administrative and judicial precedent. This approach has resulted in inconsistent and confusing standards and the Department has therefore determined that promulgation of the final rule is necessary.

Anticipated Cost and Benefits:

By providing a clear framework for key asylum and withholding issues, we anticipate that adjudicators will have clear guidance, increasing administrative efficiency and consistency in adjudicating these cases. The rule will also promote a more consistent and predictable body of administrative and judicial precedent governing these types of cases. We anticipate that this will enable applicants to better assess their potential eligibility for asylum and to present their claims more efficiently when they believe that they may qualify, thus reducing the resources spent on adjudicating claims that do not qualify. In addition, a more consistent and predictable body of law on these issues will likely result in fewer appeals, both administrative and judicial, and reduce the associated litigation costs. The Department has no way of accurately predicting how this rule will impact the number of asylum applications filed in the US. Based on anecdotal evidence and on the reported experience of other nations that have adopted standards under which the results are similar to those we anticipate from this rule, we do not believe this rule will cause a large change in the number of asylum applications filed.

Risks:

The failure to promulgate a final rule in this area presents significant risks of further inconsistency and confusion in the law. The government's interests in fair, efficient and consistent adjudications would be compromised.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76588
NPRM	09/00/10	
NPRM Comment Period End	11/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS No. 2092-00

Transferred from RIN 1115-AF92

Agency Contact:

Jedidah Hussey
Deputy Chief, Asylum Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 3300
Washington, DC 20529
Phone: 202 272–1663
Email: jedidah.m.hussey@dhs.gov

RIN: 1615–AA41

DHS—USCIS

59. REGISTRATION REQUIREMENTS FOR EMPLOYMENT–BASED CATEGORIES SUBJECT TO NUMERICAL LIMITATIONS

Priority:

Other Significant

Legal Authority:

8 USC 1184(g)

CFR Citation:

8 CFR 103; 8 CFR 299

Legal Deadline:

None

Abstract:

The Department of Homeland Security is proposing to amend its regulations governing petitions filed on behalf of alien workers subject to annual numerical limitations. This rule proposes an electronic registration program for petitions subject to numerical limitations contained in the Immigration and Nationality Act (the Act). Initially, the program would be for the H-1B nonimmigrant classification; however, other nonimmigrant classifications will be added as needed. This action is necessary because the demand for H-1B specialty occupation workers by U.S. companies generally exceeds the numerical limitation. This rule is intended to allow USCIS to more efficiently manage the intake and lottery process for these H-1B petitions.

Statement of Need:

U.S. Citizenship and Immigration Services (USCIS) proposes to establish a mandatory Internet-based electronic registration process for U.S. employers seeking to file H-1B petitions for alien workers subject to either the 65,000 or 20,000 caps. This registration process would allow U.S. employers to electronically register for consideration of available H-1B cap numbers. The mandatory proposed registration process will alleviate administrative burdens on USCIS service centers and eliminate the need for U.S. employers to needlessly prepare and file H-1B petitions without any certainty that an H-1B cap number will ultimately be allocated to the beneficiary named on that petition.

Summary of Legal Basis:

Section 214(g) of the Immigration and Nationality Act provides limits on the number of alien temporary workers who may be granted H-1B nonimmigrant status each fiscal year (commonly known as the ''cap''). USCIS has responsibility for monitoring the requests for H-1B workers and administers the distribution of available H-1B cap numbers in light of these limits.

Alternatives:

To ensure a fair and orderly distribution of H-1B cap numbers, USCIS evaluated its current random selection process, and has found that when it receives a significant number of H-1B petitions within the first few days of the H-1B filing period, it is extremely difficult to handle the volume of petitions received in advance of the H-1B random selection process. Further, the current petition process of preparing and mailing H-1B petitions, with the required filing fee, can be burdensome and costly for employers, if the petition is returned because the cap was reached and the petition was not selected in the random selection process.

Accordingly, this rule proposes to implement a new process to allow U.S. employers to electronically register for consideration of available H-1B cap numbers without having to first prepare and submit the petition.

Risks:

There is a risk that a petitioner will submit multiple petitions for the same H-1B beneficiary so that the U.S. employer will have a better chance of his or her petition being selected. Accordingly, should USCIS receive multiple petitions for the same H-1B beneficiary by the same petitioner, the system will only accept the first petition and reject the duplicate petitions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/10	
NPRM Comment Period End	05/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

2443-08

Agency Contact:

Greg Richardson
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
2nd Floor
Washington, DC 20529
Phone: 202 272–8465
Email: gregory.richardson@dhs.gov

RIN: 1615–AB71

DHS—USCIS

FINAL RULE STAGE

60. NEW CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS ELIGIBLE FOR THE T NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224 to 1227; 8 USC 1252 to 1252a; 22 USC 7101; 22 USC 7105; . . .

CFR Citation:

8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

Legal Deadline:

None

Abstract:

T classification was created by 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386. The T nonimmigrant classification was designed for eligible victims of severe forms of trafficking in persons who aid the Government with their case against the traffickers and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States after having completed their assistance to law enforcement. The rule establishes application procedures and responsibilities for the Department of Homeland Security and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

Statement of Need:

T nonimmigrant status is available to eligible victims of severe forms of trafficking in persons who have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons, and who can demonstrate that they would suffer extreme hardship involving unusual and severe harm if removed from the United States. This rule addresses the essential elements that must be demonstrated for classification as a T nonimmigrant alien; the procedures to be followed by applicants to apply for T nonimmigrant status; and evidentiary guidance to assist in the application process.

Summary of Legal Basis:

Section 107(e) of the Trafficking Victims Protection Act (TVPA), Public Law 106-386, established the T classification to create a safe haven for certain eligible victims of severe forms of trafficking in persons, who assist law enforcement authorities in investigating and prosecuting the perpetrators of these crimes.

Alternatives:

To develop a comprehensive Federal approach to identifying victims of severe forms of trafficking in persons, to provide them with benefits and services, and to enhance the Department of Justice's ability to prosecute traffickers and prevent trafficking in persons in the first place, a series of meetings with stakeholders were conducted with representatives from key Federal agencies; national, state, and local law enforcement associations; non-profit, community-based victim rights organizations; and other groups. Suggestions from these stakeholders were used in the drafting of this regulation.

Anticipated Cost and Benefits:

There is no cost associated with this regulation. Applicants for T nonimmigrant status do not pay application or biometric fees.

The anticipated benefits of these expenditures include: Assistance to trafficked victims and their families, prosecution of traffickers in persons, and the elimination of abuses caused by trafficking activities.

Benefits which may be attributed to the implementation of this rule are expected to be:

1. An increase in the number of cases brought forward for investigation and/or prosecution;

2. Heightened awareness by the law enforcement community of trafficking in persons;

3. Enhanced ability to develop and work cases in trafficking in persons cross-organizationally and multi-jurisdictionally, which may begin to influence changes in trafficking patterns.

Risks:

There is a 5,000-person limit to the number of individuals who can be granted T-1 status per fiscal year. Eligible applicants who are not granted T-1 status due solely to the numerical limit will be placed on a waiting list to be maintained by U.S. Citizenship and Immigration Services (USCIS).

To protect T-1 applicants and their families, USCIS will use various means to prevent the removal of T-1 applicants on the waiting list, and their family members who are eligible for derivative T status, including its existing authority to grant deferred action, parole, and stays of removal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/02	67 FR 4784
Interim Final Rule Effective	03/04/02	
Interim Final Rule Comment Period End	04/01/02	
Interim Final Rule	09/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

CIS No. 2132-01; AG Order No. 2554-2002

There is a related rulemaking, CIS No. 2170-01, the new U nonimmigrant status (RIN 1615-AA67).

Transferred from RIN 1115-AG19

Agency Contact:

Laura M. Dawkins
Chief, Family Immigration and Victim Protection Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 2304
Washington, DC 20529
Phone: 202 272–8398
Email: laura.dawkins@dhs.gov

RIN: 1615–AA59

DHS—USCIS

61. ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT FOR ALIENS IN T AND U NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224 to 1227; 8 USC 1252 to 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105

CFR Citation:

8 CFR 204; 8 CFR 214; 8 CFR 245

Legal Deadline:

None

Abstract:

This rule sets forth measures by which certain victims of severe forms of trafficking who have been granted T nonimmigrant status and victims of certain criminal activity who have been granted U nonimmigrant status may apply for adjustment to permanent resident status in accordance with Public Law 106-386, Victims of Trafficking and Violence Protection Act of 2000, and Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005. The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

Statement of Need:

This regulation is necessary to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to that of lawful permanent residents. T nonimmigrant status is available to aliens who are victims of a severe form of trafficking in persons and who are assisting law enforcement in the investigation or prosecution of the acts of trafficking. U nonimmigrant status is available to aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes.

Summary of Legal Basis:

This rule implements the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386, 114 Stat. 1464 (Oct. 28, 2000), as amended, to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to that of lawful permanent residents.

Alternatives:

USCIS did not consider alternatives to managing T and U applications for adjustment of status. Ease of administration dictates that adjustment of status applications from T and U nonimmigrants would be best handled on a first in, first out basis, because that is the way applications for T and U status are currently handled.

Anticipated Cost and Benefits:

USCIS uses fees to fund the cost of processing applications and associated support benefits. The fees to be collected resulting from this rule will be approximately $3 million dollars in the first year, $1.9 million dollars in the second year, and an average about $32 million dollars in the third and subsequent years. To estimate the new fee collections to be generated by this rule, USCIS estimated the fees to be collected for new applications for adjustment of status from T and U nonimmigrants and their eligible family members. After that, USCIS estimated fees from associated applications that are required such as biometrics, and others that are likely to occur in direct connection with applications for adjustment, such as employment authorization or travel authorization.

The anticipated benefits of these expenditures include: Continued assistance to trafficked victims and their families, increased investigation and prosecution of traffickers in persons, and the elimination of abuses caused by trafficking activities.

Benefits that may be attributed to the implementation of this rule are expected to be:

1. An increase in the number of cases brought forward for investigation and/or prosecution;

2. Heightened awareness of trafficking-in-persons issues by the law enforcement community; and

3. Enhanced ability to develop and work cases in trafficking in persons cross-organizationally and multi-jurisdictionally, which may begin to influence changes in trafficking patterns.

Risks:

Congress created the U nonimmigrant status (''U visa'') to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Although there are no specific data on alien crime victims, statistics maintained by the Department of Justice have shown that aliens, especially those aliens without legal status, are often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/12/08	73 FR 75540
Interim Final Rule Effective	01/12/09	
Interim Final Rule Comment Period End	02/10/09	
Interim Final Rule	09/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

CIS No. 2134-01

Transferred from RIN 1115-AG21

Agency Contact:

Laura M. Dawkins
Chief, Family Immigration and Victim Protection Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 2304
Washington, DC 20529
Phone: 202 272–8398
Email: laura.dawkins@dhs.gov

RIN: 1615–AA60

DHS—USCIS

62. NEW CLASSIFICATION FOR VICTIMS OF CERTAIN CRIMINAL ACTIVITY; ELIGIBILITY FOR THE U NONIMMIGRANT STATUS

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; . . .

