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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212, 214, 215, and 273

[USCBP-2016-0046; CBP Dec. No. 16-17]

RIN 1651-AB08

Establishment of the Electronic Visa Update System (EVUS)

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security's regulations to establish the Electronic Visa Update System ("EVUS"). This system will allow for the collection of biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to these regulations must periodically enroll in EVUS and obtain a notification of compliance with EVUS prior to travel to the United States. Individuals subject to the EVUS regulations must comply with EVUS in order to maintain the validity of their visas falling within a designated category. The Department of State is publishing a parallel rule to amend its visa regulations to reflect the new EVUS requirements.

DATES: Effective Date: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

Compliance Dates: The compliance date is November 29, 2016 or as set forth in § 215.24(c).

Comments: Comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may 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-2016-0046.
- Mail: Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Regulations and Rulings, Attention: Border Security Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229.

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. For detailed instructions on submitting comments and additional information the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch,

Office of International Trade, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Suzanne Shepherd, Office of Field Operations, Suzanne.M.Shepherd@cbp.dhs.gov or (202) 344-2073.

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I. PUBLIC PARTICIPATION

Interested persons may submit comments on this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. Based on the comments received, DHS may revise this rule in the future.

II. BACKGROUND

A. Purpose

Congress has conferred upon the Secretary of Homeland Security the authority to establish reasonable conditions on the entry of nonimmigrant aliens into the United States. The Department of Homeland Security (“DHS”), for example, may, by regulation, set conditions for an alien’s admission as a nonimmigrant, see Immigration and Nationality Act (“INA”) 214(a)(1), 8 U.S.C. 1184(a)(1), and, more generally, establish reasonable regulations governing aliens’ entry or admission into and departure from the United States, see INA 215(a)(1), 8 U.S.C. 1185(a)(1).¹ See also INA 103(a)(1), (a)(3), 8 U.S.C. 1103(a)(1), (a)(3); 6 U.S.C. 202(4).

Every alien applying for admission to the United States as a nonimmigrant must establish that he or she is admissible to the United States. See INA 235(b)(2)(A), 291, 8 U.S.C. 1225(b)(2)(A), 1361; 8 CFR 214.1(a)(3), 235.1(f), 235.3. Upon application for admission, the alien must present a valid passport and valid visa unless either or both document requirements have been waived. See INA 212(a)(7)(B), 8 U.S.C. 1182(a)(7)(B); 8 CFR 212.1; see also INA 217, 8 U.S.C. 1187; 8 CFR 217. Nonimmigrant aliens who need a visa to travel to and apply for admission to the United States may be eligible for one of 20 primary nonimmigrant classifications, depending on their specific purposes and qualifications. See INA 101(a)(15), 8 U.S.C. 1101(a)(15) (defining nonimmigrant classifications); see also U.S. Department of State,

¹ The President assigned to the Secretary of Homeland Security (acting with the concurrence of the Secretary of State) the functions under INA 215(a) with respect to noncitizens. E.O. 13323, 69 FR 241 (Dec. 30, 2003).

Bureau of Consular Affairs, “Directory of Visa Categories” (listing visa categories).² The burden of establishing admissibility and other eligibility to enter the United States lies with the applicant for admission. See, e.g., INA 291, 8 U.S.C. 1361; 8 CFR 235.1(f).

The nonimmigrant visa application process generally requires the alien to fill out an application, pay a visa application fee, and appear for an interview before a consular officer at a U.S. embassy or consulate. Every visa applicant undergoes extensive security checks before a visa is issued. At the U.S. embassy or consulate, officials review the alien’s application, collect the applicant’s fingerprints, and check the applicant’s name against the Department of State’s (“DOS”) Consular Lookout and Support System (CLASS) as well as various other government watchlists. A consular officer reviews the name check results and determines whether additional security checks are required. The consular officer then generally interviews the visa applicant and reviews his or her application and supporting documents.

When all required processing is completed, and if the alien is found eligible, the consular officer issues a nonimmigrant visa to the alien. The validity period of a nonimmigrant visa varies by category and the country that issues the nonimmigrant alien’s passport.³ When an alien’s visa validity period expires, the alien will need to renew his or her visa in order to travel to the United States. The process is generally the same whether a person is applying for a visa for the first time or renewing an expired visa. This means that to renew a visa the alien must submit a new application, which requires updated information, pay the visa application fee, and

² This directory is available at <http://travel.state.gov/content/visas/en/general/all-visa-categories.html>.

