

**DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION**

8 CFR Parts 100, 212, 214, 215, 233, and 235

19 CFR Parts 4 and 122

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**Establishing U.S. Ports of Entry in the Commonwealth of the Northern Mariana Islands
(CNMI) and Implementing the Guam-CNMI Visa Waiver Program**

AGENCY: Customs and Border Protection, DHS.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA) extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending U.S. Customs and Border Protection (CBP) regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. Accordingly, this interim final rule sets 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 for a period of authorized stay of no longer than forty-

five days. In addition, this rule establishes six ports of entry in the CNMI in order to administer and enforce the Guam-CNMI Visa Waiver Program and to allow for immigration inspections in the CNMI, including arrival and departure controls, under the Immigration and Nationality Act (INA).

DATES: Effective Date: This interim final rule is effective [Insert date of publication].

Implementation Date: Beginning June 1, 2009, Customs and Border Protection (CBP) will begin operation of this program and required compliance with this interim final rule will begin. The existing Guam Visa Waiver Program remains in effect for travel to Guam until the start of the transition period.

Comments must be received by [Insert date 60 days from date of publication].

ADDRESSES: Please submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2009-0001.
- Mail:** Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Mint Annex, 799 9th Street, NW, Washington, DC 20001.
- Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.
- Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security

Regulations Branch, Office of International Trade, Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Cheryl C. Peters, Office of Field Operations, at (202) 344-1438.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Comments

II. Background and Purpose

A. Current Requirements for the Guam Visa Waiver Program

B. The Consolidated Natural Resources Act of 2008

III. Establishing the Guam-CNMI Visa Waiver Program

A. Program Countries

1. General Eligibility Criteria

2. “Significant Economic Benefit” Criteria

3. Determination of Country Eligibility

4. Suspension of Program Countries

B. Alien Eligibility Criteria

1. Requirements for Admission

2. Inadmissibility and Deportability

3. Bond Provision

4. Maintenance of Status

5. Applicability of Section 212 of the INA – Passport and Visa Requirement

6. Applicability of Section 217 of the INA - Visa Waiver Program

IV. Conforming Changes and Amendments

- A. Changes to CBP Form I-736 “Guam Visa Waiver Information” and to CBP Form I-760 “Guam Visa Waiver Agreement”
- B. Conforming Changes to Title 8 of the Code of Federal Regulations
- C. Conforming Changes to Title 19 of the Code of Federal Regulations

V. Establishing Ports of Entry in the CNMI

VI. Effective Date

VII. Statutory and Regulatory Requirements

- A. Administrative Procedure Act
- B. Executive Order 12866
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act of 1995
- E. Executive Order 13132
- F. Executive Order 12988
- G. Paperwork Reduction Act
- H. Privacy

List of Subjects

I. PUBLIC COMMENTS

Interested persons are invited to submit written comments on all aspects of this interim final rule. Customs and Border Protection (CBP) also invites comments on the economic, environmental or federalism effects of this rule. We urge commenters to reference a specific

portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. BACKGROUND AND PURPOSE

This interim final rule establishes the Guam-Commonwealth of the Northern Mariana Islands (CNMI) Visa Waiver Program as authorized under section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-229, 122 Stat. 754, 860. As explained in more detail below, this rule replaces the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. Under this rule, CBP also is establishing six ports of entry in the CNMI to enable DHS to administer and enforce the Guam-CNMI Visa Waiver Program, and to allow for the application of U.S. immigration laws in the CNMI as directed under section 702 of the CNRA.

A. Current Requirements for the Guam Visa Waiver Program

Pursuant to section 212(l) of the Immigration and Nationality Act (INA) and DHS regulations, aliens who are citizens of eligible countries or geographic areas (hereinafter countries) may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.¹ See 8 U.S.C. 1182(l) and 8 CFR 212.1(e). The alien must be a citizen of a country that: (i) has a visa refusal rate of 16.9% or less, or is a country whose visa refusal rate exceeds 16.9% and has an established preinspection or preclearance

¹ Establishment of the Guam Visa Waiver Program was predicated upon the Attorney General, in consultation with the Secretary of State and the Secretary of the Interior, and after consultation with the Governor of Guam, making a joint determination that: (i) an adequate arrival and departure control system has been developed on Guam, and (ii) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths. See section 212(l) of the INA, 8 U.S.C. 1182(l).

program, pursuant to a bilateral agreement with the United States; (ii) is within geographical proximity to Guam unless the country has a substantial volume of nonimmigrant admissions to Guam as determined by the Commissioner of CBP and extends reciprocal privileges to citizens of the United States; (iii) is not designated by the Department of State as being of special humanitarian concern; and (iv) poses no threat to the welfare, safety or security of the United States, its territories or commonwealths. 8 CFR 212.1(e)(2). The existing regulations also provide that any potential threats to the welfare, safety, or security of the United States, its territories, or commonwealths will be dealt with on a country by country basis, and a determination by the Secretary that a threat exists will result in the immediate deletion of the country from the listing of eligible countries.

Currently, the determination as to which countries may participate in the Guam Visa Waiver Program is based on the countries' geographical proximity to Guam on the premise that they maintain a traditional interchange with Guam. Countries that are not in geographic proximity to Guam may be included if they have a substantial volume of nonimmigrant admissions to Guam and extend reciprocal privileges to citizens of the United States. The following countries meet these eligibility requirements and are currently members of the Guam Visa Waiver Program: Australia, Brunei, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Taiwan (residents who begin travel in Taiwan and fly to Guam without an intermediate layover or stop en route), the United Kingdom (including citizens of Hong Kong), Vanuatu, and Western Samoa. See 8 CFR 212.1(e)(3)(i).

An alien from one of these eligible countries currently may be admitted into Guam under the Guam Visa Waiver Program if the alien: (i) is classifiable as a visitor for business or pleasure; (ii) is solely entering and staying on Guam for a period not to exceed fifteen days; (iii) is in

possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam; (iv) is in possession of a completed and signed Guam Visa Waiver Information Form (CBP Form I-736); (v) waives any right to review or appeal under the INA of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam; and (vi) waives any right to contest other than on the basis of an application for asylum, any action for deportation of the alien. See 8 CFR 212.1(e)(1).

B. The Consolidated Natural Resources Act of 2008

On May 8, 2008, the President signed into law the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-229, 122 Stat. 754. Section 702(a) of the CNRA extends U.S. immigration laws to the CNMI and authorizes DHS to create a Guam-CNMI Visa Waiver Program. See sections 212 and 214 of the INA, 8 U.S.C. 1182 and 1184.

This interim final rule establishes the Guam-CNMI Visa Waiver Program and sets forth the requirements for nonimmigrant visitors seeking admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program. These amendments ensure that the regulations conform to current border security needs and facilitate CBP's dual core missions of protecting our nation's borders and fostering legitimate international travel.

