



This document is scheduled to be published in the Federal Register on 11/02/2015 and available online at <http://federalregister.gov/a/2015-27862>, and on FDsys.gov

[Billing Code: 4710-06]

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 9336]

Visas: Procedures for Issuing Visas

RIN: 1400-AD84

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: The Department of State is updating its regulations regarding nonimmigrant visa format, and records retention procedures. These updates reflect changes in technology, including the current practice of issuing machine-readable visas and the planned future practice of issuing visas electronically. The Department is also removing an obsolete records retention provision and a visa review provision, both of which are now addressed in the Foreign Affairs Manual.

DATES: This rule is effective [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Lauren A. Boquin, Legislation and Regulations Division, Visa Services, Department of State, 600 19th St, N.W.,

Washington, D.C. 20006, (202) 485-7638.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

Currently, 22 CFR 41.113 provides for the placement of a stamp in a visa holder's passport. The Department is amending paragraphs (a) and (c) to reflect the current practice of issuing machine-readable visas on adhesive foils that are affixed to passports,

and the planned future practice of issuing such visas as electronic visas. An electronic visas is a machine readable tamper-resistant visa format, as required by 8 U.S.C. 1732, in that the U.S. Customs and Border Protection officers at the port of entry are expected to scan the machine readable zone of the visa holder's passport to verify the biometrics and identity of the individual and to authenticate the visa's validity by accessing information stored in the Department's electronic records database.

Conforming changes and minor nonsubstantive edits were made to paragraphs (b) and (d) through (h). Paragraph (i) was revised to remove visa review and file retention instructions that are internal Department procedures addressed in Volume 9 of the Foreign Affairs Manual. See <http://www.state.gov/m/a/dir/regs/fam/>.

REGULATORY FINDINGS:

Administrative Procedure Act

This regulation amends certain “rules of agency organization, procedure, or practice”, which are not subject to the notice-and-comment rulemaking procedures set forth in 5 U.S.C. 553. See 5 U.S.C. 553(b). Therefore, the Department is issuing this amendment as a final rule.

Regulatory Flexibility Act/Executive Order 13272: Small Business.

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This

regulates individual aliens who seek consideration for nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866 and 13563

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563, and has determined that the benefits of this regulation, i.e., ensuring compliance with a Congressional mandate, outweigh any cost. The Department does not consider this rule to be an economically significant rulemaking action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power

and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign Officials, Immigration, Documentation of Nonimmigrants, Passports and Visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 as follows:

PART 41-[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; 8 U.S.C. 1182(d) ; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295); 112 Stat. 2681–795.

2. Section 41.113 is revised to read as follows:

§ 41.113 Procedures in issuing visas.

(a) Evidence of visa. Except as provided in paragraph (b) of this section, a nonimmigrant visa shall be evidenced by a physical visa placed in the alien’s passport or by an electronic visa located in the Department’s records. The appropriate symbol as prescribed in § 41.12, showing the classification of the alien, shall be entered on the visa.

(b) Cases in which a physical visa is not placed in passport. In the following cases a physical visa shall be placed on the prescribed Form DS-232. In issuing such a visa, a notation shall be made on the Form DS-232 on which the visa is placed, specifying the pertinent subparagraph of this paragraph under which the action is taken.

(1) The alien’s passport was issued by a government with which the United States does not have formal diplomatic relations, unless the Department has specifically authorized the placing of the visa in such passport;

(2) The passport requirement has been waived; or

(3) In other cases as authorized by the Department.

(c) Visa format. A machine-readable visa shall be in the format designated by the Department, and contain, at a minimum, the following data:

(1) Full name of the applicant;

(2) Visa type/class;

(3) Location of the visa issuing office;

- (4) Passport number;
- (5) Sex;
- (6) Date of birth;
- (7) Nationality;
- (8) Number of applications for admission authorized, or the letter “M” for multiple applications for admission authorized;
- (9) Date of issuance;
- (10) Date of expiration;
- (11) Visa control number.

(d) Insertion of name, petition, and derivative status notation. (1) The surname and given name of the visa recipient shall be shown on the visa in the space provided.

(2) If the visa is being issued upon the basis of a petition approved by the Secretary of Homeland Security, the number of the petition, if any, the period for which the 'alien's admission has been authorized, and the name of the petitioner shall be reflected in the annotation field on the visa.

(3) In the case of an alien who derives status from a principal alien, the name of the principal alien and of the petitioner shall be reflected in the annotation field of the visa.

(e) Period of validity. If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the letter “M” shall be shown under the word “entries”. Otherwise the number of permitted applications for admission shall be identified numerically. The date of issuance and the date of expiration of the visa shall be shown at the appropriate places in the visa by day, month, and year in that order. The standard three letter abbreviation for the month shall be used in all cases.

(f) Restriction to specified port(s) of entry. If a nonimmigrant visa is valid for admission only at one or more specified ports of entry, the names of those ports shall be entered in the annotation field. In cases where there is insufficient room to list the port(s) of entry, they shall be listed by hand on a clean passport page. Reference shall be made in the visa's annotation field citing the passport page upon which the port(s) of entry are listed.

(g) Delivery of visa. In issuing a nonimmigrant visa, the consular officer should deliver the passport containing the visa, or the prescribed Form DS-232 which bears the visa, to the alien or to the alien's authorized representative. Any relevant evidence furnished by the alien in accordance with § 41.103(b) should be retained, as required or necessary.

(h) Disposition of supporting documents. Original supporting documents furnished by the alien should be returned for presentation, if necessary, to the immigration authorities at the port of entry. Duplicate copies may be retained in the consular system, as required or necessary.

(i) Review of nonimmigrant visa issuances. Nonimmigrant visa issuances must be reviewed, in accordance with guidance by the Secretary of State, by consular supervisors, or a designated alternate, to ensure compliance with applicable laws and procedures.

September 9, 2015 _____

(Date)

Michele T. Bond,
Acting Assistant Secretary for
Consular Affairs,
Department of State.