³ To determine the validity period of a specific visa category for a given country, a nonimmigrant alien will need to consult the reciprocity schedule for the country that issued his or her passport at www.travel.state.gov/content/visas/en/fees/reciprocity-by-country.html.

undergo another interview by consular officials, unless the interview is waived.⁴ The information updates provided through the visa re-application process include basic biographical and eligibility elements that can change over time (e.g., address, name, employment, criminal history).

Visa validity periods can vary considerably, and some visas are valid for extended periods of up to ten years, and often for multiple entries. Frequent travelers to the United States who hold visas with short validity periods have to reapply more frequently than those who hold visas with longer validity periods. While visas with a longer validity period provide an opportunity for individuals to travel to the United States with greater ease, they do not enable the U.S. Government to receive regularly updated biographic and other information from repeat visitors who travel to the United States multiple times over the span of the visa. As such, aliens traveling on these visas with longer validity periods are screened using traveler information that is not as recent as for aliens who must obtain visas more frequently.

Because changes to biographical and eligibility elements could impact whether an individual may be admissible to the United States, it would be beneficial to have a mechanism for obtaining this updated information in advance of the individual's travel to the United States when the Secretary, in consultation with the Secretary of State, determines that it is warranted with respect to a given country and nonimmigrant visa category. Having a means for regularly collecting updated information, before the alien embarks on travel to the United States and without requiring aliens to apply for a visa on a more frequent basis, would be valuable in contributing to

⁴ The visa interview can be waived in certain circumstances, including for renewals that meet specific requirements. See INA 222(h)(1)(B), 8 U.S.C. 1202(h)(1)(B); 9 FAM 403.5-4(A), available at <https://fam.state.gov/FAM/09FAM/09FAM040305.html>.

a robust traveler screening and verification process and would cut down on the number of visa holders who are found inadmissible at ports of entry.⁵

Given these concerns and considerations, DHS has developed the Electronic Visa Update System (“EVUS”), which provides a mechanism through which information updates can be obtained from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. EVUS will provide for greater efficiencies in the screening of international travelers by allowing DHS to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS will aid DHS in facilitating legitimate travel while also ensuring public safety and national security.

In this final rule, DHS is amending its regulations to establish EVUS. In a parallel rule, “Visa Information Update Requirements under the Electronic Visa Update System (EVUS)” (RIN 1400-AD93) (hereinafter “DOS’s EVUS Rule”), also published in this **Federal Register**, DOS is amending its regulations to provide for the automatic provisional revocation of visas held by nonimmigrant aliens subject to the EVUS requirements for failure to comply with those requirements.

DHS and DOS anticipate that EVUS may eventually be expanded to include a number of countries and visa categories. However, as announced in a separate notice being published in this issue of the **Federal Register**, the program will initially be limited to nonimmigrant aliens who hold unrestricted, maximum validity B-1 (business visitor), B-2 (visitor for pleasure), or

⁵ Consistent with other DHS regulations, the term “port of entry” includes preclearance or immigration preinspection, which are CBP facilities in a foreign location where immigration preinspection, among other things, occurs prior to travel to the United States. See INA 235A, 8 U.S.C. 1225a; 8 CFR 235.5.

combination B-1/B-2 visas, which are generally valid for 10 years,⁶ contained in a passport issued by the People’s Republic of China (“PRC”).⁷

