Decoding Immigration: Temporary Final Rules, Regulations & Other Rigamaroles

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July 10, 2020
With grateful appreciation to David Fosnocht, Director of Immigration Practice Resources, NAFSA
Outline

• U.S. government structure
  • Executive, Legislative, and Judicial
  • Federal vs. State

• Immigration law sources
3 BRANCHES of U.S. GOVERNMENT

**Constitution**
(provided a separation of powers)

- **Legislative** (makes laws)
  - Congress
    - Senate
    - House of Representatives

- **Executive** (carries out laws)
  - President
    - Vice President
  - Cabinet

- **Judicial** (interprets laws)
  - Supreme Court
  - Other Federal Courts
Under the Tenth Amendment to the U.S. Constitution, all powers not granted to the federal government are reserved for the states and the people, which are divided between state and local governments.

All state governments are modeled after the federal government and consist of three branches: executive, legislative, and judicial.

Immigration:
In Article I, Section 8, the U.S. Constitution grants Congress the responsibility “to establish a uniform rule of naturalization,” determining how immigrants can become citizens.

Since late 1800s, the U.S. Supreme Court has backed the federal immigration regulations.
The sources of authority for immigration

Laws are the primary sources of authority that bind both the public and the government.

These sources of authority are not law, but rather how the agency interprets and applies the laws it administers.
The hierarchy of authority

1. Policy
   - Must conform to
2. Regulation
   - Must conform to
3. Statute
   - Must conform to
4. Constitution
Law: Federal Statutes

**Statutes** are laws passed by Congress and signed into law by the President.

**STATUTORY POOL**

**INA and Other Statutory Citations**

- Immigration and Nationality Act of 1952
  - INA
- Illegal Immigration Reform and Alien Responsibility Act of 1996
  - IIRIRA or IIRAIRA
- American Competitiveness and Workforce Improvement Act of 1998
  - ACWIA
- Immigration Reform and Control Act of 1986
  - IRCA

Amendatory statutes are often referred to by their common Act name as named by the Congress that passed it.
Law: Federal Regulations

The Agency Rule Pool

Immigration law is a form of administrative law, because the principal actors are federal administrative agencies, which have authority delegated to them by Congress.

Agency Administrative Law

- Promulgate regulations and issue statements of policy and interpretive rules

Agencies apply rules in the form of

- Benefit adjudications
- Compliance efforts
- Enforcement actions

Agency Interpretive Guidance

- Fills gaps in statutes or regulations
- Interprets statutory or regulatory wording
- Improves consistency in adjudications and establish expectations for the regulated public
- Responds to unforeseen events and pressures of the outside world

The Code of Federal Regulations

Agency regulations are laws promulgated by administrative agencies under authority delegated to them by Congress. Agencies are generally bound by the Administrative Procedure Act (APA) when making regulations.
Department of Homeland Security

Primary Immigration-Related Agencies

**DHS**
Department of Homeland Security

- **USCIS**
  U.S. Citizenship and Immigration Services
  Adjudication of immigration benefit applications at USCIS Service Centers.

- **ICE**
  U.S. Immigration and Customs Enforcement
  Enforcement of federal laws governing border control, customs, trade, and immigration.

- **SEVP**
  Student and Exchange Visitor Program
  SEVIS (Student and Exchange Visitor Information System) and associated F and M student and school regulations, policies, and compliance.

- **CBP**
  U.S. Customs and Border Protection
  Border management and control, admitting visitors at U.S. ports of entry and ensuring compliance with customs, immigration, border security, and agricultural protection laws.
Department of State

**DOS**
Department of State

**CA**
Bureau of Consular Affairs
- Consulates and embassies: Issuing immigrant and nonimmigrant visas.
- 212(e) Waiver Review Division: Advisory opinions and recommendations regarding the 212(e) two-year home country physical presence requirement.

**ECA**
Bureau of Educational and Cultural Affairs
- EVP: Promoting, managing, and ensuring compliance with the J exchange visitor program.
DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2663–20; DHS Docket No. USCIS–2013–0006]

RIN 1615–ZB77

Extension of the Designation of Somalia for Temporary Protected Status


ACTION: Notice.

SUMMARY: Through this notice, the Department of Homeland Security...
Federal Register

• Four types of documents are published in the Federal Register:
  • Presidential Documents
    • Executive Orders & Proclamations
  • Rules and Regulations
    • Final Rules, Interim Final Rules, Direct Rules, Temporary Rules
  • Proposed Rules
    • Preliminary rule making documents
    • Public comment, unless good cause exception
  • Notices
    • Do not amend CFR
Is Temporary Final Rule an Oxymoron?

A Final Rule is issued to amend the CFR (by adding, removing or revising text)

• What does it make final?
  • Finalizes a previously issued proposed rule, or
  • Takes final action without a prior proposed rule (for good cause)

• When is it effective?
  • Usually 30 days from date of publication, 60 days for major rules
  • On date of publication in response to emergency, or for other good cause

• Temporary Rule
  • Used for technical amendments or corrections
SEVP Rulemaking

Broadcast Message: COVID-19 and Fall 2020

To: All SEVIS Users
Date: July 6, 2020
Number: 2007-01

General Information

Temporary procedural adaptations related to online courses by the Student and Exchange Visitor Program (SEVP) during the height of the COVID-19 crisis will be modified for the fall 2020 semester. There will be temporary exemptions for nonimmigrant students taking online courses during the fall semester.

New Rules: Foreign Pupils Must Leave US if Classes Go Online

By The Associated Press
July 6, 2020

International students will be forced to leave the U.S. or transfer to another college if their schools offer classes entirely online this fall.
## Agency Guidance

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Rigamarole or Rigmarole?

• Questions (I will attempt to answer)