Section 702(b) of the CNRA requires the Secretary of Homeland Security to consult with the Secretary of State and the Secretary of the Interior, the Governor of Guam and the Governor of the CNMI in the development of these regulations. Accordingly, representatives of DHS, including CBP, during a July 10-16, 2008 visit to Guam and the CNMI, met with officials of the Guam Government, the CNMI Government and representatives of the Marianas Visitors Authority, the Guam Visitors Bureau, the Hotel Association of the Northern Mariana Islands,

and the Saipan Chamber of Commerce. At the request of the Governor of Guam, DHS officials met with Governor Camacho, his staff, and members of the Guam Visitor's Bureau on September 15, 2008, in Washington, D.C. Representatives of DHS also met on November 21, 2008 with Delegate-elect Gregorio "Kilili" Sablan, the first Delegate from the CNMI to the U.S. House of Representatives, as well as with members of the Hotel Association of the Northern Mariana Islands (HANMI) on December 5, 2008. Additionally, interagency meetings were held on September 9, October 21, 2008 and December 5, 2008, between DHS, the Department of State, and the Department of the Interior, among others, in order to come to an agreement over the implementation of the Guam-CNMI Visa Waiver Program.

III. Establishing the Guam-CNMI Visa Waiver Program

The following are the eligibility criteria for countries and aliens.

A. Program Countries

1. General Eligibility Criteria

The country eligibility requirements established in this rulemaking under the Guam-CNMI Visa Waiver Program differ from those under the Guam Visa Waiver Program. The new requirements take into account the provisions and purposes of the CNRA and ensure that the regulations conform to current border security needs. In determining the criteria for making country eligibility determinations for the Guam-CNMI Visa Waiver Program, DHS considered a variety of factors to ensure that the new Guam-CNMI Visa Waiver Program reflected Congress' stated purposes of the CRNA to, among others : (1) ensure effective border control procedures; (2) properly address national security and homeland security concerns in extending U.S. immigration law to the CNMI; and (3) maximize the CNMI's potential for future economic and business growth. See § 701(a)(1).

Section 702 of the CRNA provides that “[i]n determining whether to grant or continue providing the waiver under this subsection to nationals of any country, the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, shall consider all factors that the Secretary deems relevant, including electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.” In determining country eligibility for participation in the Guam-CNMI Visa Waiver Program under this rule, the Secretary of Homeland Security found relevant, and thus considered, each of these enumerated factors.

This rulemaking also provides for these new eligibility conditions to ensure the safety, security, and welfare of the United States. Under these new requirements a country’s nationals may not participate in the Guam-CNMI Visa Waiver Program if: (1) the country poses a threat to the welfare, safety or security of the United States, its territories or commonwealths; (2) the country is designated by the Department of State as being of special humanitarian concern; or (3) if the country does not accept for repatriation any citizen, former citizen, or national admitted into Guam or the CNMI under the Guam-CNMI Visa Waiver Program within three weeks after issuance of a final order of removal.

2. “Significant Economic Benefit” Criteria

Section 702(b) of the CNRA requires the Secretary to include in the list of participating countries, a list of those countries from which the CNMI has received a “significant economic benefit” from the number of visitors for pleasure within the one-year period preceding the date of enactment of the CNRA. However, if the Secretary determines that such a country’s inclusion represents a threat to the welfare, safety, or security of the United States, or determines that such

country is not eligible based on other factors the Secretary deems relevant, then that country will not qualify as an eligible country.

DHS has determined that, during the relevant timeframe, visitors for pleasure from the People's Republic of China (PRC) and the Russian Federation (Russia) provided a significant economic benefit to the CNMI. This determination is based on the economic analysis below and takes into account the total on-island spending of these visitors on a per country basis, calculated by the Marianas Visitors Authority. During the period of May 2007 through April 2008, DHS calculated visitor arrivals to the CNMI by country of residence. PRC nationals represented ten percent of visitor arrivals and Russian nationals represented one percent of visitor arrivals. The total on-island spending by PRC nationals was \$38 million and for Russian nationals was \$20 million. Per person on-island spending was equal to \$967 for PRC nationals and \$4,323 for Russian nationals.

At this time, however, due to political, security, and law enforcement concerns, including high nonimmigrant visa refusal rates and concerns with cooperation regarding the repatriation of citizens, subjects, nationals and residents of the country subject to a final order of removal, nationals of the PRC and Russia are not eligible to participate in the Guam-CNMI Visa Waiver Program when the program is implemented.

After additional layered security measures, which may include, but are not limited to, electronic travel authorization to screen and approve potential visitors prior to arrival in Guam and the CNMI, and other border security infrastructure, DHS will make a determination as to whether nationals of the PRC and Russia can participate in the Guam-CNMI Visa Waiver Program. In making such a determination, DHS will consider the welfare, safety, and security of the United States and its territories, as well as other considerations deemed relevant by the

Secretary.

If DHS determines that nationals from the PRC and/or Russia may participate in the Guam-CNMI Visa Program, DHS will amend the regulations as necessary.

3. Determination of Country Eligibility

This rulemaking includes a listing of all countries that have been determined to be eligible to participate in the Guam-CNMI Visa Waiver Program, and whose nationals may apply for admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program. The new Guam-CNMI Visa Waiver Program list includes all of the countries that were included in the Guam Visa Waiver Program, except for Indonesia, the Solomon Islands, Vanuatu, and Western Samoa. The Solomon Islands are not included on the list of eligible countries for the Guam-CNMI Visa Waiver Program in consideration of ongoing civil and political instability.

Indonesia, Vanuatu, and Western Samoa are not included on the list of eligible countries due to very high rates of refusal for nonimmigrant visitor visas. In addition, these four countries do not provide a “significant economic benefit” to the CNMI. Therefore, DHS does not find their removal from the program country list, based on such factors as ongoing civil and political instability, or high nonimmigrant visa refusal rates, to outweigh any existing economic benefits from their past inclusion under the Guam Visa Waiver Program. The following countries are designated for participation in the Guam-CNMI Visa Waiver Program: Australia, Brunei, Hong Kong (Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card is required), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom.

4. Suspension of Program Countries

This rule also incorporates the provisions in the CNRA regarding the suspension of countries from the Guam-CNMI Visa Waiver Program. Section 702(b) of the CNRA requires the Secretary to monitor the admission of nonimmigrant visitors to Guam and the CNMI, and to suspend the admission of nationals from a country if the Secretary determines that admissions from that country have resulted in an unacceptable number of overstays, unlawful entry into other parts of the United States, or visitors seeking withholding of removal or seeking asylum.

The CNRA also requires the Secretary to suspend admissions from a country if the Secretary determines that visitors from that country pose a risk to the law enforcement or security interests of Guam, the CNMI, or the United States, including the interest in the enforcement of U.S. immigration laws. Any designated country that fails to meet the country eligibility criteria under new section 212.1(q) shall be removed for good cause. In determining whether to continue to grant the waiver, consistent with the statutory factors listed in section 702(b) of the CNRA, designated countries must, within three weeks after the issuance of a final order of removal, accept for repatriation any citizen, former citizen or national admitted into Guam or the CNMI under this program. Failure to accept for repatriation may result in suspension of that country from the program. The CNRA also provides that the Secretary may suspend the Guam-CNMI Visa Waiver Program on a country-by-country basis for other good cause.