CFR Citation:

8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

Legal Deadline:

Other, Statutory, January 5, 2006, Regulations need to be promulgated by July 5, 2006.

Public Law 109-162, Violence Against Women and Department of Justice Reauthorization Act of 2005.

Abstract:

This rule sets forth application requirements for a new nonimmigrant status. The U classification is for non-U.S. Citizen/Lawful Permanent Resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per year.

This rule establishes the procedures to be followed in order to petition for the U nonimmigrant classifications. Specifically, the rule addresses the essential elements that must be demonstrated to receive the nonimmigrant classification; procedures that must be followed to make an application and evidentiary guidance to assist in the petitioning process. Eligible victims will be allowed to remain in the United States.The Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457, made amendments to the T nonimmigrant status provisions of the Immigration and Naturalization Act. The Department will issue another interim final rule to make the changes required by recent legislation and to provide the opportunity for notice and comment.

Statement of Need:

This rule provides requirements and procedures for aliens seeking U nonimmigrant status. U nonimmigrant classification is available to alien victims of certain criminal activity who assist government officials in the investigation or prosecution of that criminal activity. The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States

Summary of Legal Basis:

Congress created the U nonimmigrant classification in the Battered Immigrant Women Protection Act of 2000 (BIWPA). Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes, while offering protection to victims of such crimes. Congress also sought to encourage law enforcement officials to better serve immigrant crime victims.

Alternatives:

USCIS has identified four alternatives, the first being chosen for the rule:

1. USCIS would adjudicate petitions on a first in, first out basis. Petitions received after the limit has been reached would be reviewed to determine whether or not they are approvable but for the numerical cap. Approvable petitions that are reviewed after the numerical cap has been reached would be placed on a waiting list and written notice sent to the petitioner. Priority on the waiting list would be based upon the date on which the petition is filed. USCIS would provide petitioners on the waiting list with interim relief until the start of the next fiscal year in the form of deferred action, parole, or a stays of removal.

2. USCIS would adjudicate petitions on a first in, first out basis, establishing a waiting list for petitions that are pending or received after the numerical cap has been reached. Priority on the waiting list would be based upon the date on which the petition was filed. USCIS would not provide interim relief to petitioners whose petitions are placed on the waiting list.

3. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be reviewed to identify particularly compelling cases for adjudication. New filings would be rejected once the numerical cap is reached. No official waiting list would be established; however, interim relief until the start of the next fiscal year would be provided for some compelling cases. If a case was not particularly

compelling, the filing would be denied or rejected.

4. USCIS would adjudicate petitions on a first in, first out basis. However, new filings would be rejected once the numerical cap is reached. No waiting list would be established, nor would interim relief be granted.

Anticipated Cost and Benefits:

USCIS estimates the total annual cost of this interim rule to be $6.2 million. This cost includes the biometric services fee that petitioners must pay to USCIS, the opportunity cost of time needed to submit the required forms, the opportunity cost of time required for a visit to an Application Support Center, and the cost of traveling to an Application Support Center.

This rule will strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.

Risks:

In the case of witness tampering, obstruction of justice, or perjury, the interpretive challenge for USCIS was to determine whom the BIWPA was meant to protect, given that these criminal activities are not targeted against a person. Accordingly it was determined that a victim of witness tampering, obstruction of justice, or perjury is an alien who has been directly and proximately harmed by the perpetrator of one of these three crimes, where there are reasonable grounds to conclude that the perpetrator principally committed the offense as a means: (1) to avoid or frustrate efforts to investigate, arrest, prosecute, or otherwise bring him or her to justice for other criminal activity; or (2) to further his or her abuse or exploitation of, or undue control over, the alien through manipulation of the legal system.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/07	72 FR 53013
Interim Final Rule Effective	10/17/07	
Interim Final Rule Comment Period End	11/17/07	
Interim Final Rule	09/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

Additional Information:

Transferred from RIN 1115-AG39

Agency Contact:

Laura M. Dawkins
Chief, Family Immigration and Victim Protection Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Suite 2304
Washington, DC 20529
Phone: 202 272–8398
Email: laura.dawkins@dhs.gov

RIN: 1615–AA67

DHS—USCIS

63. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL NONIMMIGRANT INVESTOR CLASSIFICATION

Priority:

Other Significant

Legal Authority:

8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

On May 8, 2008, Public Law 110-229, Commonwealth Natural Resources Act, established a transitional period for the application of the Immigration and Nationality Act (INA) to the Commonwealth of the Northern Mariana Islands (CNMI). Although the CNMI is subject to most U.S. laws, the CNMI has administered its own immigration system under the terms of its 1976 covenant with the United States. The Department of Homeland Security is proposing to amend its regulations by creating a new E2 CNMI Investor classification for the duration of the transition period. These temporary provisions are necessary to reduce the potential harm to the CNMI economy before these foreign workers and investors are required to convert into U.S. immigrant or nonimmigrant visa classifications.

Statement of Need:

This final rule responds to a Congressional mandate that requires the Federal Government to assume responsibility for visas for entry to CNMI by foreign investors.

Anticipated Cost and Benefits:

Public Costs: This rule reduces the employer's annual cost by $200 per year ($500 - $300), plus any further reduction caused by eliminating the paperwork burden associated with the CNMI's process. In 2006 - 2007, there were 464 long-term business entry permit holders and 20 perpetual foreign investor entry permit holders and retiree investor permit holders, totaling 484, or approximately 500 foreign registered investors. The total savings to employers from this rule is thus expected to be $100,000 per year ($500 x $200). Cost to the Federal Government: The yearly Federal Government cost is estimated at $42,310.

Benefits: The potential abuse of the visa system by those seeking to illegally emigrate from the CNMI to Guam or elsewhere in the United States reduces the integrity of the United States immigration system by increasing the ease by which aliens may unlawfully enter the United States through the CNMI. Federal oversight and regulations of CNMI foreign investors should help reduce abuse by foreign employees in the CNMI, and should help reduce the opportunity for aliens to use the CNMI as an entry point into the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/14/09	74 FR 46938
NPRM Comment Period End	10/14/09	
Final Action	03/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Local, State

Additional Information:

CIS No. 2458-08

Agency Contact:

Steven Viger
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Washington, DC 20529
Phone: 202 272–1470
Email: steven.w.viger@dhs.gov

RIN: 1615–AB75

DHS—USCIS

64. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL WORKERS CLASSIFICATION

Priority:

Other Significant

Legal Authority:

PL 110–229

CFR Citation:

8 CFR 214.2

Legal Deadline:

None

Abstract:

The Department of Homeland Security (DHS) is creating a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification (CW classification) in accordance with title VII of the Consolidated Natural Resources Act of 2008 (CNRA). The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act (INA). A CW transitional worker is an alien worker who is ineligible for another classification under the INA and who performs services or labor for an employer in the CNMI. The CNRA imposes a five-year transition period before the INA requirements become fully applicable in the CNMI. The new CW classification will be in effect for the duration of that transition period, unless extended by the Secretary of Labor. The rule also establishes employment authorization incident to CW status.

Statement of Need:

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) created a new, temporary, Commonwealth of the Northern Mariana Islands (CNMI)-only transitional worker classification. The transitional worker program is intended to provide for an orderly transition from the CNMI permit system to the U.S. federal immigration system under the Immigration and Nationality Act.

Anticipated Cost and Benefits:

Each of the estimated 22,000 CNMI transitional workers will be required to pay a $320 fee per year, for an annualized cost to the affected public of $7 million. However, since these workers will not have to pay CNMI fees, the total present value costs of this rule are a net cost savings ranging from $9.8 million to $13.4 million depending on the validity period of CW status (1 or 2 years), whether out-of-status aliens present in the CNMI are eligible for CW status, and the discount rate applied. The intended benefits of the rule include improvements in national and homeland security and protection of human rights.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/09	74 FR 55094
Interim Final Rule Comment Period End	11/27/09	
Final Action	05/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State

Agency Contact:

Greg Richardson
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
2nd Floor
Washington, DC 20529
Phone: 202 272–8465
Email: gregory.richardson@dhs.gov

RIN: 1615–AB76

DHS—USCIS

65. REVISIONS TO FEDERAL IMMIGRATION REGULATIONS FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS; CONFORMING REGULATIONS

Priority:

Other Significant

Legal Authority:

PL 110–229

CFR Citation:

8 CFR 208 and 209; 8 CFR 214 and 215; 8 CFR 217; 8 CFR 235; 8 CFR 248; 8 CFR 264; 8 CFR 274a

Legal Deadline:

Final, Statutory, November 28, 2009, Consolidated Natural Resources Act (CNRA) of 2008.

Abstract:

The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act (CNRA) of 2008. The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing asylum and credible fear of persecution determinations; references to the geographical ''United States'' and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Form I-9, Employment Eligibility Verification (Form I-9); employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program. Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal. The purpose of this rule is to ensure that the regulations apply to persons and entities arriving in or physically present in the CNMI to the extent authorized by the CNRA.

Statement of Need:

The Department of Homeland Security (DHS) and the Department of Justice (DOJ) are implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI). This rule amends the regulations governing: asylum and credible fear of persecution determinations; references to the geographical ''United States'' and its territories and possessions; alien classifications authorized for employment; documentation acceptable for Employment Eligibility Verification; employment of unauthorized aliens; and adjustment of status of immediate relatives admitted under the Guam-CNMI Visa Waiver Program.

Additionally, this rule makes a technical change to correct a citation error in the regulations governing the Visa Waiver Program and the regulations governing asylum and withholding of removal.

Anticipated Cost and Benefits:

The stated goals of the CNRA are to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth. While those goals are expected to be partly facilitated by the changes made in this rule, they are general and qualitative in nature. There are no specific changes made by this rule with sufficiently identifiable direct or indirect economic impacts so as to be quantified.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/09	74 FR 55725
Interim Final Rule Comment Period End	11/27/09	
Final Action	10/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

CIS 2460-08

Agency Contact:

Evelyn Sahli
Chief, Policy and Regulation Management Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW.
Washington, DC 20529
Phone: 202 272–1722

RIN: 1615–AB77

DHS—U.S. Coast Guard (USCG)

PROPOSED RULE STAGE

66. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG–2001–10486)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

16 USC 4711

CFR Citation:

33 CFR 151

Legal Deadline:

None

Abstract:

This rulemaking would propose to add performance standards to 33 CFR part 151, subparts C and D, for all discharges of ballast water. It supports the Coast Guard's broad roles and responsibilities of maritime safety and maritime stewardship. This project is significant due to high interest from Congress and several Federal and State agencies, as well as costs imposed on industry.