B. Legal Authority

DHS and DOS are establishing EVUS primarily under the authorities granted in INA sections 103 (8 U.S.C. 1103), 214 (8 U.S.C. 1184), 215 (8 U.S.C. 1185), and 221 (8 U.S.C. 1201); and sections 402(4) and 428(b) of the Homeland Security Act (“HSA”), 6 U.S.C. 202(4), 236(b). Section 221(a)(1)(B) of the INA authorizes DOS to issue nonimmigrant visas to foreign nationals. Section 221(c) provides that “[a] nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed,” and section 221(i) authorizes the Secretary of State to revoke visas at any time in his or her discretion. See also 22 CFR 41.122. Section 214(a)(1) of the INA authorizes DHS to establish by regulation conditions for a nonimmigrant alien’s admission to the United States, 8 U.S.C. 1184(a)(1); and section 215(a)(1) provides DHS with authority to set reasonable rules restricting aliens’ entry into and departure from the United States.⁸ 8 U.S.C. 1185(a)(1). Section 103(a) of the INA authorizes the Secretary of Homeland Security to administer and enforce the INA and other laws relating to the immigration and naturalization of aliens, and to establish such regulations as he deems necessary for carrying out his authority. 8 U.S.C. 1103(a). Sections 402(4) and 428(b) of the HSA generally confers upon the Secretary the authority to establish and administer rules governing the granting of visas. 6 U.S.C. 202(4), 236(b).

⁶ This includes visas issued for more than nine years and all replacement visas issued to correct errors in the original instance.

⁷ B category visas are considered “visitor visas.” Visitor visas are nonimmigrant visas for individuals seeking admission to the United States temporarily for business (visa category B-1), tourism or pleasure, (visa category B-2), or a combination of both purposes (visa category B-1/B-2). Maximum validity for B category visas contained in a passport issued by the People’s Republic of China, is generally ten years, but includes visas issued for more than nine years and all replacement visas issued to correct errors in the original visa.

⁸ See supra note 1.

These broad authorities allow DHS to set conditions for admission or entry into the United States and DOS to revoke visas subject to the fulfillment of these conditions. Together, these authorities allow DHS to establish an electronic visa information update system to collect periodic biographic and other updates and for DOS to provisionally revoke a nonimmigrant alien's visa for failure to meet DHS's conditions for admission or entry as outlined in the EVUS regulations set forth in this final rule and the companion DOS rulemaking.

Through the issuance of these regulations outlined below, DHS is conditioning the admission or entry of nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category on compliance with EVUS. Through the issuance of DOS's rule on EVUS, as specified in 22 CFR 41.122(b)(3), failure to comply with this condition triggers the automatic provisional revocation of the regulated individual's visa, which will prevent travel to the United States on that visa. Once the visa holder successfully enrolls in EVUS, the provisional revocation will be automatically reversed and the visa will be valid for travel to the United States. See DOS's EVUS Rule.

C. Amendments to the DHS Regulations to Establish the Electronic Visa Update System

This rule amends 8 CFR by renaming part 215 "Controls of Aliens Departing from the United States; Electronic Visa Update System," placing the existing §§ 215.1 through 215.9 into a subpart A entitled "Controls of Aliens Departing from the United States" and adding new sections in a subpart B, entitled "Electronic Visa Update System." New subpart B describes the purpose of EVUS, who it applies to, and its requirements. It also contains definitions that apply throughout that subpart.

As provided in part 215, subpart B, EVUS is an online information update system that requires nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to provide information updates through periodic EVUS enrollment. The Secretary will identify countries (“EVUS countries”) whose passport holders will be subject to the EVUS regulations and designate applicable visa categories. This regulation would potentially apply to both single and multiple use visas. Notice of identified countries and designated visa categories will be published in the **Federal Register**. A nonimmigrant alien who holds a passport issued by an EVUS country containing a U.S. nonimmigrant visa of a designated category is referred to in part 215, subpart B, as a “covered alien.” Each covered alien must comply with EVUS in order to ensure the continued validity of his or her visa. A covered alien will not be allowed to board an air or sea carrier destined for the United States unless he or she complies with EVUS. Failure to enroll in EVUS according to the regulations will result in the automatic provisional revocation of the individual’s visa pursuant to DOS’s regulations in 22 CFR 41.122(b)(3). See DOS’s EVUS Rule.

1. Enrollment in EVUS

To enroll in EVUS, the covered alien must go online to www.EVUS.gov and provide truthful, accurate, and complete responses to all of the required questions. At this time, the EVUS enrollment may be completed by the covered alien or by a third party, such as a friend, relative, or travel industry professional, at the direction of the covered alien. The third party may submit the required information on the alien’s behalf, although the alien is responsible for the truthfulness and accuracy of all information submitted.