B. Alien Eligibility Criteria

1. Requirements for Admission

The CNRA authorizes the Secretary to allow an alien to enter Guam or the CNMI as a nonimmigrant visitor for business or pleasure for a period not to exceed forty-five days after the Secretary of Homeland Security, in consultation with the Secretaries of State and the Interior and

the Governors of Guam, and the CNMI determines that: (i) adequate arrival and departure control systems have been developed in Guam and the CNMI, and (ii) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

In addition to the requirements that aliens currently seeking admission to Guam under the current Guam Visa Waiver program must meet, DHS is adding three new admission requirements. Under this interim final rule, to be considered eligible for admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program, nonimmigrant aliens must also: (i) be in possession of a valid unexpired passport that meets the standards of the International Civil Aviation Organization (ICAO) for machine readability and which is issued by a country that meets the eligibility requirements as determined by the Secretary; (ii) have not previously violated the terms of any prior admissions to the United States under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, or the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa; and (iii) present a valid completed and signed CBP Form I-94, known as the Arrival-Departure Record Form (Form I-94).

Although not specifically required under the Guam Visa Waiver Program regulations, pursuant to operational practices, nonimmigrant visitors currently must present a valid completed and signed CBP Form I-94 to enter Guam under the Guam Visa Waiver Program. This rulemaking explicitly requires completion of an I-94 to enter Guam and the CNMI under the Guam-CNMI Visa Waiver Program.

Additionally, consistent with existing Guam Visa Waiver Program regulations, an alien will not be admitted under the Guam-CNMI Visa Waiver Program unless the alien (i) has waived any

right to review or appeal under the INA of an immigration officer's determination as to the admissibility of the alien and (ii) has waived any right to contest any action for removal of the alien, other than on the basis of an application for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or an application for asylum if permitted under section 208 of the INA, 8 U.S.C. 1158.

2. Inadmissibility and Deportability

This rule provides DHS with the authority to remove aliens and to make determinations as to admissibility and deportability under 8 CFR 212.1(q)(8). CBP may remove an alien seeking admission under the Guam-CNMI Visa Waiver Program upon a determination that the alien is inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility (other than for lack of visa) listed under section 212 of the INA. See 8 U.S.C. 1182. This rule also provides that an immigration officer may remove a Guam-CNMI Visa Waiver Program applicant who presents fraudulent or counterfeit travel documents. Likewise, DHS will have the authority to remove an alien admitted under the Guam-CNMI Visa Waiver Program who has violated his/her status under one or more grounds of deportability as listed under section 237 of the INA. See 8 U.S.C. 1227. Accordingly, aliens who have been determined to be inadmissible or deportable will not be referred to an immigration judge for further inquiry, examination or hearing, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum or withholding of removal under section 241(b)(3) of the INA or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2).

The CNRA provides that, during the transition period, section 208 of the INA, 8 U.S.C. 1158, which provides for asylum, does not apply to aliens physically present in the CNMI. See Pub. Law 110-229, 122 Stat. 754, § 702(a). Therefore, prior to January 1, 2015, an alien who is physically present in the CNMI under the Guam-CNMI Visa Waiver Program may not apply for asylum and an immigration judge will not have jurisdiction over asylum applications filed by an alien physically present in the CNMI under the Guam-CNMI Visa Waiver Program. Aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This rule amends 8 CFR 214.1, regarding ineligibility for extensions of stay to add a limitation regarding extensions of stay for any Guam-CNMI Visa Waiver Program nonimmigrants. Currently, nonimmigrants who were admitted into the United States as visitors for business or pleasure pursuant to the Visa Waiver Program (section 217 of the INA) are ineligible for an extension of stay. This amendment will provide that nonimmigrants admitted pursuant to the Guam-CNMI Visa Waiver Program are ineligible for an extension of stay. Additional technical changes to 8 CFR 233.5 to include references to the CNMI also are made where appropriate.

3. Bond Provision

Section 702(b) of the CNRA also requires that the regulations include any bonding requirements for nationals of some or all of those countries who may present an increased risk of

overstaying their period of authorized stay or other potential problems. See section 702(b). This rule implements this new bonding provision in new section 212.1(q), which provides that the Secretary may require a bond on behalf of an alien seeking admission under the Guam-CNMI Visa Waiver Program when the Secretary deems it appropriate.

4. Maintenance of Status

This rule includes a provision allowing an alien admitted to Guam or the CNMI under the Guam-CNMI Visa Waiver Program to seek a period of satisfactory departure. Under this rule, CBP and U.S. Citizenship and Immigration Services (USCIS) have the discretion to grant a period of satisfactory departure to an alien admitted under the Guam-CNMI Visa Waiver Program in the event of an emergency. Under new section 212.1(q)(7), this rule provides that if an alien admitted under the Guam-CNMI Visa Waiver Program is prevented from departing within the period of his or her authorized stay due to an emergency, CBP or USCIS may grant satisfactory departure to permit the alien to delay departing Guam or the CNMI for a period not to exceed fifteen days. If the alien departs within the extended time period, the alien will be regarded as having departed within the required time period and will not be considered as having overstayed his period of authorized stay.

5. Applicability of Section 212 of the INA – Passport and Visa Requirement

Another result of applying the U.S. immigration laws to the CNMI, is that, pursuant to section 212 of the INA, 8 U.S.C. 1182, nonimmigrant visitors who seek admission to the CNMI must possess a valid passport and a valid visa, unless they are applying for entry under a visa waiver program. This means that nonimmigrant visitors who are not eligible for either the Visa Waiver Program under 8 CFR part 217 (VWP) or the Guam-CNMI Visa Waiver Program must

possess a valid passport and must obtain a visa from a U.S. Embassy or Consulate. They will no longer be able to visit the CNMI using the CNMI Visitor Entry Permit.²

6. Applicability of Section 217 of the INA – Visa Waiver Program

The CNRA extends the immigration laws of the United States to the CNMI. Thus, the admission of aliens to the CNMI is governed by the provisions of the INA. As indicated above, this rule amends 8 CFR 215.1 to add the CNMI to the definition of the United States to ensure that the INA applies to the CNMI.

Section 217 of the INA, 8 U.S.C. 1187, establishes the VWP. Under the VWP, nationals of designated countries can apply for admission to the United States at ports of entry for business or pleasure for up to 90 days without first obtaining a nonimmigrant visa. The regulations implementing the VWP are at 8 CFR part 217. Under this interim final rule, both the VWP and the Guam-CNMI Visa Waiver Program will be in operation in the CNMI. Thus, nonimmigrant visitors may be able to apply for admission to the CNMI under one or both programs, depending on the eligibility status of the nonimmigrant visitors' country of nationality or citizenship. The permitted length of stay will depend on whether the nonimmigrant visitors are admitted under the VWP (up to 90 days) or under the Guam-CNMI Visa Waiver Program (up to 45 days).³

² Nonimmigrant visitors who seek admission to Guam already must possess a valid passport and a valid visa, or a valid passport (and no visa) if they are applying for entry under a visa waiver program. This will not change under this interim final rule.