Statement of Need:

The unintentional introductions of nonindigenous species into U.S. waters via the discharge of vessels' ballast water has had significant impacts to the nation's aquatic resources, biological diversity, and coastal infrastructures. This rulemaking would amend the ballast water management requirements (33 CFR part 151 subparts C and D) and establish standards that specify the level of biological treatment that must be achieved by a ballast water treatment system before ballast water can be discharged into U.S. waters. This would increase the Coast Guard's ability to protect U.S. waters against the introduction of nonindigenous species via ballast water discharges.

Summary of Legal Basis:

Congress has directed the Coast Guard to develop ballast water regulations to prevent the introduction of nonindigenous species into U.S. waters under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and reauthorized and amended it with the National Invasive Species Act of 1996. This rulemaking does not have a statutory deadline.

Alternatives:

We would use the standard rulemaking process to develop regulations for ballast water discharge standards. Nonregulatory alternatives such as navigation and vessel inspection circulars and the Marine Safety Manual have been considered and may be used for the development of policy and directives to provide the maritime industry and our field offices guidelines for implementation of the regulations. Nonregulatory alternatives cannot be substituted for the standards we would develop with this rule. Congress has directed the Coast Guard to review and revise its BWM regulations not less than every three years based on the best scientific information available to the Coast Guard at the time of that review.

This proposed rule includes a phase-in schedule (Phase-one and Phase-two) for the implementation of ballast water discharge standards based on vessel's ballast water capacity and build date. The proposed phase-one standard is the same standard adopted by the International Maritime Organization (IMO) for concentration of living organisms in ballast water discharges. For phase-two, we propose incorporating a practicability review to determine whether technology to achieve a more stringent standard than the IMO can practicably be implemented.

Anticipated Cost and Benefits:

This proposed rule would affect vessels operating in U.S. waters that are equipped with ballast tanks. Owners and operators of these vessels would be required to install and operate Coast Guard approved ballast water management systems before discharging ballast water into U.S. waters. Cost estimates for individual vessels vary due to the vessel class, type and size, and the particular technology of the ballast water management system installed. We expect the highest annual costs of this rulemaking during the periods of installation as the bulk of the existing fleet of vessels must meet the standards according to proposed phase-in schedules. The primary cost driver of this rulemaking is the installation costs for all existing vessels. Operating and maintenance costs are substantially less than the installation costs.

We evaluated the benefits of this rulemaking by researching the impact of aquatic nonindigenous species (NIS) invasions in the U.S. waters, since ballast water discharge is one of the main vectors of NIS introductions in the marine environment. The primary benefit of this rulemaking would be the economic and environmental damages avoided from the reduction in the number of new invasions as a result of the reduction in concentration of organisms in discharged ballast water. We expect that the benefits of this rulemaking would increase as the technology is developed to achieve more stringent ballast water discharge standards.

At this time, we estimate that this rulemaking would have annual impacts that exceed $100 million and result in an economically significant regulatory action.

Risks:

Ballast water discharged from ships is a significant pathway for the introduction and spread of non-indigenous aquatic nuisance species. These organisms, which may be plants, animals, bacteria or pathogens, have the potential to displace native species, degrade native habitats, spread disease and disrupt human economic and social activities that depend on water resources. It is estimated that for areas such as the Great Lakes, San Francisco Bay, and Chesapeake Bay, one nonindigenous species becomes established per year. At this time, it is difficult to estimate the reduction of risk that would be accomplished by promulgating this rulemaking; however, it is expected a major reduction will occur. We are currently requesting information on costs and benefits of more stringent ballast water discharge standards.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/02	67 FR 9632
ANPRM Comment Period End	06/03/02	
NPRM	08/28/09	74 FR 44632
Public Meeting	09/14/09	74 FR 46964
Public Meeting	09/22/09	74 FR 48190
Public Meeting	09/28/09	74 FR 49355
Notice—Extension of Comment Period	10/15/09	74 FR 52941
Public Meeting	10/22/09	74 FR 54533
Public Meeting Correction	10/26/09	74 FR 54944
NPRM Comment Period End	12/04/09	74 FR 52941
Final Rule	12/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Mr. John C Morris
Project Manager
Department of Homeland Security
U.S. Coast Guard
2100 2nd Street, SW, STOP 7126
Washington, DC 20593–7126
Phone: 202 372–1433
Email: john.c.morris@uscg.mil

RIN: 1625–AA32

DHS—USCG

67. INSPECTION OF TOWING VESSELS (USCG–2006–24412)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

46 USC 3301, 46 USC 3305, 46 USC 3306, and 46 USC 3103; 46 USC 3703 [DHS Delegation No 0170.1]

CFR Citation:

33 CFR 156 and 157; 33 CFR 163 and 164; 46 CFR 135 to 146

Legal Deadline:

None

Abstract:

This rulemaking would implement a program of inspection for certification of towing vessels, which were previously uninspected. It would prescribe standards for safety management systems and third-party entities along with standards for construction, operation, vessel systems, safety equipment, and recordkeeping. Due to the costs imposed on an entire uninspected segment of the marine industry, the Coast Guard projects that this will be a significant rulemaking, especially for small entities.

Statement of Need:

This rulemaking would implement sections 409 and 415 of the Coast Guard and Maritime Transportation Act of 2004. The intent of the proposed rule is to promote safer work practices and reduce casualties on towing vessels by ensuring that towing vessels adhere to prescribed safety standards and safety management systems. This proposed rule was developed in cooperation with the Towing Vessel Safety Advisory Committee. It would establish a new subchapter dedicated to towing vessels and covering vessel equipment, systems, operational standards and inspection requirements.

Summary of Legal Basis:

Proposed new Subchapter Authority: 46 U.S.C. 3103, 3301, 3306, 3308, 3316, 8104, 8904; 33 CFR 1.05; DHS Delegation 0170.1.

The Coast Guard and Maritime Transportation Act of 2004 (CGMTA 2004), Pub. L. 108-293, 118 Stat. 1028, (Aug. 9, 2004), established new authorities for towing vessels as follows:

Section 415 added towing vessels, as defined in section 2101 of title 46, United States Code (U.S.C.), as a class of vessels that are subject to safety inspections under chapter 33 of that title (Id. at 1047).

Section 415 also added new section 3306(j) of title 46, authorizing the Secretary of Homeland Security to establish, by regulation, a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels (Id.).

Section 409 added new section 8904(c)of title 46, U.S.C., authorizing the Secretary to establish, by regulation, ''maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).'' (Id. at 1044-45).

Alternatives:

We considered the following alternatives for the notice of proposed rulemaking (NPRM):

One regulatory alternative would be the addition of towing vessels to one or more existing subchapters that deal with other inspected vessels, such as cargo and miscellaneous vessels (subchapter I), offshore supply vessels (subchapter L), or small passenger vessels (subchapter T). This option would involve very minimal regulatory work. We do not believe, however, that this approach would recognize the

often ''unique'' nature and characteristics of the towing industry in general and towing vessels in particular.

In addition to inclusion in a particular existing subchapter (or subchapters) for equipment-related concerns, the same approach could be adopted for use of a safety management system by merely requiring compliance with Title 33, Code of Federal Regulations, part 96 (Rules for the Safe Operation of Vessels and Safety Management Systems). Adoption of these requirements, without an alternative safety management system, would also not be''appropriate for the characteristics, methods of operation, and nature of service of towing vessels.''

The Coast Guard has had extensive public involvement (four public meetings, over 100 separate comments submitted to the docket, as well as extensive ongoing dialogue with members of the Towing Safety Advisory Committee (TSAC)) regarding development of these regulations. Adoption of one of the alternatives discussed above would likely receive little public or industry support, especially considering the TSAC efforts toward development of standards to be incorporated into a separate subchapter dealing specifically with the inspection of towing vessels.

An approach that would seem to be more in keeping with the intent of Congress would be the adoption of certain existing standards from those applied to other inspected vessels. In some cases, these existing standards would be appropriately modified and tailored to the nature and operation of certain categories of towing vessels. The adopted standards would come from inspected vessels that have demonstrated ''good marine practice'' within the maritime community. These regulations would be incorporated into a subchapter specifically addressing the inspection for certification of towing vessels. The law requiring the inspection for certification of towing vessels is a statutory mandate, compelling the Coast Guard to develop regulations appropriate for the nature of towing vessels and their specific industry.

Anticipated Cost and Benefits:

We estimate that 1,059 owners and operators (companies) would incur additional costs from this rulemaking. The rulemaking would affect a total of 5,208 vessels owned and operated by these companies. We estimate that 232 of the companies, operating 2,941 vessels, already use some type of safety management system. We estimate that 827 of the companies, operating 2,267 vessels, do not currently use a safety management system. Our cost assessment includes existing and new vessels. We are currently developing cost estimates for the proposed rule.

The Coast Guard developed the requirements in the proposed rule by researching both the human factors and equipment failures that caused towing vessel accidents. We believe that the proposed rule would address a wide range of causes of towing vessel accidents and supports the main goal of improving safety in the towing industry. The primary benefit of the proposed rule is an increase in vessel safety and a resulting decrease in the risk of towing vessel accidents and their consequences.

Risks:

This regulatory action would reduce the risk of towing vessel accidents and their consequences. Towing vessels accidents result in fatalities, injuries, property damage, pollution, and delays.

Timetable:

Action	Date	FR Cite
NPRM	02/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Dave Dolloff
Program Manager, CG–5222
Department of Homeland Security
U.S. Coast Guard
2100 Second Street SW. STOP 7126
Washington, DC 20593–7126
Phone: 202 372–1415

RIN: 1625–AB06

DHS—U.S. Customs and Border Protection (USCBP)

PROPOSED RULE STAGE

68. ESTABLISHMENT OF GLOBAL ENTRY PROGRAM

Priority:

Other Significant

Legal Authority:

8 USC 1365b(k)(1); 8 USC 1365b(k)(3); 8 USC 1225; 8 USC 1185(b)

CFR Citation:

8 CFR 235; 8 CFR 103

Legal Deadline:

None

Abstract:

CBP already operates several regulatory and non-regulatory international registered traveler programs, also known as trusted traveler programs. In order to comply with the Intelligence Reform Terrorism Prevention Act of 2004 (IRPTA), CBP is proposing to amend its regulations to establish another international registered traveler program called Global Entry. The Global Entry program would expedite the movement of low-risk, frequent international air travelers by providing an expedited inspection process for pre-approved, pre-screened travelers. These travelers would proceed directly to automated Global Entry kiosks upon their arrival in the United States. This Global Entry Program, along with the other programs that have already been established, are consistent with CBP's strategic goal of facilitating legitimate trade and travel while securing the homeland. A pilot of Global Entry has been operating since June 6, 2008.

