

U.S. Department of Homeland Security

Retrospective Review of Existing Regulations – Progress Report

May 14, 2012



U.S. Department of Homeland Security

Retrospective Review Plan Report

May 2012

Component	RIN/ OMB Control Number	Rule/ICR	Brief Description	Actual or Target Completion Date	Anticipated Savings in Costs and/or Information Collection Burdens, together with any Anticipated Changes in Benefits (please quantify, to the extent feasible, & also specify baseline, time horizon, & affected groups)	Progress Updates & Anticipated Accomplishments	Notes
USCIS	1615-AB95	<u>Immigration Benefits Business Transformation: Nonimmigrants, Students and Exchange Visitor Program</u>	This rulemaking primarily focuses on 8 CFR Part 214, which covers the nonimmigrant classes, including the requirements for admission, extension, maintenance of status, and the Student and Exchange Visitor Information System (SEVIS).	Undetermined	<ul style="list-style-type: none"> • Provide the public with a more user-friendly organization of regulatory requirements. • Reduce public confusion. 	USCIS is developing the Notice of Proposed Rulemaking (NPRM). There are no previous rulemakings.	This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.
USCIS	1615-AB71	<u>Electronic Communications: Registration Requirement for Petitioners Seeking to File H-1B Petitions</u>	USCIS is proposing to require employers seeking to petition H-1B workers subject to numerical limitations to first file electronic registrations with USCIS during a designated registration period. If necessary, registrations will be randomly selected to file H-1B petitions.	Undetermined	<ul style="list-style-type: none"> • Reduce the petitioner's administrative burdens with preparing a complete H-1B petition prior to knowing whether the statutory limit has been reached. • Reduce societal burden by 13,750 hours annually. 	USCIS published a NPRM on 3/3/2011. USCIS is reviewing public comments.	USCIS estimates that this rule will result in a net benefit to society. Currently, employers submit a petition, at great expense, without any certainty that an H-1B cap number will ultimately be allocated to the beneficiary named on the petition. The proposed Internet-based registration system would allow employers to complete a much shorter and less expensive registration process for consideration of available H-1B cap numbers. The new system will also relieve a significant administrative burden and expense from USCIS.
USCIS	1615-AB99	<u>Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives</u>	This rule will propose to change the current process for filing and adjudication of certain applications for waivers of inadmissibility filed in connection with an immediate relative immigrant visa application. Specifically, USCIS will propose to allow certain immediate relatives of U.S. citizens to request provisional waivers under section 212(a)(9)(B)(v) of the Immigration and Nationality Act of 1952, as amended, prior to departing the United States for consular processing of their immigrant visa applications.	NPRM published on 4/2/2012.	<ul style="list-style-type: none"> • Allow certain immediate relatives of U.S. citizens who are physically present in the United States to request provisional unlawful presence waivers prior to departing from the United States for consular processing of their immigrant visa applications. • USCIS anticipates that the proposed changes will significantly reduce the length of time U.S. citizens are separated from their immediate relatives who are required to remain outside of the United States for immigrant visa processing and during adjudication of a waiver of inadmissibility for the unlawful presence. • USCIS also believes the proposed provisional waiver process will create efficiencies for both the U.S. Government and most applicants by reducing the degree of interchange between the Department of State and USCIS. 	Comment period will close on 6/1/2012. USCIS has begun reviewing the public comments.	The proposed rule requires that an applicant requesting a provisional unlawful presence waiver complete an Application for Provisional Waiver of Unlawful Presence, Form I-601A. This is a revised collection instrument under the Paperwork Reduction Act (PRA), and OMB is reviewing that instrument for PRA approval.