³ The immigration laws of the United States already apply to Guam. Thus, nonimmigrant visitors from designated countries already can apply for admission to Guam under the VWP under section 217 of the INA or the Guam Visa Waiver Program under section 212(1) of the INA. Under this interim final rule, visitors from participating countries will be able to apply for admission to Guam or the CNMI under the VWP or the Guam-CNMI Visa Waiver Program. The permitted length of stay depends on whether they are admitted under the VWP (up to 90 days) or under the Guam-CNMI Visa Waiver Program (up to 45 days).

IV. Conforming Changes and Amendments

A. Changes to CBP Form I-736 “Guam Visa Waiver Information” and to CBP Form I-760 “Guam Visa Waiver Agreement”

Under the current Guam Visa Waiver Program, an alien seeking admission must present a completed CBP Form I-736 “Guam Visa Waiver Information” (I-736) in order to be admitted into Guam without a visa. The alien must also present a completed and signed CBP Form I-94/Arrival-Departure Record Form (I-94). The I-736 will be revised so that it will be entitled: “Guam-CNMI Visa Waiver Information Form.” Additionally, the portion of the form allowing for a maximum stay of 15 days visit will be changed to allow for a maximum stay of 45 days. The amended forms will not be available until after the effective date of the regulation, and not required until the start of the transition period, currently June 1, 2009.

Currently, transportation lines transporting nonimmigrant visitors under the Guam Visa Waiver Program into Guam from foreign territories must enter into a contract with CBP by executing CBP Form I-760 “Guam Visa Waiver Agreement” (I-760). Form I-760 will be revised so that it will be titled “Guam-CNMI Visa Waiver Agreement” and references to the CNMI will be inserted, where appropriate.⁴ A conforming change that adds a new provision at 8 CFR 233.6 has been made to include transportation lines bringing aliens to the CNMI in addition to Guam.

B. Conforming Changes to Title 8 of the Code of Federal Regulations

Part 215 of title 8 of the CFR describes the procedures concerning aliens who depart from the United States. Section 215.1 sets forth the definitions for 8 CFR Part 215. This rule amends

⁴ The current provisions of the Guam Visa Waiver Program set forth in 8 CFR 212.1(e) will apply to nonimmigrant visitors seeking admission to Guam under the Guam Visa Waiver Program until the start of the transition period – currently June 1, 2009, when the new Guam-CNMI Visa Waiver Program is implemented. The current CBP Forms I-736 and I-760 are to be used for purposes of the Guam Visa Waiver Program through this date.

8 CFR 215.1 to add the CNMI to the definition of the United States to ensure that the INA applies to the CNMI beginning June 1, 2009.

To conform the amendments to existing laws, this rule deletes both “Canal Zone” and “Trust Territory of the Pacific” from the definitions of the United States, under 8 CFR 215.1, paragraphs (e), (g), and (j).

This rule also makes a conforming change in paragraph (e) of section 212.1 by adding the phrase “Until June 1, 2009,” to the beginning of the first sentence. This change will allow the existing Guam Visa Waiver Program to continue until the Guam –CNMI Visa Waiver program takes effect on the transition date.

The deletion of “the Canal Zone” from 8 CFR 215.1 is being made to reflect that the United States no longer has control over the Canal Zone, pursuant to the Panama Canal Zone Act of 1979, Pub. L. No. 96-70. Similarly, the term “Trust Territory of the Pacific Islands” is being removed from 8 CFR 215.1 to update the regulations to reflect current law.⁵

C. Conforming Changes to Title 19 of the Code of Federal Regulations

This rule amends 19 CFR 4.7b(a) and 122.49a(a) to add the CNMI to the definition of the term “United States” for purposes of the filing of electronic passenger and crew arrival manifests prior to the arrival of vessels and aircraft in the United States.

⁵ The “Trust Territory of the Pacific Islands” (TTPI) is no longer in existence. On November 3, 1986, President Reagan announced by Proclamation that the TTPI agreement between the CNMI and the United States was terminated after the Trusteeship Council of the United Nations concluded that the United States satisfactorily discharged its obligations under the agreement. See Proclamation No. 5564, 51 FR 40399 (November 7, 1986). As announced by President Reagan’s Proclamation, the United States fully established its agreement with CNMI. This agreement is entitled “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States,” Pub. L. 99-239, 48 U.S.C. 1801. With regard to the CNMI, the CNMI then became a self-governing Commonwealth in political union with and under the sovereignty of the United States. Therefore, DHS is deleting the term “Trust Territory of the Pacific Islands” to conform the regulations to existing law.

V. Establishing Ports of Entry in the CNMI

Currently, CBP does not have a presence in the CNMI. In order to implement section 702 of the CNRA, CBP must establish operations in the CNMI to allow for immigration inspections, including arrival and departure controls, under the INA. Such operational controls are also necessary to establish the Guam-CNMI Visa Waiver Program. Therefore, the Secretary is designating six ports of entry in the CNMI for immigration purposes only. The CNMI will continue to enforce and administer its own customs and agriculture laws. This rule amends 8 CFR part 100 to establish Ports-of-Entry, as defined in 8 CFR section 100.4(c), to provide air and sea ports in close proximity to the CNMI facilities on the islands of Saipan, Tinian, and Rota.⁶

VI. Effective Date

These regulations will be effective [insert date of publication in the **Federal Register**]. Beginning June 1, 2009, unless the start of the transition period is delayed, U.S. immigration law applies to the CNMI and the Guam-CNMI Visa Waiver Program will be implemented. The immediate effective date of this rule allows nationals from the designated participating countries to prepare for their travel to either Guam or the CNMI under the program. In addition, CBP will have the necessary time to establish ports of entry in the CNMI and to set up the necessary infrastructure to implement the Guam-CNMI Visa Waiver Program and enforce U.S. immigration laws. Beginning June 1, 2009, DHS will begin operating ports-of-entry in the CNMI for immigration inspection of arriving aliens and establish departure control for certain flights leaving the CNMI. In addition, on that date, DHS will begin the administration and enforcement of the Guam-CNMI Visa Waiver Program.

⁶ Because the INA already applies to Guam and ports of entry have already been established in Guam to administer and enforce the INA, no amendments to 8 CFR part 100 are needed with respect to Guam. Guam will continue to administer its own customs laws.

The date of June 1, 2009, may be delayed by the Secretary of Homeland Security, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the Commonwealth of the CNMI, for up to 180 days if the date for application of the immigration laws to the CNMI is delayed pursuant to section 702(b) of the CNRA. Any delay in the implementation date of the Guam-CNMI Visa Waiver Program will be published in the **Federal Register**. Prior to the start of the transition period, currently June 1, 2009, the current requirements pertaining to the Guam Visa Waiver Program will apply to nonimmigrant visitors seeking admission into Guam. Additionally, section 702(b) directs that the promulgation of the regulations shall be considered a foreign affairs function for purposes of the notice and comment and 30-day delayed effective date requirements under the Administrative Procedure Act. See 5 U.S.C. 553(a).