After the enrollment information is submitted, the submitter will receive an electronic status message on the EVUS enrollment website stating “enrolled,” “pending,” “unsuccessful,” or “The

State Department has revoked your visa.” The U.S. Customs and Border Protection (“CBP”) anticipates that each EVUS enrollment attempt will be adjudicated within 72 hours of submission, although most results will be received shortly after submission. An “enrolled” message indicates that the submission was successful and that the covered alien has a valid notification of compliance. For more details, see the section below, “Notification of Compliance.” If a “pending” message is received, the alien will need to return to the website at a later time to verify successful enrollment.

In some circumstances, the submitter may receive an “unsuccessful” message. This may occur for reasons including, but not limited to, the alien’s failure to provide adequate responses to the EVUS questions, the alien’s attempt to use an invalid passport or visa, such as an expired document or one reported lost or stolen, or irreconcilable errors discovered relating to the information the alien provided as part of an attempted EVUS enrollment. An unsuccessful EVUS enrollment after November 29, 2016 means that the covered alien’s visa will be automatically provisionally revoked. An unsuccessful enrollment does not cause the underlying visa to be permanently revoked. A covered alien may reattempt enrollment any number of times, subsequent to receiving an “unsuccessful” message.

If the submitter receives a message stating that “The State Department has revoked your visa,” the submitter will not be permitted to travel to the United States on that visa until a new visa application has been submitted to DOS, a new visa has been issued, and the submitter has successfully enrolled in EVUS based on his or her new visa.

2. Notification of Compliance

Upon successful enrollment in EVUS, CBP will issue a notification of compliance to the covered alien. In most cases, this notification of compliance will be issued immediately,

appearing on the next page of the EVUS website after submission of the EVUS enrollment information. CBP will not send an email or letter to the alien notifying them of their enrollment status. It is the alien's responsibility to verify whether he or she has a valid notification of compliance. The alien can do this by returning to the EVUS website and following the instructions provided there.

The notification of compliance is a positive determination that the individual's visa is not automatically provisionally revoked and is considered valid for travel to the United States as of the time of the notification. See DOS's EVUS Rule; see also 22 CFR 41.122(b)(3).

As explained in the section below, "Duration of Notification of Compliance," as a general rule, a notification of compliance is valid for a period of two years. For immigration purposes, a covered alien may travel to the United States repeatedly using the same notification of compliance, as long as the notification of compliance and the underlying visa remain valid.

3. EVUS in the Context of Travel to the United States

When a covered alien seeks to board a commercial aircraft or vessel carrier for travel to a U.S. air or sea port of entry, the carrier will verify that the traveler has a valid notification of compliance before allowing the alien to board. When a covered alien arrives at a U.S. land port of entry, the CBP officer at the port of entry will verify that the traveler has a valid notification of compliance before conducting further assessment on the admissibility of the traveler.

A notification of compliance only allows a covered alien to board a conveyance for travel to a U.S. air or sea port of entry, or to apply for admission at a land port of entry. It does not restrict, limit, or otherwise affect the authority of CBP officers to determine an alien's admissibility to the United States during inspection at a port of entry or the respective authorities of DHS and DOS to refuse or revoke a nonimmigrant visa.

4. Validity Period of Notification of Compliance

As a general rule, a notification of compliance will be valid for a period of two years. If a covered alien's passport or visa will expire in less than two years from the date the notification of compliance is issued, the notification will be valid only until the date of expiration of the passport or visa, whichever is sooner. Individuals who have successfully enrolled in EVUS may return to the EVUS website at any time to verify their EVUS status and notification of compliance expiration date.

The Secretary, in consultation with the Secretary of State, may increase or decrease the notification of compliance validity period for any EVUS country. Any changes to the validity period will be done through rulemaking. The EVUS website will also be updated to reflect the specific duration of notification of compliance validity periods for each EVUS country.

If a covered alien does not re-enroll in EVUS before his or her notification of compliance expires, his or her visa will be automatically provisionally revoked and the alien may not travel to the United States on that visa unless or until the alien re-enrolls in EVUS and obtains a new notification of compliance. Furthermore, a notification of compliance is not valid unless the alien's passport and designated visa are also valid.