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USCIS	1615-AB92	<u>Employment Authorization for Certain H-4 Spouses</u>	This rule will propose to extend the availability of employment authorization to H-4 dependent spouses of principal H-1B nonimmigrants who have begun the process of seeking lawful permanent resident status through employment and have extended their authorized period of admission or "stay" in the United States under the American Competitiveness in the Twenty-First Century Act of 2000 (AC21).	Publication of the NPRM is expected in 2012.	<ul style="list-style-type: none"> • Would increase incentives of H-1B nonimmigrant workers who are allowed to extend their period of stay under AC21 as they complete the process to adjust status to that of a lawful permanent resident by providing parallel employment incentives to the H-4 spouse. 	USCIS is developing the rulemaking. There are no previous rulemakings.	
USCG	1625-AA16	<u>Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended, and Changes to Domestic Endorsements</u>	The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended, sets forth minimum training and demonstrations of proficiency requirements for merchant mariners. It provides a consistent set of training and competencies for merchant mariners operating in U.S. and international waters. The Coast Guard has codified these Convention standards in the U.S. Code of Federal Regulations. The Coast Guard develops these standards with other international parties at the International Maritime Organization of the United Nations. The Coast Guard also develops similar standards of training and proficiency requirements for mariners that work only in U.S. waters.	Publication of the Final Rule is expected in Fall 2012	<ul style="list-style-type: none"> • Update requirements to address gaps in minimum training requirements for seafarers. • Provide additional flexibility for sea service and training requirements. • Provide a societal benefit by clarifying STCW requirements in response to requests for interpretation and guidance. 	Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) on 8/1/11. Coast Guard received public comments that make suggestions for minimizing economic impacts on the industry (e.g., incorporating on-the-job training, an additional phase-in period for implementation) and is considering them for inclusion in the rule.	
USCG	1625-AB80	<u>Elimination of TWIC for Certain Mariner Populations (Implementation of Section 809 of the 2010 Coast Guard Authorization Act)</u>	Section 809 of the Coast Guard Authorization Act of 2010 eliminated the requirement that certain mariners must obtain a Transportation Worker Identification Credential (TWIC). The Coast Guard is working on regulatory provisions that would implement section 809. Related to this, the Coast Guard is also considering regulatory changes that would provide an exemption from paying certain fees for a subset of the above mariner population.	Publication of the rule expected in Summer 2012	<ul style="list-style-type: none"> • Eliminate TWIC requirements for approximately 18,000 mariners annually. • Eliminate trips to TWIC Enrollment Centers for approximately 18,000 mariners annually. 	Coast Guard issued a Letter of Policy in December 2011; it implements an interim process to provide burden relief to mariners until Coast Guard publishes the rule.	

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USCG	1625-AB38	<u>Update to Maritime Security Regulations</u>	The Coast Guard regulations implementing the Maritime Transportation Security Act of 2002 (MTSA) provide security measures for vessel and port facility operations in U.S. ports. Among other things, these regulations require owners or operators of vessels and port facilities to develop security plans. Since promulgation of the MTSA regulations, the Coast Guard has granted exemptions from MTSA provisions on an ad hoc, individual basis. Through this rule, the Coast Guard would formalize several categories of exemptions, which, in turn, will reduce the burden associated with the current ad hoc waiver process.	Publication of the NPRM expected in Fall 2012	<ul style="list-style-type: none"> Clarify MTSA requirements in response to requests for interpretation and guidance. Formalize exemptions from certain MTSA provisions, which would provide an annual savings of \$125,000 to society. 	Coast Guard is in the process of reviewing industry practice related to MTSA regulations and is compiling data with regard to the effect that clarifications (beyond the elimination of requests for interpretation and guidance) would have on current industry practice.	
CBP	1651-AA94	<u>Internet Publication of Administrative Seizure/Forfeiture Notices</u>	Current regulations provide for publication of notices of seizure and intent to forfeit seized merchandise in local newspapers for seized merchandise appraised at more than \$5,000, and by posting the notice at the local customhouse for seized merchandise appraised at \$5,000 or less. This regulation would allow for online posting of such information.	NPRM published on 2/8/2012. Publication of the Final Rule expected in Fall 2012.	<ul style="list-style-type: none"> Provide an estimated annual savings of \$700,000 to CBP, when compared to current advertising expenses. 	Comment period closed on 4/9/2012. CBP is reviewing the public comments.	
CBP	1651-AA93	<u>Closing of White Tail Crossing</u>	CBP is developing a proposal to close the port of entry in Whitetail, Montana. Whitetail is one of the least trafficked ports, and the facility does not have the infrastructure to meet modern operational, safety, and technological demands for ports of entry.	Publication of the Final Rule expected in Summer 2012.	<ul style="list-style-type: none"> This rule will provide budget savings to CBP and yields a net benefit (estimated budget savings less increased travel costs) of approximately \$8.2 million the first year and \$396,000 each year thereafter when compared to the baseline condition. If the crossing were to remain open, it would need significant renovation to meet current safety and security standards. CBP therefore includes an \$8 million renovation in the baseline condition. 	CBP published the NPRM on 8/24/11, and the comment period closed on 10/24/2011. CBP is reviewing the public comments and developing the Final Rule.	