VII. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Section 702(b) of CNRA directs that all regulations necessary to implement the Guam-CNMI Visa Waiver Program shall be considered a foreign affairs function for purposes of section 553(a) of the Administrative Procedure Act (APA). Accordingly, this interim final rule is exempt from the notice and comment and 30-day effective date requirements of the APA. Although DHS is not required to provide prior public notice or an opportunity to comment, DHS is nevertheless providing the opportunity for public comments. In accordance with section 702(a) of the CNRA, this rule is effective [INSERT DATE OF PUBLICATION]. Implementation and compliance with this interim final rule will begin on the date that begins the transition period, which is currently June 1, 2009.

B. Executive Order 12866

This interim final rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, due to the foreign affairs exemption described above. Accordingly, the Office of Management and Budget has not reviewed this regulation under that Executive Order.

DHS has, however prepared an economic analysis of the potential impacts of this interim final rule. A summary of the analysis is presented below. The complete details of the analysis can be found in the Economic Analysis in the public docket for this rule.

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 Visa Waiver Program under 8 CFR part 217 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. For admission to Guam, the primary change will be the extension of the maximum allowable period of stay from fifteen days to forty-five days for visitors of countries included in the Guam-CNMI Visa Waiver Program and the opportunity for visitors admitted under the Guam-CNMI Visa Waiver Program to travel between Guam and the CNMI without the requirement to obtain a visa or a visitor entry permit.

In this analysis, we estimate the incremental costs associated with the interim final rule. Specifically, we assess and estimate the potential impact of implementing the Guam-CNMI Visa Waiver Program on the economies of the CNMI and Guam, with particular focus on their tourism sectors. While tourism impacts are “indirect” effects of the rule (where the impacts to

visitors are the “direct” effect because visitors are directly regulated), we consider these impacts because tourism represents a major component of the economies of both the CNMI and Guam.

We anticipate that the CNMI will experience most of the economic impact of this rule because the rule federalizes the entry and exit procedures for nonimmigrant visitors to the CNMI. We first estimate the changes in the travel demand of nonimmigrant visitors to the CNMI (i.e., the reduction in visitors due to implementation of the Guam-CNMI Visa Waiver Program) had the Guam-CNMI Visa Waiver Program been implemented in our baseline year of analysis (May 2007 to April 2008). We then estimate the associated changes in the total amount of visitor spending in the CNMI. Next, we estimate the associated changes in net economic output, income, and employment in the CNMI. Finally, we project these economic impacts to each year of our five-year analysis period (May 2009 through April 2014) and calculate the present value of these cost impacts.

For Guam, we do not anticipate that the interim final rule will significantly affect its economy because the Guam-CNMI Visa Waiver Program only modifies the existing Guam visa waiver program by extending the allowable duration of stay from fifteen days to forty-five days. Thus, we qualitatively assess two of the three issues that may arise as a result of implementing the Guam-CNMI Visa Waiver Program, namely: 1) the impact of extending the allowable period of stay from fifteen days to forty-five days on visitor behavior, spending, and the Guam economy in general; 2) the impact of adding the CNMI to the existing Guam Visa Waiver Program on visitor decisions to visit the CNMI instead of or in addition to Guam; and 3) the impact of excluding Indonesia, the Solomon Islands, Vanuatu, and Western Samoa in the list of program-eligible countries (these four countries currently are participating countries in the Guam Visa Waiver Program).

Because of limitations in the data, we cannot reliably predict and quantify what percentages of visitors to Guam would elect to stay in Guam longer than fifteen days, by how many additional days, and the resulting impact on Guam's economy. On-island tourist expenditures in Guam are quite substantial, and additional days of stay on the island would have a positive impact on Guam's economy. Conversely, adding the CNMI to the existing Guam Visa Waiver Program to establish the Guam-CNMI Visa Waiver Program could divert visitor travel away from Guam to the CNMI. Under the interim final rule, nationals from those countries included in the Guam-CNMI Visa Waiver Program, which includes all the countries currently included in the Guam Visa Waiver Program, may now enter the CNMI without having to apply for and obtain a CNMI visitor entry permit. Such a change may increase the potential for visitors from these countries to travel to the CNMI instead of or in addition to Guam. The Guam-CNMI Visa Waiver Program will facilitate travel between Guam and the CNMI, and packaged tours of both islands may appeal to some tourists, especially visitors that have already visited Guam. However, we do not have sufficient data to reliably predict and quantify the extent to which visitors from countries included in the Guam-CNMI Visa Waiver Program would elect to spend part or all of a planned visit in the CNMI instead of, or in addition to, Guam and how this change would affect the Guam economy.

Finally, we present the costs CBP expects to incur to develop and administer the Guam-CNMI Visa Waiver Program.

Impacts to the CNMI

The two largest foreign markets for visitors to the CNMI in the baseline year of our analysis (May 2007 to April 2008) are Japan and the Republic of Korea. Because this rule does not

change the baseline conditions for Japanese visitors and will ease requirements for Korean visitors, we do not estimate any significant changes in visitation levels for these two countries.

To estimate the impacts on tourism from other affected countries, we use an “elasticity of demand” for long-haul international leisure trips available from the published literature to compare the change in cost (both in out-of-pocket expenses as well as the value of time burden) that obtaining a visa represents to the trip cost to the CNMI. In this analysis, we estimate out-of-pocket expenses of \$187 (including the fee, photos, travel costs, and other miscellaneous expenses) plus an average time of five hours to obtain the visa (including completing the necessary Department of State forms and having an interview at a U.S. embassy). Applying a demand elasticity of -1.04, we find that if the rule had been in effect in the baseline year of analysis (May 2007 to April 2008) the potential impact of this regulation would have been a reduction of approximately 5,017 tourist arrivals from the PRC, 194 tourist arrivals from Russia, and 618 tourist arrivals from the Philippines to the CNMI. We estimate that a strong majority of travelers from these countries would continue traveling to the CNMI even with the implementation of the rule. These visitors represent the three largest tourist markets that primarily will be affected by the rule because they are not included on the list of eligible countries for the Guam-CNMI Visa Waiver Program and, therefore, will now be required to obtain U.S. visas to visit the CNMI (previously PRC and Russia, but not the Philippines, were eligible for admission to the CNMI under its visitor entry permit program).

Based on visitor spending data provided by the Marianas Visitors Authority, we estimate that the associated reductions in spending would have been \$4.9 million from the Chinese, \$0.8 million from the Russians, and \$0.5 million from the Filipinos. In sum, the total visitor spending in the CNMI could potentially have declined by \$6.2 million, or 2.0 percent of the \$317 million

in total visitor spending. Using economic multiplier data available from the published literature, we estimate that the potential reduction in visitor spending of \$6.2 million leads to a reduction of between \$8.3 million and \$12.5 million in economic output, \$2.1 million and \$2.4 million in income, and between 131 and 162 jobs in the CNMI.

Applying these baseline year estimates to our five-year period of analysis (2009 to 2014), assuming no growth in the number of visitors or the amounts they spend in the CNMI, results in a total present value estimate of \$29.2 million (3 percent discount rate) and \$27.1 million (7 percent discount rate) in lost CNMI visitor spending. We estimate that the total present value losses in CNMI economic output and income are between \$36.4 million and \$59.1 million, and \$9.4 million and \$11.4 million, respectively, depending on the discount rate applied. Tables 1 and 2 summarize the results of our analysis.