Statement of Need:

CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008, and the pilot has been very successful. As a result, there is a desire on the part of the public that the program be established as a permanent program, and expanded, if possible. By establishing this program, CBP will make great strides toward facilitating the movement of people in a more efficient manner, thereby accomplishing our strategic goal of balancing legitimate travel with security. Through the use of biometric and record-keeping technologies, the risk of terrorists entering the United

States would be reduced. Improving security and facilitating travel at the border, both of which are accomplished by Global Entry, are primary concerns within CBP jurisdiction.

Anticipated Cost and Benefits:

Global Entry is a voluntary program that provides a benefit to the public by speeding the CBP processing time for participating travelers. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. CBP estimates that over a five year period, 250,000 enrollees will be processed (an annual average of 50,000 individuals). CBP will charge a fee of $100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the enrollee's time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an ''opportunity cost of time'' to travel to an Enrollment Center upon acceptance of the initial application. We assume that one hour will be required for this time spent at the Enrollment Center and travel to and from the Center, though we note that during the pilot program, many applicants coordinated their trip to an Enrollment Center with their travel at the airport. We have used one hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of $28.60 for the opportunity cost for this time, which is taken from the Federal Aviation Administration's ''Economic Values for FAA Investment and Regulatory Decisions, A Guide.'' (July 3, 2007). This value is the weighted average for U.S. business and leisure travelers. For this evaluation, we assume that all enrollees will be U.S. citizens, U.S. nationals, or Lawful Permanent Residents.

Timetable:

Action	Date	FR Cite
NPRM	11/19/09	74 FR 59932
NPRM Comment Period End	01/19/10	
Final Rule	11/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

www.globalentry.gov

Agency Contact:

John P. Wagner
Director, Trusted Traveler Programs
Department of Homeland Security
U.S. Customs and Border Protection
Office of Field Operations
1300 Pennsylvania Avenue NW.
Washington, DC 20229
Phone: 202 344–2118

RIN: 1651–AA73

DHS—USCBP

FINAL RULE STAGE

69. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 109–347, sec 203; 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433 to 1434; 19 USC 1624; 19 USC 2071 note; 46 USC 60105

CFR Citation:

19 CFR 4; 19 CFR 12.3; 19 CFR 18.5; 19 CFR 103.31a; 19 CFR 113; 19 CFR 123.92; 19 CFR 141.113; 19 CFR 146.32; 19 CFR 149; 19 CFR 192.14

Legal Deadline:

None

Abstract:

This interim final rule implements the provisions of section 203 of the Security and Accountability for Every Port Act of 2006. It amends CBP Regulations to require carriers and importers to provide to CBP, via a CBP approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and insure cargo safety and security. Under the rule, importers and carriers must submit specified information to CBP before the cargo is brought into the United States by vessel. This advance information will improve CBP's risk assessment and targeting capabilities, assist CBP in increasing the security of the global trading system, and facilitate the prompt release of legitimate cargo following its arrival in the United States.

Statement of Need:

Vessel carriers are currently required to transmit certain manifest information by way of the CBP Vessel Automated Manifest System (AMS) 24 hours prior to lading of containerized and non-exempt break bulk cargo at a foreign port. For the most part, this is the ocean carrier's or non-vessel operating common carrier (NVOCC)'s cargo declaration. CBP analyzes this information to generate its risk assessment for targeting purposes.

Internal and external government reviews have concluded that more complete advance shipment data would produce even more effective and more vigorous cargo risk assessments. In addition, pursuant to section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 6 U.S.C. 943) (SAFE Port Act), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports.

Based upon its analysis, as well as the requirements under the SAFE Port Act, CBP is requiring the electronic transmission of additional data for improved high-risk targeting. Some of these data elements are being required from carriers (Container Status Messages and Vessel Stow Plan) and others are being required from ''importers,'' as that term is defined for purposes of the regulations.

This rule improves CBP's risk assessment and targeting capabilities and enables the agency to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system and, thereby, reducing the threat to the United States and world economy.

Summary of Legal Basis:

Pursuant to section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 6 U.S.C. 943) (SAFE Port Act), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data

elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports.

Alternatives:

CBP considered and evaluated the following four alternatives:

Alternative 1 (the chosen alternative): Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is exempt from the Importer Security Filing requirements;

Alternative 2: Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is not exempt from the Importer Security Filing requirements;

Alternative 3: Only Importer Security Filings are required. Bulk cargo is exempt from the Importer Security Filing requirements; and

Alternative 4: Only the Additional Carrier Requirements are required.

Anticipated Cost and Benefits:

When the NPRM was published, CBP estimated that approximately 11 million import shipments conveyed by 1,000 different carrier companies operating 37,000 unique voyages or vessel-trips to the United States will be subject to the rule. Annualized costs range from $890 million to $7.0 billion (7 percent discount rate over 10 years).

The annualized cost range results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to carriers for transmitting additional data to CBP.

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the regulation. CBP would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of direct benefits. However, existing data limitations and a lack of complete understanding of the true risks posed by terrorists prevent us from establishing the incremental risk reduction attributable to this rule. As a result, CBP has undertaken a ''break-even'' analysis to inform decision-makers of the necessary incremental change in the probability of such an event occurring that would result in direct benefits equal to the costs of the proposed rule. CBP's analysis finds that the incremental costs of this regulation are relatively small compared to the median value of a shipment of goods despite the rather large absolute estimate of present value cost.

The regulation may increase the time shipments are in transit, particularly for shipments consolidated in containers. For such shipments, the supply chain is generally more complex and the importer has less control of the flow of goods and associated security filing information. Foreign cargo consolidators may be consolidating multiple shipments from one or more shippers in a container destined for one or more buyers or consignees. In order to ensure that the security filing data is provided by the shippers to the importers (or their designated agents) and is then transmitted to and accepted by CBP in advance of the 24-hour deadline, consolidators may advance their cut-off times for receipt of shipments and associated security filing data.

These advanced cut-off times would help prevent a consolidator or carrier from having to unpack or unload a container in the event the security filing for one of the shipments contained in the container is inadequate or not accepted by CBP. For example, consolidators may require shippers to submit, transmit, or obtain CBP approval of their security filing data before their shipments are stuffed in the container, before the container is sealed, or before the container is delivered to the port for lading. In such cases, importers would likely have to increase the times they hold their goods as inventory and thus incur additional inventory carrying costs to sufficiently meet these advanced cut-off times imposed by their foreign consolidators. The high end of the cost ranges presented assumes an initial supply chain delay of 2 days for the first year of implementation (2008) and a delay of 1 day for years 2 through 10 (2009 to 2017).

The benefit of this rule is the improvement of CBP's risk assessment and targeting capabilities, while at the same time, enabling CBP to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information will assist CBP in increasing the security of the global trading system, and thereby reducing the threat to the United States and the world economy.

Timetable:

Action	Date	FR Cite
NPRM	01/02/08	73 FR 90
NPRM Comment Period End	03/03/08	
NPRM Comment Period Extended	02/01/08	73 FR 6061
NPRM Comment Period End	03/18/08	
Interim Final Rule	11/25/08	73 FR 71730
Interim Final Rule Effective	01/26/09	
Interim Final Rule Comment Period End	06/01/09	
Final Action	02/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Richard DiNucci
Department of Homeland Security
U.S. Customs and Border Protection
Office of Field Operations
1300 Pennsylvania Avenue, NW.
Washington, DC 20229
Phone: 202 344–2513
Email: richard.dinucci@dhs.gov

RIN: 1651–AA70

DHS—USCBP

70. CHANGES TO THE VISA WAIVER PROGRAM TO IMPLEMENT THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

8 USC 1103; 8 USC 1187; 8 CFR 2

CFR Citation:

8 CFR 217.5

Legal Deadline:

None

Abstract:

This rule implements the Electronic System for Travel Authorization (ESTA) for aliens who travel to the United States under the Visa Waiver Program (VWP) at air or sea ports of entry. Under the rule, VWP travelers are required to provide certain biographical information to CBP electronically before departing for the United States. This allows CBP to determine before their departure, whether these travelers are eligible to travel to the United States under the VWP and whether such travel poses a security risk. The rule is intended to fulfill the requirements of section 711 of the Implementing recommendations of the 9/11 Commission Act of 2007 (9/11 Act). In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, the ESTA is intended to increase national security and to provide for greater efficiencies in the screening of international travelers by allowing for vetting of subjects of potential interest well before boarding, thereby reducing traveler delays at the ports of entry.

Statement of Need:

Section 711 of the 9/11 Act requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system that will collect biographical and other information in advance of travel to determine the eligibility of the alien to travel to the United States and to determine whether such travel poses a law enforcement or security risk. ESTA is intended to fulfill these statutory requirements.

Under this rule, VWP travelers provide certain information to CBP electronically before departing for the United States. VWP travelers who receive travel authorization under ESTA are not required to complete the paper Form I-94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler's ESTA status as part of the traveler's boarding status. By automating the I-94W process and establishing a system to provide VWP traveler data in advance of travel, CBP is able to determine the eligibility of citizens and eligible nationals from VWP countries to travel to the United States and to determine whether such travel poses a law enforcement or security risk, before such individuals begin travel to the United States. ESTA provides for greater efficiencies in the screening of international travelers by allowing CBP to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry.

Summary of Legal Basis:

The ESTA program is based on congressional authority provided under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 and section 217 of the Immigration and Nationality Act (INA).

Alternatives:

CBP considered three alternatives to this rule:

1. The ESTA requirements in the rule, but with a $1.50 fee per each travel authorization (more costly)

2. The ESTA requirements in the rule, but with only the name of the passenger and the admissibility questions on the I-94W form (less burdensome)

3. The ESTA requirements in the rule, but only for the countries entering the VWP after 2009 (no new requirements for VWP, reduced burden for newly entering countries)

CBP determined that the rule provides the greatest level of enhanced security and efficiency at an acceptable cost to traveling public and potentially affected air carriers.

Anticipated Cost and Benefits:

The purpose of ESTA is to allow DHS and CBP to establish the eligibility of certain foreign travelers to travel to the United States under the VWP, and whether the alien's proposed travel to the United States poses a law enforcement or security risk. Upon review of such information, DHS will determine whether the alien is eligible to travel to the United States under the VWP.

Impacts to Air & Sea Carriers

CBP estimated that eight U.S.-based air carriers and eleven sea carriers will be affected by the rule. An additional 35 foreign-based air carriers and five sea carriers will be affected. CBP concluded that costs to air and sea carriers to support the requirements of the ESTA program could cost $137 million to $1.1 billion over the next 10 years depending on the level of effort required to integrate their systems with ESTA, how many passengers they need to assist in applying for travel authorizations, and the discount rate applied to annual costs.

Impacts to Travelers

ESTA will present new costs and burdens to travelers in VWP countries who were not previously required to submit any information to the U.S. Government in advance of travel to the United States. Travelers from Roadmap countries who become VWP countries will also incur costs and burdens, though these are much less than obtaining a nonimmigrant visa (category B1/B2), which is currently required for short-term pleasure or business to travel to the United States. CBP estimated that the total quantified costs to travelers will range from $1.1 billion to $3.5 billion depending on the number of travelers, the value of time, and the discount rate. Annualized costs are estimated to range from $133 million to $366 million.