5. Schedule for EVUS Enrollment and Re-enrollment

As explained below in more detail, EVUS requires each covered alien to initially enroll after receiving his or her designated visa and to re-enroll in the context of travel if the initial or an earlier notification of compliance is no longer valid.

a. Initial Enrollment

Following are the requirements for initial enrollment in EVUS. As explained below, as of November 29, 2016, no covered alien will be permitted to travel to the United States on a visa

subject to EVUS, without a valid notification of compliance. Any covered alien who received his or her visa of a designated category prior to November 29, 2016, must initially enroll in EVUS by December 14, 2016, unless the alien intends to travel to the United States before that date. In such case, a covered alien intending to arrive at an air or sea port of entry must have a notification of compliance that is valid prior to boarding a carrier destined for travel to the United States, and an alien intending to arrive at a land port of entry must have a notification of compliance that is valid prior to application for admission.

In contrast, any covered alien who receives his or her visa of a designated category on or after November 29, 2016 must initially enroll in EVUS upon receipt of his or her visa.

Enrollment upon receipt of the visa is necessary because, based on CBP's data on crossing history and visa issuance, most visitors to the United States travel within six months of visa issuance. To alleviate the reporting burden, EVUS will pre-populate the data elements that are duplicated on the visa application for recent visa issuances

Failure to initially enroll in EVUS as described above will result in the automatic provisional revocation of the covered alien's visa. The alien will not be authorized to travel to the United States on that visa unless or until the alien enrolls in EVUS and obtains a notification of compliance.

b. EVUS Re-enrollment Prior to Travel to the United States

A covered alien must have a valid notification of compliance in order to travel to the United States on his or her visa of a designated category. To comply with this requirement, the individual must re-enroll in EVUS if his or her initial or most recent notification of compliance has expired, or will expire, prior to the following timeframes. A covered alien intending to arrive at an air or sea port of entry must have a notification of compliance that is valid prior to

boarding a carrier destined for travel to the United States and that will remain valid through the date when the alien will arrive at the port of entry. A covered alien intending to arrive at a land port of entry must have a notification of compliance that is valid through the date of the alien's application for admission into the United States.

A covered alien may travel to the United States repeatedly using the same notification of compliance, as long as it remains valid through the timeframe described above and the underlying visa remains valid. If a covered alien needs a new notification of compliance in order to meet the relevant timeframe, DHS recommends that he or she re-enroll in EVUS at least 72 hours in advance of his or her intended departure to the United States.

6. Required EVUS Data Elements

The information required for EVUS enrollment is information that DHS, after consultation with DOS, has deemed necessary to evaluate whether a covered alien's travel to the United States poses a law enforcement or security risk. It includes biographical data such as name, birth date, and passport information, as well as travel information such as travel details and the alien's contact information in the United States. Covered aliens must also answer eligibility questions regarding, for example: infection with communicable diseases of public health significance, existence of arrests or convictions for certain crimes, and past history of visa or admission denial.

The EVUS enrollment questions will be available in multiple languages, including English and the official language(s) of the covered alien's EVUS country. Although the covered alien must provide responses to most of the data elements in English, some of the information, such as the alien's name and address, can or must also be provided in the official language(s) of the alien's EVUS country.

The information submitted by the alien will be checked by DHS against all appropriate databases, including, but not limited to, lost and stolen passport databases and appropriate watchlists.

7. Events Requiring EVUS Re-enrollment

Covered aliens must re-enroll in EVUS and obtain a new notification of compliance if any of the following occur:

- (a) The alien is issued a new passport or new nonimmigrant visa of a designated category;
- (b) The alien changes his or her name;
- (c) The alien changes his or her gender;
- (d) There is any change to the alien's country of citizenship or nationality, including becoming a dual national; or
- (e) The circumstances underlying the alien's previous responses to any of the EVUS enrollment questions requiring a "yes" or "no" response (eligibility questions) have changed.

