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## **DEPARTMENT OF STATE**

### **22 CFR Part 41**

**[Public Notice: 8687]**

**RIN: 1400-AD51**

### **Visas: Waiver by Joint Action of Visa and Passport Requirements for Members of Armed Forces and Coast Guards of Foreign Countries**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending its regulations regarding the waiver by joint action of consular and immigration officers of visa and passport requirements for members of foreign armed forces and coast guards. Specifically, the regulation, as amended, removes the current list of countries whose armed forces members are ineligible for a such a waiver, and provides that, in every case, when entry of foreign armed forces and coast guard members is proposed under arrangements made with the appropriate military authorities of the United States and after coordination within the U.S. Government by those U.S. military authorities, the Department of Homeland Security and the Department of State will jointly decide whether to approve waiver of the visa and/or passport requirements.

**EFFECTIVE DATE:** This rule becomes effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Jennifer Liu, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 600 19<sup>th</sup> Street N.W., Washington, D.C. 20520-0106, (202) 485-7648, email (LiuJN@state.gov).

**SUPPLEMENTARY INFORMATION:**

*Why is the Department promulgating this rule?*

This final rule implements the joint determination of the Department of State and the Department of Homeland Security to remove the list of countries whose citizens or residents are currently ineligible for a waiver under 22 CFR 41.3(e), pursuant to authority under section 212(d)(4)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(4)(A), as such a list is considered unnecessary and requires regular and resource-intensive review. The amended regulation clarifies that, in every case, when entry of members of foreign armed forces and coast guard into the United States is proposed under arrangements made with the appropriate military authorities of the United States and after coordination within the U.S. Government by those U.S. military authorities, the Department of Homeland Security and the Department of State will jointly decide, as a matter of discretion, whether to approve a waiver of the visa and/or passport requirements for the foreign armed forces and coast guard members. Finally, the amended rule extends authority to grant a waiver under 22 CFR 41.3 to the Deputy Assistant Secretary of State for Visa Services or his or her designee, in addition to the consular officer serving the port or place of embarkation, jointly with the appropriate immigration officer within DHS.

**REGULATORY FINDINGS**

**A. Administrative Procedure Act**

The Department of State is of the opinion that waiver of visa and passport requirements for foreign armed forces and coast guards is a foreign affairs function of the United States Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act.

**B. 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 at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of 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 rule regulates individual aliens applying for visas under INA section 101(A)(15) and does not affect any small entities, as defined in 5 U.S.C. 601(6).

**C. The Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 109 Stat. 48, codified at 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.

**D. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects 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.

**E. Executive Order 12866**

The Department is of the opinion that waiver of visa and passport requirements for foreign armed forces and coast guards is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

**F. Executive Order 13563: Improving Regulation and Regulatory Review**

The Department has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

**G. 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 No. 12372 and No. 13132.

## **H. Executive Order 12988: Civil Justice Reform**

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

## **I. Executive Order 13175**

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

## **J. Paperwork Reduction Act**

This rule does not impose new 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, Passports and visas, Students.

For the above reasons, 22 CFR Part 41 is amended as follows:

### **PART 41-[AMENDED]**

1. The authority citation for Part 41 is revised to read as follows:

Authority: 8 U.S.C. 1104, 1182(d), 1185 note; 112 Stat. 2681-795.

2. Section 41.3 is amended by revising the introductory text and paragraph (e), to read as follows:

**§ 41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.**

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(7) (B)(i)(I), (i)(II) may be waived for any alien in whose case the consular officer serving the port or place of embarkation, or the Deputy Assistant Secretary of State for Visa Services or his or her designee, is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

\* \* \* \* \*

(e) *Members of armed forces and coast guards of foreign countries; visa and passport waiver.* An alien on active duty in the armed forces or coast guard of a foreign country and a member of a group of such armed forces or coast guard traveling to the United States, on behalf of the alien's government or the United Nations, under arrangements made with the appropriate military authorities of the United States, coordinated within the U.S. Government by those U.S. military authorities, and approved by the Department of State and the Department of Homeland Security for such visit.

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Dated: March 28, 2014.

Janice L. Jacobs,  
*Assistant Secretary for  
Consular Affairs,  
Department of State.*

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