Benefits

As set forth in section 711 of the 9/11 Act, it was the intent of Congress to modernize and strengthen the security of the Visa Waiver Program under section 217 of the Immigration and Nationality Act (INA, 8 USC 1187) by simultaneously enhancing program security requirements and extending visa-free travel privileges to citizens and eligible nationals of eligible foreign countries that are partners in the war on terrorism.

By requiring passenger data in advance of travel, CBP may be able to determine, before the alien departs for the United States, the eligibility of citizens and eligible nationals from VWP countries to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for the screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at U.S. ports of entry.

CBP concluded that the total benefits to travelers could total $1.1 billion to $3.3 billion over the period of analysis. Annualized benefits could range from $134 million to $345 million.

In addition to these benefits to travelers, CBP and the carriers should

also experience the benefit of not having to administer the I-94W except in limited situations. While CBP has not conducted an analysis of the potential savings, it should accrue benefits from not having to produce, ship, and store blank forms. CBP should also be able to accrue savings related to data entry and archiving. Carriers should realize some savings as well, though carriers will still have to administer the I-94 for those passengers not traveling under the VWP and the Customs Declaration forms for all passengers aboard the aircraft and vessel.

Timetable:

Action	Date	FR Cite
Interim Final Action	06/09/08	73 FR 32440
Interim Final Rule Effective	08/08/08	
Interim Final Rule Comment Period End	08/08/08	
Notice – Announcing Date Rule Becomes Mandatory	11/13/08	73 FR 67354
Final Action	01/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Additional Information:

http://www.cbp.gov/xp/cgov/travel/id__visa/esta/

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Suzanne Shepherd
Director, Electronic System for Travel Authorization
Department of Homeland Security
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229
Phone: 202 344–2073
Email: cbp.esta@dhs.gov

RIN: 1651–AA72

DHS—USCBP

71. IMPLEMENTATION OF THE GUAM–CNMI VISA WAIVER PROGRAM

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

PL 110–229, sec 702

CFR Citation:

8 CFR 100.4; 8 CFR 212.1; 8 CFR 233.5; 8 CFR 235.5; 19 CFR 4.7b; 19 CFR 122.49a

Legal Deadline:

Final, Statutory, November 4, 2008, Public Law 110–229.

Abstract:

This rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program.

Statement of Need:

Currently, aliens who are citizens of eligible countries may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen (15) days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission. Section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), supersedes the Guam visa waiver program by providing for a visa waiver program for Guam and the Commonwealth of the Northern Mariana Islands (Guam-CNMI Visa Waiver Program). Section 702(b) requires DHS to promulgate regulations within 180 days of enactment of the CNRA to allow nonimmigrant visitors from eligible countries to apply for admission into Guam and the CNMI, for business or pleasure, without a visa, for a period of authorized stay of no longer than forty-five (45) days.

Summary of Legal Basis:

The Guam-CNMI Visa Waiver Program is based on congressional authority provided under 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA).

Alternatives:

None

Anticipated Cost and Benefits:

The most significant change for admission to the CNMI as a result of the rule will be for visitors from those countries who are not included in either the existing U.S. Visa Waiver Program or the Guam-CNMI Visa Waiver Program established by the rule. These visitors must apply for U.S. visas, which require in-person interviews at U.S. embassies or consulates and higher fees than the CNMI currently assesses for its visitor entry permits. CBP anticipates that the annual cost to the CNMI will be $6 million. These are losses associated with the reduced visits from foreign travelers who may no longer visit the CNMI upon implementation of this rule.

The anticipated benefits of the rule are enhanced security that will result from the federalization of the immigration functions in the CNMI.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/09	74 FR 2824
Interim Final Rule Effective	01/16/09	
Interim Final Rule Comment Period End	03/17/09	
Final Action	06/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

International Impacts:

This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

Agency Contact:

Cheryl C. Peters
Department of Homeland Security
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW.
Washington, DC 20229
Phone: 202 344–1707
Email: cheryl.c.peters@dhs.gov

RIN: 1651–AA77

DHS—Transportation Security Administration (TSA)

PROPOSED RULE STAGE

72. AIRCRAFT REPAIR STATION SECURITY

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

49 USC 114; 49 USC 44924

CFR Citation:

49 CFR 1554

Legal Deadline:

Final, Statutory, August 8, 2004, Rule within 240 days of the date of enactment of Vision 100.

Final, Statutory, August 3, 2008, Rule within 1 year after the date of enactment of 9/11 Commission Act.

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; Dec. 12, 2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations.'' Section 1616 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110—531; Aug. 3, 2007; 21 Stat. 266) requires TSA issue a final rule on foreign repair station security.

Abstract:

The Transportation Security Administration (TSA) will propose to add a new regulation to improve the security of domestic and foreign aircraft repair stations, as required by the section 611 of Vision 100—Century of Aviation Reauthorization Act and section 1616 of the 9/11 Commission Act of 2007. The regulation will propose general requirements for security programs to be adopted and implemented by repair stations certificated by the Federal Aviation Administration (FAA). Regulations originally were to be promulgated by August 8, 2004. A Report to Congress was sent August 24, 2004, explaining the delay. The delay in publication of the notice of proposed rulemaking has been due to TSA scoping out the project, including making site visits to repair stations in different locations around the world.

Statement of Need:

The Transportation Security Administration (TSA) is proposing regulations to improve the security of domestic and foreign aircraft repair stations. The proposed regulations will require repair stations that are certificated by the Federal Aviation Administration to adopt and carry out a security program. The proposal will codify the scope of TSA's existing inspection program. The proposal also will provide procedures for repair stations to seek review of any TSA determination that security measures are deficient.

Summary of Legal Basis:

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; 12/12/2003; 117 Stat. 2490), codified at 49 U.S.C. 44924, requires TSA to issue ''final regulations to ensure the security of foreign and domestic aircraft repair stations'' within 240 days from date of enactment of Vision 100. Section 1616 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266) requires that the FAA may not certify any foreign repair stations if the regulations are not issued within one year after the date of enactment of the 9/11 Commission Act unless the repair station was previously certificated or is in the process of certification.

Alternatives:

TSA is required by statute to publish regulations requiring security programs for aircraft repair stations. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous alternative ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

TSA anticipates costs to aircraft repair stations mainly related to the establishment of security programs, which may include adding such measures as access controls, a personnel identification system, security awareness training, the designation of a security coordinator, employee background verification, and a contingency plan.

It is difficult to identify the particular risk reduction associated with the implementation of this rule because the nature of value of the benefits of reducing risk of a terrorist attack is a function of both the probability of an attack and the value of the consequence. When the proposed rule is published, DHS will provide a break even analysis discussing the program elements that would help achieve risk reductions. These elements and related qualitative benefits include a reduction in the risk of an aircraft being sabotaged, resulting in potential injury or loss of life for the passengers and crew, or reduction in the risk of being hijacked, resulting in the additional potential for the aircraft being used as a weapon of mass destruction.

Risks:

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By requiring security programs for aircraft repair stations, TSA will focus on preventing unauthorized access to repair work and to aircraft to prevent sabotage or hijacking.

Timetable:

Action	Date	FR Cite
Notice—Public Meeting; Request for Comments	02/24/04	69 FR 8357
Report to Congress	08/24/04	
NPRM	11/18/09	74 FR 59873
NPRM Comment Period End	01/19/10	
Final Rule	11/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Celio Young
Program Manager, Repair Stations
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management, General Aviation Division
TSA–28, HQ, E5
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3580
Fax: 571 227–1362
Email: celio.young@dhs.gov

Thomas (Tom) Philson
Manager, Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–411N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3236
Fax: 571 227–1362
Email: thomas.philson@dhs.gov

Linda L. Kent
Assistant Chief Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–126S
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2675
Fax: 571 227–1381
Email: linda.kent@dhs.gov

RIN: 1652–AA38

DHS—TSA

73. LARGE AIRCRAFT SECURITY PROGRAM, OTHER AIRCRAFT OPERATOR SECURITY PROGRAM, AND AIRPORT OPERATOR SECURITY PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

6 USC 469; 18 USC 842; 18 USC 845; 46 USC 70102 to 70106; 46 USC 70117; 49 USC 114; 49 USC114(f)(3); 49 USC 5103; 49 USC 5103a; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation:

49 CFR 1515; 49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1542; 49 CFR 1544; 49 CFR 1550

Legal Deadline:

None

Abstract:

On October 30, 2008, the Transportation Security Administration (TSA) issued a Notice of Proposed Rulemaking, proposing to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements, and by adding new requirements for certain large aircraft operators and airports serving those aircraft. TSA also proposed that all aircraft operations, including corporate and private charter operations, with aircraft having a maximum certificated takeoff weight (MTOW) above 12,500 pounds (''large aircraft'') be required to adopt a large aircraft security program. TSA also proposed to require certain airports that serve large aircraft to adopt security programs. TSA is preparing a supplemental NPRM (SNPRM), which will include a comment period for public comments.

After considering comments received on the NPRM and meeting with stakeholders, TSA decided to revise the original proposal to tailor security requirements to the general aviation industry. TSA is considering alternatives to the following proposed provisions in the SNPRM: (1) the weight threshold for aircraft subject to TSA regulation; (2) compliance oversight; (3) watch list matching of passengers; (4) prohibited items; (5) scope of the background check requirements and the procedures used to implement the requirement; and (6) other issues.

Statement of Need:

This rule would enhance current security measures, and would apply security measures currently in place for operators of certain types of aircraft, to operators of other aircraft. While the focus of TSA's existing aviation security programs has been on air carriers and commercial operators, TSA is aware that general aviation aircraft of sufficient size and weight may inflict significant damage and loss of lives if they are hijacked and used as missiles. TSA has current regulations that apply to large aircraft operated by air carriers and commercial operators, including the twelve five program, the partial program, and the private charter program. However, the current regulations do not cover all general aviation operations, such as those operated by corporations and individuals, and such operations do not have the features that are necessary to enhance security.

Alternatives:

DHS considered continuing to use voluntary guidance to secure general aviation, but determined that to ensure that each aircraft operator maintains an appropriate level of security, these security measures would need to be mandatory requirements.

Anticipated Cost and Benefits:

This proposed rule would yield benefits in the areas of security and quality governance. The rule would enhance security by expanding the mandatory use of security measures to certain operators of large aircraft that are not currently required to have a security plan. These measures would deter malicious individuals from perpetrating acts that might compromise transportation or national security by using large aircraft for these purposes.