Table 1. Impacts to Visitors, CNMI Economic Analysis, \$2008

Country	Potential number of lost visitors annually	Annual lost CNMI visitor spending (undiscounted) (\$M)	Estimated total on-island spending (\$M)	% of on-island spending lost
Japan	0	\$0.0	\$162	0.0%
Korea	0	0.0	65	0.0%
China	5,017	4.9	38	12.9%
Russia	194	0.8	20	4.2%
Philippines	618	0.5	3	18.3%
Others	0	0.0	29	0.0%
Total	5,829	\$6.2	\$317	2.0%

Table 2. Summary of Economic Impacts, CNMI Economic Analysis

	Lost CNMI visitor spending (\$M)	Estimated lost CNMI economic output (\$M)	Estimated lost CNMI income (\$M)
Total, May 2007–Apr 2008 (undiscounted)	\$6.2	\$8.3 to \$12.5	\$2.1 to \$2.4
Total (2009–2014), 3% discount rate	\$29.2	\$39.1 to \$59.1	\$10.1 to \$11.4
Total (2009–2014), 7% discount rate	\$27.1	\$36.4 to \$54.9	\$9.4 to \$10.6

We have not quantified the losses associated with excluding Indonesia, the Solomon Islands, Vanuatu, and Western Samoa from the Guam-CNMI Visa Waiver Program because the Marianas Visitors Authority did not report statistics for these countries individually; they are captured in the “other” category in Table 1. Because their current number of visits is low (too low to be reported by the Marianas Visitors Authority), any potential economic losses would also be small.

Impacts to Guam

We attempted to quantify the potential economic impact of the interim final rule on Guam, although we anticipate it to be minimal. Because of limitations in the available data, we could not reliably predict and quantify how many Guam-CNMI Visa Waiver Program-eligible visitors would elect to stay in Guam longer than the current fifteen day limit and by how many days, or elect to spend part or all of their planned visit in the CNMI instead of or in addition to Guam. Additional days of stay on the island would have a positive impact on Guam’s economy. However, visitors diverting their travel plans from Guam to the CNMI and visitors from Indonesia, the Solomon Islands, Vanuatu, and Western Samoa forgoing travel to Guam would have a negative impact. The net economic effect of these two factors is unknown.

Government Costs

Finally, CBP estimates that it will incur costs to establish and administer six new air and sea ports of entry in the CNMI. The costs consist of two primary categories: 1) non-recurring capital costs and other initial or one-time expenses incurred in the first year or prior to implementation of the Guam-CNMI Visa Waiver Program, and 2) recurring operating, maintenance, and personnel costs expected to be incurred each year. CBP will need to build, operate, and maintain the infrastructure needed at the six ports of entry to achieve the requisite

level of security (e.g., arrival and departure control) and operational efficiency commensurate with other CBP-operated ports. CBP estimates a capital cost of approximately \$25.8 million to develop this infrastructure, and a recurring cost of \$153,100 per year for port operation and maintenance. CBP plans to staff these ports initially with experienced temporary duty assignment staff on a short-term basis, gradually replacing them with permanent staff. CBP estimates initial costs of approximately \$3.7 million for personnel relocation as well as recurring costs of approximately \$7.8 million per year for personnel salary and benefits and \$5.3 million per year for associated temporary duty costs (e.g., airfare, per diem food and housing allowances, vehicle rental). Applying these estimated costs to the applicable years of our 5-year analysis period results in total present value cost for government implementation of \$87.3 million to \$91.7 million, depending on the discount rate applied.

Sources of Uncertainty

Because the Commonwealth of the Northern Mariana Islands is small and remote, the quality and quantity of prior economic data and analyses are very limited. We have relied on the best available data in estimating the economic impact of implementing the Guam-CNMI Visa Waiver Program. Nonetheless, we recognize that there are significant limitations and uncertainties in our analysis.

The key sources of uncertainty in our analysis are the value of time and demand elasticity for Chinese, Russian, and Filipino visitors. These data are key inputs into our estimates of the reduction in the number of these visitors to the CNMI. To estimate the value of time, we apply the wages from the highest paid industry category among all industries reported in an International Labor Organization (ILO) database; however, we recognize that these data are imperfect. First, comparing wages, and by extension opportunity costs, across countries is

notoriously difficult. In addition, it is likely that only the more affluent citizens of these countries would engage in international travel to the CNMI and, therefore, we likely understate their value of time. We test the sensitivity of our wage estimates and find that the estimated loss in CNMI visitor spending could increase by about 40 percent assuming a much higher wage rate (\$20 per hour).

The demand elasticity value we use (-1.04) is also a significant source of uncertainty because it may not be representative of visitor demand to the CNMI (demand elasticities for specifically the CNMI or other Pacific Islands are not available). On the one hand, for the more affluent travelers, the additional travel (visa) costs may not currently represent a significant portion of their household budget or travel cost and thus may not be a major factor influencing their travel decisions (less elastic). There may not be very many travelers from the PRC, Russia, and the Philippines for whom the visa costs and burden are particularly meaningful – they are either wealthy enough that it does not matter, or their economic status is such that international travel is out of reach regardless of the additional travel costs. On the other hand, other alternative destinations exist that would provide these visitors with a comparable experience to that of the CNMI. As a result, some of these visitors may simply choose to forgo travel to the CNMI because of the additional burden associated with the visa requirements and instead seek other alternative destinations (more elastic).

Finally, in applying an own-price elasticity of travel demand, we have presented a binary choice for a traveler based solely on price – “go” or “do not go.” In reality, travelers are faced with complex decisions and myriad substitutes for particular trips. There is evidence in the travel literature that price may not be a very big determinant of destination selection. Additionally, a traveler could still choose to visit the CNMI but may spend less while on the

islands. This would still be a loss to the CNMI economy, but it would be less than what we have estimated in this analysis. We have chosen to estimate direct costs using demand elasticities to avoid deliberately misrepresenting these costs (we would not want to assume that travelers' decisions will be completely unaffected by the new entry requirements), knowing that we may then be overstating the simplicity of the traveler's decision-making process. In doing this, we have likely overstated indirect costs.

Another source of uncertainty is in the multipliers used to calculate lost economic output, income, and employment as a result of lost tourist spending. Although we use a range of values, the actual total economic impact could be significantly lower or higher than the results presented in this analysis.

A final source of uncertainty is our assumption that the number of visitors or the amounts they spend in the CNMI will remain constant over the five-year analysis period. The historic year-to-year trends in the number of visitors from the PRC, Russia, and the Philippines on which we could estimate a future growth rate vary widely from negative growth (-69.0 percent) to positive growth (118.7 percent). We also cannot reliably predict future growth (or loss) rates given the ever-changing global economy and political climate, airline and tourism industries, the volatility of the CNMI economy, and other factors affecting international travel.

C. Regulatory Flexibility Act

Because this rule is being issued as an interim final rule on the foreign affairs function of the United States, as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601-612).