8. Noncompliance, Expiration of Notification of Compliance, and Change in EVUS Status Resulting in Rescission of Notification of Compliance

An individual subject to the EVUS requirements must take affirmative actions to ensure and maintain the validity of his or her visa, pursuant to 22 CFR 41.122(b)(3). Failure to initially enroll in EVUS as described above will result in the automatic provisional revocation of the covered alien's visa. Furthermore, once a covered alien's notification of compliance has expired, his or her visa will be automatically provisionally revoked. In order to prevent the automatic provisional revocation of his or her visa, or to re-instate the validity of the visa after it has been

provisionally revoked in these circumstances, the alien must successfully enroll or re-enroll in EVUS and obtain a valid notification of compliance.

In the event that a covered alien's EVUS enrollment is unsuccessful, his or her visa will also be automatically provisionally revoked. Under these circumstances, the alien may re-attempt enrollment or contact CBP for further guidance. Additionally, in the event that irreconcilable errors are discovered after the issuance of a notification of compliance, or other circumstances occur, such as a change in the validity period of the notification of compliance, CBP may rescind the notification of compliance.⁹ If a covered alien's notification of compliance is rescinded, his or her visa will be automatically provisionally revoked. In this circumstance, the alien may re-attempt enrollment or contact CBP for further guidance.

For more information on the automatic provisional revocation of visas in the context of EVUS, please see DOS's EVUS rule.

D. Other Amendments to the DHS Regulations to Reference EVUS

In establishing EVUS, several other sections of the DHS regulations must be amended to reference the new part 215, subpart B, of title 8 of the Code of Federal Regulations ("CFR"). Section 212.1 ("Documentary Requirements for Nonimmigrants") is being revised to specify that when presenting documents for admission, the nonimmigrant alien's visa must meet the requirements of part 215, subpart B, if applicable. Section 212.1 is also being revised to remove the phrase "valid for the period set forth in section 212(a)(26) of this Act" as a descriptor of the passport an alien must present upon application for admission. That section of the INA no longer exists, making the reference obsolete. Section 214.1(a)(3) ("Requirements for Admission,

⁹ CBP will send an e-mail to the address provided during enrollment to attempt to notify the covered alien about the rescission of his or her notification of compliance.

Extension, and Maintenance of Status”) is being revised to note that an alien’s admission to the United States as a nonimmigrant is now conditioned on compliance with part 215, subpart B, if applicable.

Lastly, § 273.3, regarding screening procedures, is also being revised to reflect EVUS requirements. Section 273.3 lists the screening procedures that owners, operators, or agents of carriers which transport passengers to the United States must follow to be eligible to apply for a reduction, refund, or waiver of fines imposed under section 273 of the INA, 8 U.S.C. 1323, for bringing aliens to the United States without the required travel documents. Section 273.3(b)(1) is being revised to add a new paragraph that specifies that carrier personnel, when screening passengers prior to boarding, should ensure that covered aliens have complied with EVUS as appropriate. Additionally, a new § 273.3(b)(4) is being added to address the procedures that carriers should follow to ensure that a covered alien has a valid notification of compliance before allowing him or her to board. This provision specifies that carriers should transmit the visa number of any passenger who requires a visa. The carrier should transmit this information using the Advance Passenger Information System (“APIS”).¹⁰ CBP will then use the visa number to ascertain whether the alien requires a notification of compliance with EVUS and if so, whether the alien has a valid notification of compliance. CBP will relay this information back to the carrier, and the carrier should use this information in determining whether to board the passenger.

E. Compliance Dates and Early Enrollment Period for EVUS

As provided in § 215.24(c), covered aliens must initially enroll in EVUS as early as November 29, 2016, depending on the date on which the alien received his or her visa of a

¹⁰ This provision does not create a new APIS requirement, it only provides that carriers use the APIS system to transmit the visa information.

designated category and on his or her specific plans to travel to the United States. As of November 29, 2016, no covered alien will be authorized to travel to the United States on his or her visa of a designated category unless or until the alien enrolls in EVUS and obtains a notification of compliance.

As of the effective date of this rule, CBP will allow covered aliens to voluntarily enroll in EVUS prior to the mandatory compliance dates. This will allow covered aliens to familiarize themselves with the online tool and to meet the update requirements associated with EVUS well in advance of the mandatory compliance dates. A notification of compliance received during the early enrollment period will generally be valid for two years from the date of issuance, subject to the same limitations as notifications of compliance received after the mandatory compliance dates as provided in § 215.24(b).