In the NPRM, TSA estimated the total 10-year cost of the program would be $1.3 billion, discounted at 7 percent. Aircraft operators, airport operators, and TSA would incur costs to comply with the requirements of the proposed Large Aircraft Security Program rule. Aircraft operator costs comprise 85 percent of all estimated expenses. TSA estimated approximately 9,000 general aviation aircraft operators use aircraft with a maximum takeoff weight exceeding 12,500 pounds, and would be newly subjected to the proposed rule.

Risks:

This rulemaking addresses the national security risk of general aviation aircraft being used as a weapon or as a means to transport persons or weapons that could pose a threat to the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/30/08	73 FR 64790
NPRM Comment Period End	12/29/08	
Notice—NPRM Comment Period Extended	11/25/08	73 FR 71590
NPRM Extended Comment Period End	02/27/09	

Action	Date	FR Cite
Notice—Public Meetings; Requests for Comments	12/28/08	73 FR 77045
Supplemental NPRM	10/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Local

Additional Information:

Public Meetings held on: Jan. 6, 2009 at White Plains, NY; Jan. 8, 2009, at Atlanta, GA; Jan 16, 2009, at Chicago, IL; Jan. 23, 2009, at Burbank, CA; and Jan. 28, 2009, at Houston, TX.

Additional Comment Sessions held in Arlington, VA, on April 16, 2009, May 6, 2009, and June 15, 2009.

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Erik Jensen
Assistant General Manager, General Aviation Security
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–132S
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–2154
Fax: 571 227–1923
Email: erik.jensen@dhs.gov

Holly Merwin
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–343N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–4656
Fax: 571 227–1362
Email: holly.merwin@dhs.gov

Mai Dinh
Assistant Chief Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–309N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2725
Fax: 571 227–1378
Email: mai.dinh@dhs.gov

Kiersten Ols
Attorney, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–316N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2403
Fax: 571 227–1378
Email: kiersten.ols@dhs.gov

Related RIN: Related to 1652–AA03, Related to 1652–AA04

RIN: 1652–AA53

DHS—TSA

74. PUBLIC TRANSPORTATION AND PASSENGER RAILROADS—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, secs 1408 and 1517

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, November 1, 2007, Interim Rule for public transportation agencies is due 90 days after date of enactment.

Final, Statutory, February 3, 2008, Rule for railroads is due 6 months after date of enactment.

Final, Statutory, August 3, 2008, Rule for public transportation agencies is due 1 year after date of enactment.

According to section 1408 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), interim final regulations for public transportation agencies are due 90 days after the date of enactment (Nov. 1, 2007), and final regulations are due 1 year after the date of enactment of this Act.According to section 1517 of the same Act, final regulations for railroads are due no later than 6 months after the date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will propose a new regulation to improve the security of public transportation and passenger railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. This rulemaking will propose general requirements for a public transportation security training program and a passenger railroad training program to prepare public transportation and passenger railroad employees, including frontline employees, for potential security threats and conditions.

Statement of Need:

A security training program for public transportation agencies and for passenger railroads is proposed to prepare public transportation and passenger railroad employees, including frontline employees, for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; sections 1408 and 1517 of Public Law 110-53, Implementing

Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Alternatives:

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

Economic analysis under development.

Risks:

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By providing for security training for personnel, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Agency Contact:

Thomas L. Farmer
Deputy General Manager–Mass Transit
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, E10–219S
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3552
Email: tom.farmer@dhs.gov

Shaina Pereira
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–339N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–5138
Fax: 571 227–1362
Email: shaina.pereira@dhs.gov

David Kasminoff
Sr. Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–310N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–3583
Fax: 571 227–1378
Email: david.kasminoff@dhs.gov

Related RIN: Related to 1652–AA57, Related to 1652–AA59

RIN: 1652–AA55

DHS—TSA

75. FREIGHT RAILROADS—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1517

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, February 3, 2008, Rule is due 6 months after date of enactment.

According to section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266), TSA must issue a regulation no later than 6 months after the date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will propose new regulations to improve the security of freight railroads in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. The rulemaking will propose general requirements for a security training program to prepare freight railroad employees, including frontline employees, for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

Statement of Need:

The rulemaking will propose general requirements for a security training program to prepare freight railroad employees, including frontline employees, for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; section 1517 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Alternatives:

TSA is required by statute to publish regulations requiring security programs for these operators. As part of its notice of proposed rulemaking, TSA will seek public comment on the numerous ways in which the final rule could carry out the requirements of the statute.

Anticipated Cost and Benefits:

Economic analysis under development.

Risks:

The Department of Homeland Security aims to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. By providing for security training for personnel, TSA intends in this rulemaking to reduce the risk of a terrorist attack on this transportation sector.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Agency Contact:

Scott Gorton
Policy and Plans Branch Chief for Freight Rail
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–423N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–1251
Fax: 571 227–2930
Email: scott.gorton@dhs.gov

Shaina Pereira
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–339N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–5138
Fax: 571 227–1362
Email: shaina.pereira@dhs.gov

David Kasminoff
Sr. Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–310N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–3583
Fax: 571 227–1378
Email: david.kasminoff@dhs.gov

Related RIN: Related to 1652–AA55, Related to 1652–AA59

RIN: 1652–AA57

DHS—TSA

76. OVER–THE–ROAD BUSES—SECURITY TRAINING OF EMPLOYEES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, sec 1534

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, February 3, 2008, Rule due 6 months after date of enactment.

According to section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007); 121 Stat. 266), TSA must issue a regulation no later than 6 months after date of enactment of this Act.

Abstract:

The Transportation Security Administration (TSA) will propose new regulations to improve the security of over-the-road buses in accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007. The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions. The regulations will take into consideration any current security training requirements or best practices.

Statement of Need:

The rulemaking will propose an over-the-road bus security training program to prepare over-the-road bus frontline employees for potential security threats and conditions.

Summary of Legal Basis:

49 U.S.C. 114; section 1534 of Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266).

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
NPRM	04/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Agency Contact:

Paul Pitzer
Policy and Planning Branch Chief; Highway and Motor Carrier Programs
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–1233
Email: paul.pitzer@dhs.gov

Shaina Pereira
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–339N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–5138
Fax: 571 227–1362
Email: shaina.pereira@dhs.gov

Denise Starr
Attorney, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, E12–419N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–5130
Email: denise.starr@dhs.gov

Related RIN: Related to 1652–AA55, Related to 1652–AA57

RIN: 1652–AA59

DHS—TSA

77. VETTING, ADJUDICATION, AND REDRESS PROCESS AND FEES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

49 USC 114; PL 110–53, secs 1411, 1414, 1520, 1522, 1602

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Transportation Security Administration (TSA) will propose new

regulations to revise and standardize the procedures, adjudication criteria, and fees for most of the security threat assessments (STA) of individuals for which TSA is responsible. In accordance with the Implementing Recommendations of the 9/11 Commission Act of 2007, the scope of the rulemaking will include transportation workers from all modes of transportation who are required to undergo an STA in other regulatory programs, including certain aviation workers and frontline employees for public transportation agencies, railroads, and over-the-road buses.

In addition, TSA will propose fees to cover the cost of the STAs, and credentials for some personnel. TSA plans to improve efficiencies in processing STAs and streamline existing regulations by simplifying language and removing redundancies.

Statement of Need:

Sections of the Implementing Recommendation of the 9/11 Commission Act of 2007 require TSA to complete security threat assessments and provide a redress process for all frontline employees for public transportation agencies, railroads, and over-the-road buses. There could be a further need for threat assessments on transportation personnel that could be addressed under this rule.

Summary of Legal Basis:

49 U.S.C. 114; sections 1411, 1414, 1520, 1522, and 1602 of Public Law 110-53, Implementing Recommendation of the 9/11 Commission Act of 2007.

Anticipated Cost and Benefits:

Economic analysis under development.

Timetable:

Action	Date	FR Cite
Notice of Proposed Rulemaking (NPRM)	02/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Agency Contact:

Hao-y Tran Froemling
Program Manager, Maritime and Surface Credentialing
Department of Homeland Security
Transportation Security Administration
Office of Transportation Threat Assessment and Credentialing
TSA–19, HQ, E3–401N
601 South 12th Street
Arlington, VA 20598–6019
Phone: 571 227–2782
Email: hao-y.froemling@dhs.gov

Adam Sicking
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–345N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–2304
Fax: 571 227–1362
Email: adam.sicking@dhs.gov

Christine Beyer
Assistant Chief Counsel, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–336N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2657
Email: christine.beyer@dhs.gov

RIN: 1652–AA61

DHS—TSA

FINAL RULE STAGE

---

78. AIR CARGO SCREENING

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 110–53, sec 1602; 49 USC 114; 49 USC 40113; 49 USC 44901 to 44905; 49 USC 44913 to 44914; 49 USC 44916; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation:

49 CFR 1520; 49 CFR 1522; 49 CFR 1540; 49 CFR 1544; 49 CFR 1548; 49 CFR 1549

Legal Deadline:

Other, Statutory, February 3, 2009, Screen 50 percent of cargo on passenger aircraft.

Final, Statutory, August 3, 2010, Screen 100 percent of cargo on passenger aircraft.

Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, Aug. 3, 2007) requires that the Secretary of Homeland Security establish a system to screen 50 percent of cargo on passenger aircraft not later than 18 months after the date of enactment and 100 percent of such cargo not later than 3 years after the date of enactment.

Abstract:

The Transportation Security Administration (TSA) is establishing the Certified Cargo Screening Program that will certify shippers, manufacturers, and other entities to screen air cargo intended for transport on a passenger aircraft. This will be the primary means through which TSA will meet the requirements of section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 that mandates that 100 percent of air cargo transported on passenger aircraft, operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation, must be screened by August 2010, to ensure the security of all such passenger aircraft carrying cargo.

Under this rulemaking, each certified cargo screening facility (CCSF) and their employees and authorized representatives that will be screening cargo must successfully complete a security threat assessment. The CCSF must also submit to an audit of their security measures by TSA-approved auditors, screen cargo using TSA-approved methods, and initiate strict chain of custody measures to ensure the security of the cargo throughout the supply chain prior to tendering it for transport on passenger aircraft.

Statement of Need:

TSA is establishing a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

The system shall require, at a minimum, that equipment, technology, procedures, personnel, or other

methods approved by the Administrator of TSA, used to screen cargo carried on passenger aircraft, provide a level of security commensurate with the level of security for the screening of passenger checked baggage.

Summary of Legal Basis:

49 U.S.C. 114; section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266, 478, 10/3/2007), codified at 49 U.S.C. 44901(g).

Alternatives:

The Interim Final Rule (IFR) states that as an alternative to establishing the CCSP, TSA considered meeting the statutory requirements by having aircraft operators screen cargo intended for transportation on passenger aircraft—that is, continuing the current cargo screening program but expanding it to 85 percent of air cargo on passenger aircraft. Under this alternative, the cost drivers for this alternative are screening equipment, personnel for screening, training of personnel, and delays. Delays are the largest cost component, totaling $7.0 billion over 10 years, undiscounted. In summary, the undiscounted 10 year cost of the alternative is $11.1 billion, and discounted at 7 percent, the cost is 7.7 billion.