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. No. 104-4, 109 Stat. 48, on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule would not impose a significant cost or uniquely affect small governments. The economic impacts of this rule are presented in the Executive Order 12866 discussion of this document.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among

the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The collections of information encompassed within this rule have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651-0109 (Guam Visa Waiver Information) for CBP Form I-736 and OMB Control Number 1651-0111 for Form I-94 (Arrival and Departure Record).

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The burden estimates for the two forms affected by this rule are presented below.

OMB Control Number 1651-0109 (Guam-CNMI Visa Waiver Information)

Estimated annual average reporting and/or recordkeeping burden: 30,000 hours

Estimated annual average number of respondents: 360,000

Estimated average burden per respondent: 5 minutes

Estimated frequency of responses: once per year.

OMB Control Number 1651-0111 (Arrival and Departure Record)

Estimated annual average reporting and/or recordkeeping burden: 60,000 hours

Estimated annual average number of respondents: 360,000

Estimated average burden per respondent: 10 minutes

Estimated frequency of responses: once per year.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Customs and Border Protection, Mint Annex, 799 Ninth Street, NW. Washington, DC 20001.

H. Privacy

DHS will publish a Privacy Impact Assessment (PIA) on its website. In addition, DHS is also preparing a separate Systems of Records Notice (SORN) in conjunction with this interim final rule.

LIST OF SUBJECTS

8 CFR part 100

Organization and functions (Government agencies)

8 CFR part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR part 233

Air carriers, Maritime carriers, Aliens, Government Contracts.

8 CFR part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

19 CFR part 4

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

19 CFR part 122

Administrative practice and procedure, Air carriers, Aircraft, Customs duties and inspection, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, DHS amends parts 100, 212, 214, 215, 233 and 235 of title 8 of the Code of Federal Regulations (8 CFR parts 100, 212, 214, 215, 233 and 235) and parts 4 and 122 of title 19 of the Code of Federal Regulations (19 CFR parts 4 and 122), as set forth below:

8 CFR CHAPTER 1—AMENDMENTS

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. Section 100.4 is amended by revising in paragraph (c)(2) the listing under “District No. 17 – Honolulu, Hawaii” and “Class A” and by revising in paragraph (c)(3) the listing under “District No. 17—Honolulu, Hawaii”:

§ 100.4 Field Offices.

* * * * *

(c) * * *

(2) * * *

DISTRICT NO. 17—HONOLULU, HAWAII

Class A

*Agana, Guam, M.I (including the port facilities of Apra Harbor, Guam)

Honolulu, HI, Seaport (including all port facilities on the island of Oahu)

Rota, the Commonwealth of the Northern Mariana Islands

Saipan, the Commonwealth of the Northern Mariana Islands

Tinian, the Commonwealth of the Northern Mariana Islands

* * *

(3) * * *

DISTRICT NO. 17—HONOLULU, HAWAII

Agana, Guam, Guam International Airport Terminal

Honolulu, HI, Honolulu International Airport

Honolulu, HI, Hickam Air Force Base

Rota, the Commonwealth of the Northern Mariana Islands

Saipan, the Commonwealth of the Northern Mariana Islands

Tinian, the Commonwealth of the Northern Mariana Islands

* * * * *

**PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS;
ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

3. The general authority citation for part 212 continues and a new authority for section 212.1(q) is added to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

Authority: Section 212.1(q) also issued under section 702, Pub. L. 110-229, 100 Stat. 842.

4. In section 212.1, paragraph (e) is revised and a new paragraph (q) is added to read as follows:

§ 212.1 Documentary Requirements for Nonimmigrants.

* * * * *

(e) Aliens entering Guam pursuant to section 14 of Pub. L. 99-396, "Omnibus Territories Act." (1) Until June 1, 2009, a visa is not required of an alien who is a citizen of a country enumerated in paragraph (e)(3) of this section who:

* * *

(q) Aliens admissible under the Guam-CNMI Visa Waiver Program. (1) Eligibility for Program. In accordance with Public Law 110-229, beginning June 1, 2009, the Secretary, in consultation with the Secretaries of the Departments of Interior and State, may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or to the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program. To be admissible under the Guam-CNMI Visa Waiver Program, prior to embarking on a carrier for travel to Guam or the CNMI, each nonimmigrant alien must:

(i) Be a national of a country or geographic area listed in (q)(2) of this section;

(ii) Be classifiable as a visitor for business or pleasure;

(iii) Be solely entering and staying on Guam or the CNMI for a period not to exceed forty-five days;

(iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI. "Round trip ticket" includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;

(v) Be in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736);

(vi) Be in possession of a completed and signed I-94, Arrival-Departure Record (CBP Form I-94);

(vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by a country that meets the eligibility requirements of (q)(2) of this section;

(viii) Have not previously violated the terms of any prior admissions. Prior admissions include those under the Guam-CNMI Visa Waiver Program, the prior Guam Visa Waiver Program, the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa;

(ix) Waive any right to review or appeal an immigration officer's determination of admissibility at the port of entry into Guam or the CNMI;

(x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

or, an application for asylum if permitted under section 208 of the Act; and

(xi) If a resident of Taiwan, possess a Taiwan National Identity Card and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs.

(2) Program Countries and Geographic Areas. (i) General Eligibility Criteria.

(A) A country or geographic area may not participate in the Guam-CNMI Visa Waiver Program if the country or geographic area poses a threat to the welfare, safety or security of the United States, its territories, or commonwealths;

(B) A country or geographic area may not participate in the Guam-CNMI Visa Waiver Program if it has been designated a Country of Particular Concern under the International Religious Freedom Act of 1998 by the Department of State, or identified by the Department of State as a source country of refugees designated of special humanitarian concern to the United States;

(C) A country or geographic area may not participate in the Guam-CNMI Visa Waiver Program if that country, not later than three weeks after the issuance of a final order of removal, does not accept for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal or reconsideration for release or removal of any alien.

(D) DHS may make a determination regarding a country's eligibility based on other factors including, but not limited to, rate of refusal for nonimmigrant visas, rate of overstays,

cooperation in information exchange with the United States, electronic travel authorizations, and any other factors deemed relevant by DHS.

(ii) Eligible Countries and Geographic Areas. Nationals of the following countries and geographic areas are eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI: Australia, Brunei, Hong Kong (Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card are required), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan (residents thereof who begin their travel in Taiwan and who travel on direct flights from Taiwan to Guam or the CNMI without an intermediate layover or stop except that the flights may stop in a territory of the United States enroute), and the United Kingdom.

(iii) Significant Economic Benefit Criteria. If, in addition to the considerations enumerated under paragraph (q)(2)(i) of this section, DHS determines that the CNMI has received a significant economic benefit from the number of visitors for pleasure from particular countries during the period of May 8, 2007 through May 8, 2008, those countries are eligible to participate in the Guam-CNMI Visa Waiver Program unless the Secretary of Homeland Security determines that such country's inclusion in the Guam-CNMI Visa Waiver Program would represent a threat to the welfare, safety, or security of the United States and its territories.

(iv) Additional Eligible Countries or Geographic Areas Based on Significant Economic Benefit.

[Reserved.]

(3) Suspension of Program Countries or Geographic Areas.