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CBP	1651-AA73	<u>Establishment of Global Entry Program</u>	Current CBP regulations do not include provisions for all of CBP's trusted traveler programs and those that are included are set forth in different provisions and are not comprehensive. For example, the trusted traveler pilot program, Global Entry, is not yet incorporated in the regulations. CBP issued an NPRM to incorporate Global Entry into the regulations and since developed a Final Rule.	Final Rule published on 2/6/2012.	<ul style="list-style-type: none"> Result in a 70 percent reduction in processing time with an average savings of 7.6 minutes per trip for enrollees when compared to average processing times for nonmembers. Note: The main direct beneficiaries of the program are the travelers who enroll in the program. Because it is a voluntary program, CBP expects all enrollees to benefit. Nonmembers could also experience shorter wait times, because the regular inspection lines will be shorter. 	Final Rule became effective on 3/7/2012.	
FEMA	No RIN Available	<u>Increased Federal Cost Share and Reimbursement for Force Account Labor for Public Assistance Debris Removal</u>	Currently, FEMA regulations do not allow for reimbursement of force account labor for debris removal activities and do not allow for increased cost share when an applicant has a debris management plan.	Publication of a rule expected in late Summer 2012	<ul style="list-style-type: none"> Cost savings are expected due to the greater efficiency in managing debris operations. Benefits include reduced or eliminated delays in performing debris removal after a disaster. Public Assistance applicants also have additional flexibility to use a combination of contracting and force labor. 	FEMA is developing the rule.	In the DHS Final Plan for the Retrospective Review of Existing Regulations, which DHS issued on August 22, 2011, DHS included this FEMA regulation in "Appendix C: Long-Term Retrospective Review Candidates." DHS has now moved this regulation to its list of ongoing retrospective review projects.
FEMA	No RIN Available	<u>State Standard and Enhanced Mitigation Plan</u>	Currently, FEMA regulations require applicants for hazard mitigation assistance to update the Standard and the Enhanced State Mitigation Plans every 3 years.	Publication of a rule expected in Spring 2013.	<ul style="list-style-type: none"> Will allow States to update their plans every 5 years instead of every 3 years, thereby matching the updated cycle for local and tribal governments. Cost savings are expected due to the fact that fewer updates will be required over time. 	FEMA is developing the rule.	In the DHS Final Plan for the Retrospective Review of Existing Regulations, which DHS issued on August 22, 2011, DHS included this FEMA regulation in "Appendix C: Long-Term Retrospective Review Candidates." DHS has now moved this regulation to its list of ongoing retrospective review projects.

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ICE	1653-AA44	<u>Revisions to SEVIS regulations</u>	<p>The Student and Exchange Visitor Information System (SEVIS) is an electronic filing and adjudication system for schools that seek to enroll foreign nonimmigrant students. SEVIS improves data collection and reporting, enhances customer service, facilitates compliance with regulations, and helps ICE better monitor school and exchange programs.</p> <p>ICE is working with the Department of State to implement the deployment of SEVIS II, the next generation of the system.</p>	Publication of NPRM expected in Summer 2013.	<ul style="list-style-type: none"> • Remove outdated provisions. • Provide an estimated total annual burden reduction of approximately 11,000 hours. • Provide an estimated total annual savings of approximately \$220,110 to society. 	ICE is developing the rule. In addition, ICE is consulting with the Department of State regarding the draft rule.	
TSA	1652-AA35	<u>Revisions to the Alien Flight Student Program (AFSP) regulations</u>	<p>The Alien Flight Student Program (AFSP) rulemaking, among other things, requires a prospective alien flight student to undergo a background check called a "security threat assessment" before each training event. TSA charges each alien flight student a fee intended to cover the costs of the vetting.</p>	Publication of the NPRM expected in early 2013.	<ul style="list-style-type: none"> • Improve the accuracy of vetting fees and equity among fee payers. • Enable the implementation of new technologies to support vetting. • Increase efficiency by enabling existing threat assessment processes to be leveraged. • Provide an estimated total savings for alien flight students, over a five-year period, of approximately \$18 million at a seven percent discount rate to society. 	TSA is accomplishing the review and improvement of AFSP regulations through its rulemaking on Standardized Vetting, Adjudication, and Redress (SVAR). TSA is developing the SVAR rule.	
TSA	1652-AA01	<u>Aviation Security Infrastructure Fee (ASIF)</u>	<p>The Aviation Security Infrastructure Fee (ASIF) rule provides that each air carrier pays fees based on what that carrier spent on certain security measures in the calendar year 2000. Under the statute, after fiscal year 2005, TSA may re-evaluate how much each carrier pays, including using market share or other appropriate measure.</p>	Publication of the NPRM expected in late 2012.	<ul style="list-style-type: none"> • Update the fee distribution among air carriers as a result of market share changes since 2000; this will result in a benefit to society. 	TSA has been reviewing data that could be used for determining ASIF market share and has completed initial analysis for developing needed methodology.	