Anticipated Cost and Benefits:

TSA estimates the cost of the rule will be $1.9 billion (discounted at 7 percent) over 10 years. TSA analyzed the alternative of not establishing the Certified Cargo Screening Program (CCSP) and, instead, having aircraft operators and air carriers perform screening of all cargo transported on passenger aircraft. Absent the CCSP, the estimated cost to aircraft operators and air carriers is $7.7 billion (discounted at seven percent) over ten years. The bulk of the costs for both the CCSP and the alternative are attributed to personnel and the impact of cargo delays resulting from the addition of a new operational process.

The benefits of the IFR are four fold. First, passenger air carriers will be more firmly protected against an act of terrorism or other malicious behaviors by the screening of 100 percent of cargo shipped on passenger aircraft. Second, allowing the screening process to occur throughout the supply chain via the Certified Cargo Screening Program will reduce potential bottlenecks and delays at the airports. Third, the IFR will allow market forces to identify the most efficient venue for screening along the supply chain, as entities upstream from the aircraft operator may apply to become CCSFs and screen cargo. Finally, validation firms will perform assessments of the entities that become CCSFs, allowing TSA to set priorities for compliance inspections.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/16/09	74 FR 47672
Interim Final Rule Comment Period End	11/16/09	
Interim Final Rule Effective	11/16/09	
Final Rule	11/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

Agency Contact:

Robert S. Hyde
Branch Chief, Air Cargo Policy & Plans
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E4–417N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–3943
Fax: 571 227–1923
Email: rsh@dhs.gov

Adam Sicking
Economist, Regulatory Development and Economic Analysis
Department of Homeland Security
Transportation Security Administration
Office of Transportation Sector Network Management
TSA–28, HQ, E10–345N
601 South 12th Street
Arlington, VA 20598–6028
Phone: 571 227–2304
Fax: 571 227–1362
Email: adam.sicking@dhs.gov

Alice Crowe
Sr. Attorney, Regulations and Security Standards Division
Department of Homeland Security
Transportation Security Administration
Office of the Chief Counsel
TSA–2, HQ, E12–320N
601 South 12th Street
Arlington, VA 20598–6002
Phone: 571 227–2652
Fax: 571 227–1379
Email: alice.crowe@dhs.gov

RIN: 1652–AA64

DHS—U.S. Immigration and Customs Enforcement (USICE)

PROPOSED RULE STAGE

79. CLARIFICATION OF CRITERIA FOR CERTIFICATION, OVERSIGHT, AND RECERTIFICATION OF SCHOOLS BY THE STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP) TO ENROLL F OR M NONIMMIGRANT STUDENTS

Priority:

Other Significant

Legal Authority:

8 USC 1356(m); PL 107–56; PL 107–173

CFR Citation:

8 CFR 103; 8 CFR 214.3; 8 CFR 214.4

Legal Deadline:

None

Abstract:

This proposed rule would clarify the criteria for nonimmigrant academic (F visa) and vocational (M visa) students and exchange aliens (J visa) to maintain visa status, and for the schools certified by the Student and Exchange Visitor Program (SEVP) to enroll F or M nonimmigrant students to fulfill their recordkeeping, retention, and reporting requirements to SEVP. The proposed rule would incorporate significant refinements in policy and procedures that have evolved since the last major regulatory update in 2002 and since the establishment of SEVP nearly 6 years ago. The proposed rule would remove obsolete provisions in the regulations used prior to and during implementation of the Student and Exchange Visitor Information Program (SEVIS). In anticipation of the implementation of a major reprogramming of SEVIS, referred to as SEVIS II, that will begin in late 2009, the proposed rule would incorporate language to support that transition.

Statement of Need:

ICE will publish this proposed rule that will incorporate significant refinements in policy and procedures that have evolved since the last major regulatory update in 2002, and since the establishment of SEVP nearly six years ago. These revisions of 8 CFR 214.1-4 will clarify the criteria for F, M and J nonimmigrant status and for schools certified by SEVP, update policy and procedure for SEVP, remove obsolete provisions and support the

implementation of a major reprogramming of the Student and Exchange Visitor Information System (SEVIS), known as ''SEVIS II.''

Anticipated Cost and Benefits:

Under development. It is difficult to quantify monetarily the benefits of the Clarification of Criteria for Certification, Oversight and Recertification of Schools by the Student and Exchange Visitor Program (SEVP) To Enroll F or M Nonimmigrant Students regulation using standard economic accounting techniques. Nonimmigrant students, the schools that serve them, and the communities in which they live will benefit from the improvements and clarifications to the rules governing the certification, oversight, and recertification of schools certified by SEVP.

Timetable:

Action	Date	FR Cite
NPRM	05/00/10	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

Agency Contact:

Sharon Snyder
Acting Branch Chief, SEVP Policy, Student and Exchange Visitor Program
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th Street SW.
Washington, DC 20024–6121
Phone: 703 603–3415

Related RIN: Related to 1653–AA42

RIN: 1653–AA44

DHS—USICE

FINAL RULE STAGE

---

80. CONTINUED DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

Priority:

Other Significant

Legal Authority:

8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253; . . .

CFR Citation:

8 CFR 241

Legal Deadline:

None

Abstract:

The U.S. Department of Homeland Security is finalizing, with amendments, the interim rule that was published on November 14, 2001, by the former Immigration and Naturalization Service (Service). The interim rule included procedures for conducting custody determinations in light of the U.S. Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001), which held that the detention period of certain aliens who are subject to a final administrative order of removal is limited under section 241(a)(6) of the Immigration and Nationality Act (Act) to the period reasonably necessary to effect their removal. The interim rule amended section 241.4 of title 8, Code of Federal Regulations (CFR), in addition to creating two new sections: 8 CFR 241.13 (establishing custody review procedures based on the significant likelihood of the alien's removal in the reasonably foreseeable future) and 241.14 (establishing custody review procedures for special circumstances cases). Subsequently, in the case of Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court clarified a question left open in Zadvydas, and held that section 241(a)(6) of the Act applies equally to all aliens described in that section. This rule amends the interim rule to conform to the requirements of Martinez. Further, the procedures for custody determinations for post-removal period aliens who are subject to an administratively final order of removal, and who have not been released from detention or repatriated, have been revised in response to comments received and experience gained from administration of the interim rule published in 2001. This final rule also makes conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). Additonally, certain portions of the Final Rule were determined to require public comment and, for this reason, have been developed into a separate/companion Notice of Proposed Rulemaking; RIN 1653-AA60.

Statement of Need:

This rule will improve the post order custody review process in the Final Rule related to the Detention of Aliens Subject to Final Orders of Removal in light of the U.S. Supreme Court's decisions in Zadvydas v. Davis, 533 U.S. 678 (2001), Clark v. Martinez, 543 U.S. 371 (2005) and conforming changes as required by the enactment of the Homeland Security Act of 2002 (HSA). A companion Notice of Proposed Rulemaking (NPRM) will amend 8 CFR 241.1(g) to provide for a new 90-day removal period once an alien comes into compliance with his or her obligation to make timely application in good faith for travel or other documents and not conspire or act to prevent removal. The NPRM adds new subparagraph (iii) to 8 CFR 241.4(g)(1) to provide for a 90-day removal period once the alien is taken into custody if at liberty or in another agency's custody at the time the removal order becomes administratively final and amends 8 CFR 241.13(b)(3) to clarify that aliens who fall within the provisions of 236A of the Act, 8 U.S.C. 1226a, are not covered by the provisions of 8 CFR 241.13(a) (such alien covered by the specific provisions of section 236A).

Anticipated Cost and Benefits:

Under development; this rule is not significant for economic reasons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/14/01	66 FR 56967
Interim Final Rule Comment Period End	01/14/02	
Final Action	05/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

INS No. 2156-01

Transferred from RIN 1115-AG29

Agency Contact:

Jason Johnsen
Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street SW.
Washington, DC 20024
Phone: 202 732–4245
Email: jason.johnsen@dhs.gov

RIN: 1653–AA13

DHS—USICE

81. ELECTRONIC SIGNATURE AND STORAGE OF FORM I–9, EMPLOYMENT ELIGIBILITY VERIFICATION

Priority:

Other Significant

Legal Authority:

8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 CFR 2

CFR Citation:

8 CFR 274a

Legal Deadline:

None

Abstract:

Department of Homeland Security (DHS) regulations provide that employers and recruiters or referrers for a fee required to complete and retain Forms I-9, Employment Eligibility Verification, may sign and retain these forms electronically.

Statement of Need:

This final rule on the Electronic Signature and Storage of Form I-9, Employment Eligibility Verification will respond to comments and make minor changes to the IFR that was published in 2006.

Anticipated Cost and Benefits:

Under development.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/06	71 FR 34510
Interim Final Rule Effective	06/15/06	
Interim Final Rule Comment Period End	08/14/06	
Final Rule	02/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

ICE 2345-05

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Allan Vanscoy
Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street SW.
Washington, DC 20025
Phone: 202 732–5798

RIN: 1653–AA47

DHS—USICE

82. EXTENDING PERIOD FOR OPTIONAL PRACTICAL TRAINING BY 17 MONTHS FOR F–1 NONIMMIGRANT STUDENTS WITH STEM DEGREES AND EXPANDING THE CAP–GAP RELIEF FOR ALL F–1 STUDENTS WITH PENDING H–1B PETITIONS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184 to 1187; 8 USC 1221; 8 USC 1281 and 1282; 8 USC 1301 to 1305

CFR Citation:

8 CFR 214

Legal Deadline:

None

Abstract:

Currently, foreign students in F-1 nonimmigrant status who have been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by U.S. Immigration and Custom Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) are eligible for 12 months of optional practical training (OPT) to work for a U.S. employer in a job directly related to the student's major area of study. The maximum period of OPT is 29 months for F-1 students who have completed a science, technology, engineering, or mathematics (STEM) degree and accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program. Employers of F-1 students with an extension of post-completion OPT authorization must report to the student's designated school official (DSO) within 48 hours after the OPT student has been terminated from, or otherwise leaves, his or her employment with that employer prior to end of the authorized period of OPT. The final rule will respond to public comments and may make adjustments to the regulations.

Statement of Need:

ICE will improve SEVP processes by publishing the Final Optional Practical Training (OPT) rule, which will respond to comments on the OPT interim final rule (IFR). The IFR increased the maximum period of OPT from 12 months to 29 months for nonimmigrant students who have completed a science, technology, engineering, or mathematics (STEM) degree and who accept employment with employers who participate in the U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program.

Alternatives:

DHS is considering several alternatives to the 17-month extension of OPT and cap-gap extension, ranging from taking no action to further extension for a larger populace. The interim final rule addressed an immediate competitive disadvantage faced by U.S. industries and ameliorated some of the adverse impacts on the U.S. economy. DHS continues to evaluate both quantitative and qualitative alternatives.