(i) Suspension of a country or geographic area from the Guam-CNMI Visa Waiver Program may be made on a country-by-country basis for good cause including, but not limited to if: the

admissions of visitors from a country have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the CNMI, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or seeking asylum; or that visitors from a country pose a risk to law enforcement or security interests, including the enforcement of immigration laws of Guam, the CNMI, or the United States.

(ii) A country or geographic area may be suspended from the Guam-CNMI Visa Waiver Program if that country or geographic area is designated as a Country of Particular Concern under the International Religious Freedom Act of 1998 by the Department of State, or identified by the Department of State as a source country of refugees designated of special humanitarian concern to the United States, pending an evaluation and determination by the Secretary.

(iii) A country or geographic area may be suspended from the Guam-CNMI Visa Waiver Program by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State, based on the evaluation of all factors the Secretary deems relevant including, but not limited to, electronic travel authorization, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems and information exchange.

(4) Admission under this section renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act, to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(5) Requirements for transportation lines. A transportation line bringing any alien to Guam or the CNMI pursuant to this section must:

(i) Enter into a contract on CBP Form I-760, made by the Commissioner of Customs and Border Protection on behalf of the government;

(ii) Transport an alien who is a citizen or national and in possession of a valid unexpired ICAO compliant, machine readable passport of a country enumerated in paragraph (q)(2) of this section;

(iii) Transport an alien only if the alien is in possession of a round trip ticket as defined in subparagraph (q)(1)(iv) of this section bearing a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI which the carrier will unconditionally honor when presented for return passage. This ticket must be:

(A) Valid for a period of not less than one year,

(B) Nonrefundable except in the country in which issued or in the country of the alien's nationality or residence, and

(C) Issued by a carrier which has entered into an agreement described in paragraph (q)(5) of this section.

(iv) Transport an alien in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736), and

(v) Transport an alien in possession of completed I-94, Arrival-Departure Record (CBP Form I-94).

(6) Bonding. The Secretary may require a bond on behalf of an alien seeking admission under the Guam-CNMI Visa Waiver Program, in addition to the requirements enumerated in this section, when the Secretary deems it appropriate. Such bonds may be required of an individual alien or of an identified subset of participants.

(7) Maintenance of status. (i) Satisfactory departure. If an emergency prevents an alien admitted under the Guam-CNMI Visa Waiver Program, as set forth in paragraph (q) of this section, from departing from Guam or the CNMI within his or her period of authorized stay, an immigration officer having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 15 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(8) Inadmissibility and Deportability. (i) Determinations of inadmissibility.

(A) An alien who applies for admission under the provisions of the Guam-CNMI Visa Waiver Program, who is determined by an immigration officer to be inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into Guam or the CNMI and removed. Such refusal and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum, withholding of removal under section 241(b)(3) of the INA or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2). The provisions of 8 CFR 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to

January 1, 2015; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Secretary enumerated in section 212(d) of the Act.

(C) Refusal of admission under this paragraph shall not constitute removal for purposes of the Act.

(ii) Determination of deportability.

(A) An alien who has been admitted to either Guam or the CNMI under the provisions of this section who is determined by an immigration officer to be deportable from either Guam or the CNMI under one or more of the grounds of deportability listed in section 237 of the Act, shall be removed from either Guam or the CNMI to his or her country of nationality or last residence. Such removal will be determined by DHS authority that has jurisdiction over the place where the alien is found, and will be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program who applies for asylum or other form of protection from persecution or torture must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2). The provisions of 8 CFR 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No

application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present or arriving in the CNMI prior to January 1, 2015 may apply for withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

(B) Removal by DHS under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(iii) Removal of inadmissible aliens who arrived by air or sea. Removal of an alien from Guam or the CNMI under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to Guam and the CNMI. Such removal shall be on the first available means of transportation to the alien's point of embarkation to Guam or the CNMI. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

PART 214 – NONIMMIGRANT CLASSES

5. The authority citation for part 214 is amended to read:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Pub. L. 110-229; 8 CFR part 2.

6. Section 214.1 is amended by adding paragraph (c)(3)(viii), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(c) Extensions of stay --

* * * * *

(3) Ineligible for extension of stay. A nonimmigrant in any of the following classes is ineligible for an extension of stay:

* * * * *

(viii) Any nonimmigrant admitted pursuant to the Guam-CNMI Visa Waiver Program, as provided in section 212(l) of the Act.

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

7. The general authority citation for part 215 is revised to read as follows:

Authority: 8 U.S.C. 1101; 1104; 1184; 1185 (pursuant to Executive Order 13323, published January 2, 2004); 1365a note. 1379, 1731-32.

8. Section 215.1 is revised by amending paragraphs (e), (g), and (j) to read as follows:

§ 215.1 Definitions.

* * * * *

(e) The term United States means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

* * * * *

(g) The term geographical part of the United States means: (1) The continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) American

Samoa, (8) Swains Island, or (9) the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009).

* * * * *

(j) The term port of departure means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), or the Virgin Islands, designated as a port of entry by the Secretary, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, or Swains Island, designated as a port of entry by the chief executive officer thereof.

* * * * *

PART 233—CONTRACTS WITH TRANSPORTATION LINES

9. The authority for part 233 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229, 8 CFR part 2.

10. Part 233 is revised by adding a new section 233.6 to read as follows:

§ 233.6 Aliens entering Guam or the Commonwealth of the Northern Mariana Islands pursuant to Title VII of Public Law 110-229, “Consolidated Natural Resources Act of 2008.”

A transportation line bringing aliens to Guam or the Commonwealth of the Northern Mariana Islands under the visa waiver provisions of § 212.1(q) of this chapter must enter into an agreement on CBP Form I-760. Such agreements must be negotiated directly by Customs and Border Protection and head offices of the transportation lines.

PART 235--- INSPECTION OF PERSONS APPLYING FOR ADMISSION

11. The authority for Part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

12. Section 235.5(a) is revised to read as follows:

§ 235.5 Preinspection.

(a) In United States territories and possessions. In the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility will be made immediately prior to such departure. The examination will be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination will be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible will be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person will be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

* * * * *

19 CFR CHAPTER 1—AMENDMENTS

13. The general authority for part 4 continues, and the specific authority citation for § 4.7b is revised to read as follows:

Authority: 5 U.S.C 301; 19 U.S.C. 66; 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7b also issued under 8 U.S.C. 1101, 1221;

* * * * *

14. In § 4.7b(a), the definition of “United States” is revised to read as follows:

§ 4.7b Electronic passenger and crew arrival manifests.

(a) * * *

United States. "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009).

* * * * *

15. The general authority for part 122 continues, and the specific authority citation for § 122.49a is revised to read as follows:

Authority: 5 U.S.C 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

* * * * *

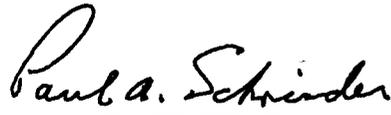
16. In § 122.49a(a), the definition of “United States” is revised to read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * *

United States. “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands (beginning June 1, 2009), and the Virgin Islands of the United States.

* * * * *



Paul A. Schneider,
Deputy Secretary.