Anticipated Cost and Benefits:

Based on an estimated 12,000 students per year that will receive an OPT extension and an estimated 5,300 employers that will need to enroll in E-verify, DHS projects that this rule will cost students approximately $1.49 million per year in additional information collection burdens, $4,080,000 in fees, and cost employers $1,240,000 to enroll in E-Verify and $168,540 per year thereafter to verify the status of new hires. However, this rule will increase the availability of qualified workers in science, technology, engineering, and mathematical fields; reduce delays that place U.S. employers at a disadvantage when recruiting foreign job candidates, thereby improving strategic and resource planning capabilities; increase the quality of life for participating students, and increase the integrity of the student visa program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/08	73 FR 18944
Interim Final Rule Comment Period End	06/09/08	
Final Rule	05/00/10	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

URL For More Information:

www.dhs.gov/sevis/

Agency Contact:

Sharon Snyder
Acting Branch Chief, SEVP Policy, Student and Exchange Visitor Program
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Potomac Center North
500 12th Street SW.
Washington, DC 20024–6121
Phone: 703 603–3415

RIN: 1653–AA56

DHS—Federal Emergency Management Agency (FEMA)

PROPOSED RULE STAGE

83. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS

Priority:

Other Significant

Legal Authority:

42 USC 5174

CFR Citation:

44 CFR 206

Legal Deadline:

Final, Statutory, October 15, 2002.

Abstract:

This rulemaking implements section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In doing so, the notice of proposed rulemaking would propose further revisions to 44 CFR part 206, subpart D (the Individuals and Households Program (IHP)) and remove subpart E (Individual and Family Grant Programs). Among other things, it would propose to implement section 686 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) to remove the IHP subcaps; and PKEMRA section 685 regarding semi-permanent and permanent housing construction eligibility. It would revise FEMA's regulations related to individuals with disabilities pursuant to PKEMRA section 689; and revise FEMA's regulations to allow for the payment of security deposits and the costs of utilities, excluding telephone service, in accordance with section 689d of PKEMRA. The rule would propose to implement section 689f of PKEMRA by authorizing assistance to relocate individuals displaced from their predisaster primary residence, to and from alternate locations for short- or long-term accommodations.

Statement of Need:

FEMA needs to revise its IHP regulations to reflect lessons learned, from Hurricane Katrina and subsequent events, to address comments received on the interim regulations, and to implement recent legislative changes (i.e. Post-Katrina Emergency Management Reform Act of 2006). These changes are intended to provide clear information to disaster assistance applicants, implement new authorities, and help ensure the consistent administration of the Individuals and Households Program.

Summary of Legal Basis:

This rulemaking is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended by the Post-Katrina Emergency Management Reform Act of 2006.

Alternatives:

The rule is under development.

Anticipated Cost and Benefits:

The economic analysis for this rule is under development.

Risks:

This action does not adversely affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3412
NPRM Comment Period End	03/11/02	
Interim Final Rule	09/30/02	67 FR 61446
Corrections	10/09/02	67 FR 62896
Corrections Effective	10/09/02	
Interim Final Rule Effective	10/15/02	
Interim Final Rule Comment Period End	04/15/03	
NPRM	08/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

Transferred from RIN 3067-AD25; Docket ID FEMA-2008-0005

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

Julia Chiu
Disaster Assistance Directorate
Department of Homeland Security
Federal Emergency Management Agency
500 C Street SW.
Washington, DC 20472–3100
Phone: 202 212–1100
Fax: 202 212–1002
Email: fema-ia-regulations@dhs.gov

RIN: 1660–AA18

DHS—FEMA

84. UPDATE OF FEMA'S PUBLIC ASSISTANCE REGULATIONS

Priority:

Other Significant

Legal Authority:

42 USC 5121–5207

CFR Citation:

44 CFR 206

Legal Deadline:

None

Abstract:

This proposed rule would revise the Federal Emergency Management Agency's Public Assistance program regulations. Many of these changes reflect amendments made to the Robert T. Stafford Disaster Relief and Emergency Assistance Act by the Post-Katrina Emergency Management Reform Act of 2006 and the Security and Accountability For Every Port Act of 2006. The proposed rule also proposes to reflect lessons learned from recent events, and propose further substantive and non-substantive clarifications and corrections to improve upon the Public Assistance regulations. This proposed rule is intended to improve the efficiency and consistency of the Public Assistance program, as well as implement new statutory authority by expanding Federal assistance, providing for precautionary evacuations, improving the Project Worksheet process, empowering grantees, and improving State Administrative Plans.

Statement of Need:

The proposed changes implement new statutory authorities and incorporate necessary clarifications and corrections to streamline and improve the Public Assistance program. Portions of FEMA's Public Assistance regulations have become out of date and do not implement all of FEMA's available statutory authorities. The current regulations inhibit FEMA's ability to clearly articulate its regulatory requirements, and the Public Assistance applicants' understanding of the program. The proposed changes are intended to improve the efficiency and consistency of the Public Assistance program.

Summary of Legal Basis:

The legal authority for the changes in this proposed rule is contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 to 5207, as amended by the Post-Katrina Emergency Management Reform Act of 2006, 6 U.S.C. 701 et seq., the Security and Accountability for Every Port Act of 2006, 6 U.S.C. 901 note, the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333, and the Pets Evacuation and Transportation Standards Act of 2006, Public Law 109-308, 120 Stat. 1725.

Alternatives:

One alternative is to revise some of the current regulatory requirements (such as application deadlines) in addition to implementing the amendments made to the Stafford Act by (1) the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) Public law 109-295, 120 Stat. 1394; 2) the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109-347, 120 Stat. 1884, 3) the Local Community Recovery Act of 2006, Public Law 109-218, 120 Stat. 333; and 4) the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109-308, 120 Stat. Another alternative is to expand funding by expanding force account labor cost eligibility to Category A Projects (debris removal) as well as Category B Projects (emergency protective measures).

Anticipated Cost and Benefits:

The proposed rule is expected to have economic impacts on the public, grantees, subgrantees, and FEMA. The expected benefits are a reduction in property damages, societal losses, and losses to local businesses, as well as improved efficiency and consistency of the Public Assistance program. The expected cost impact of the proposed rule is mainly the costs to FEMA in administering the Public Assistance program of approximately $60 million per year. Less than $1 million per year is expected to be attributed to grantees, and FEMA estimates the rule will have no costs added to subgrantees. These costs to FEMA are expected to accrue from the inclusion of education to the list of eligible private nonprofit critical services; expansion of force account labor cost eligibility; the inclusion of durable medical equipment; the evacuation, care, and sheltering of pets; as well as providing for precautionary evacuation measures. However, most of the proposed changes are not expected to result in any additional cost to FEMA or any changes in the eligibility of assistance. For example, the proposed rule would provide for accelerated Federal assistance and expedited payment of Federal share for debris removal. These are expected to improve the agency's ability to quickly provide funding to grantees and subgrantees without affecting Public Assistance funding amounts.

Risks:

This action does not adversely affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/10	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

Agency Contact:

James A. Walke
Disaster Assistance Directorate
Department of Homeland Security
Federal Emergency Management Agency
500 C Street SW.
Washington, DC 20472–3100
Phone: 202 646–2751
Fax: 202 646–3304
Email: james.walke@dhs.gov

RIN: 1660–AA51

DHS—FEMA

FINAL RULE STAGE

85. SPECIAL COMMUNITY DISASTER LOANS PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 5121 to 5207

CFR Citation:

44 CFR 206

Legal Deadline:

None

Abstract:

This rule amends FEMA's regulations to implement loan cancellation provisions for Special Community Disaster Loans (Special CDLs), which were provided by FEMA to local governments in the Gulf region following Hurricanes Katrina and Rita. This rule would not automatically cancel all Special CDLs, but would establish the procedures and requirements for governments who received Special CDLs to apply for cancellation of loan obligations as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Troop Act). With the passage of the Troop Act, FEMA has the discretionary ability to cancel Special CDLs subject to the limitations of section 417(c)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Under section 417 of the Stafford Act, FEMA is authorized to cancel a loan if it determines that the ''revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character.'' Since the cancellation provisions of section 417 of the Stafford Act already exist in the Traditional CDL Program regulations at 44 CFR 206.366, and section 417 of the Stafford Act provides the basis for cancellation of loans under both the Special CDL Program and the Traditional CDL Program, FEMA proposed to mirror the Traditional CDL cancellation provisions for Special CDLs. This rule will not affect the

cancellation provisions for the Traditional CDL Program.

Statement of Need:

This rulemaking is needed to address the needs of the communities affected by Hurricanes Katrina and Rita in 2005. This rule would provide for the alleviation of financial hardship on those communities who can demonstrate that in the three full fiscal years after the disaster they have not recovered to the point that their revenues are sufficient to meet their operating budget. This rule is needed to help those communities recover from that catastrophic disaster by offering the potential for relief of an additional financial burden.

Summary of Legal Basis:

This rulemaking is authorized by the Community Disaster Loan Act of 2005 (Pub. L. 109-88), the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, (Pub. L. 109-234), and the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

Alternatives:

FEMA considered creating new and different cancellation application requirements for these communities but decided against that method as the cancellation authority is the same as the authority for traditional CDLs and the regulations currently used to cancel traditional CDLs has been in place and working for 19 years. New requirements may be confusing, additionally burdensome, or insufficient. FEMA is also considering the alternatives proposed by the commenters in drafting the final rule.

Anticipated Cost and Benefits:

The overall impact of this rule is the cost to the applicant to apply for the cancellation, as well as the impact on the economy of potentially forgiving all Special Community Disaster Loans and any related interest and costs. As the total amount of loans approved in the SCDL program reached almost $1.3 billion, therefore, the maximum total economic impact of this rule is approximately $1.3 billion. However, without knowing which communities will apply for cancellation and the dollar amount of the loans that will be cancelled, it is impossible to predict the amount of the economic impact of this rule with any precision. Although the impact of the rule could be spread over multiple years as applications are received, processed, and loans cancelled, the total economic effect of a specific loan cancellation would only occur once, rather than annually.

Risks:

This action does not adversely affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/18/05	70 FR 60443
Interim Final Rule Effective	10/18/05	
Interim Final Rule Comment Period End	12/19/05	
NPRM	04/03/09	74 FR 15228
NPRM Comment Period End	06/02/09	
Final Rule	01/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

Docket ID FEMA-2005-0051

URL For More Information:

www.regulations.gov

URL For Public Comments:

www.regulations.gov

Agency Contact:

James A. Walke
Disaster Assistance Directorate
Department of Homeland Security
Federal Emergency Management Agency
500 C Street SW.
Washington, DC 20472–3100
Phone: 202 646–2751
Fax: 202 646–3304
Email: james.walke@dhs.gov

RIN: 1660–AA44

BILLING CODE 9110–9B–S