The compliance date for the new requirements set forth in § 273.3, regarding carriers' screening procedures, is November 29, 2016.

III. STATUTORY AND REGULATORY REQUIREMENTS.

A. Administrative Procedure Act

This final rule is excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals regarding the issuance of visas, involves a diplomatic arrangement with another country regarding reciprocal changes to temporary visitor for business and pleasure, student, and exchange visitor visas, and directly involves relationships between the United States and its alien visitors. See 5 U.S.C. 553(a)(1). This determination was reached after consultation with DOS, which is also asserting the foreign affairs function exception in their parallel rule. Accordingly,

DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. Congressional Review Act

Under the Congressional Review Act, a rule that is likely to result in an annual effect on the U.S. economy of \$100,000,000 or more is considered a major rule. See 5 U.S.C. 804.

Generally, the effective date of a major rule must be the later of these two dates: 60 days after publication in the **Federal Register**, or 60 days after delivery of the report to Congress. See 5 U.S.C. 801(a)(3). DHS has concluded in section III.E that this rule is likely to result in an annual effect on the U.S. economy of \$100,000,000 or more. Therefore, it meets the criteria for a major rule. However, as provided in 5 U.S.C. 808, notwithstanding section 801, any rule which an agency for good cause finds (and incorporates the finding and a brief statement or reasons therefor) that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. As discussed below, DHS finds for good cause that notice and public procedure thereon are impractical and contrary to the public interest.

This rule improves the security of issuing certain visas with longer validity periods to nonimmigrant aliens who hold a passport issued by an identified country. By requiring covered aliens to provide regular updated biographic and other information, DHS is better positioned to obtain updated information from these individuals and to screen them before they embark on travel to the United States. Implementation of this rule as soon as possible is necessary to protect the national security of the United States and to prevent potential wrongdoers from exploiting visas with longer validity periods when they are issued to nonimmigrant aliens who hold a passport issued by a country identified by the Secretary. Therefore, DHS finds for good cause

that notice and public comment are impractical and contrary to the public interest. Accordingly, the effective date pursuant to 5 U.S.C. 808 may be the date the agency determines and DHS has determined that the rule will take effect immediately upon publication, but the compliance date is November 29, 2016, or as set forth in section 215.24(c).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104-4 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 \$100,000,000 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 \$100,000,000 (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 rule does have an effect on the private sector of \$100,000,000 or more. This impact is discussed in section III.E. entitled “Executive Order 13563 and Executive Order 12866.”

E. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Order 12866. As discussed above, EVUS advances the President’s foreign policy goals regarding the issuance of visas and directly involves relationships between the United States and its alien visitors, and as such, DHS is of the opinion that this rule is exempt from the requirements of Executive Orders 13563 and 12866. However, DHS has nevertheless reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 13563 and 12866. DHS has prepared an economic

analysis of the potential impacts of this final rule for public awareness. A summary of the analysis is presented below. The complete analysis can be found in the public docket for this rulemaking at www.regulations.gov.

1. Purpose of Rule

Visa validity periods can vary considerably, and some visas are valid for extended periods of up to ten years, and often for multiple entries. Although these longer-term visas allow individuals to travel repeatedly to the United States with greater ease and at lower cost, they do not enable the U.S. Government to receive regular information about the travelers that could impact whether they are admissible to the United States over the entire span of the visa. Because changes to biographical and eligibility elements could impact whether an individual may be admissible to the United States, it would be beneficial to have a mechanism for obtaining this updated information in advance of the individual's travel to the United States when the Secretary, in consultation with the Secretary of State, determines that it is warranted with respect to a given country and nonimmigrant visa category. To maintain the needed levels of security when granting longer-term visas, this rule and a corresponding DOS rule will establish EVUS, an electronic mechanism for collecting biographical and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to these regulations ("covered aliens") must periodically submit up-to-date biographical and other information through an EVUS enrollment request and receive an electronic notification of compliance indicating successful enrollment in advance of travel or admission to the United States. Failure to comply with EVUS will result in the automatic provisional revocation of the covered alien's visa, rendering the covered alien inadmissible to the United States on that visa and barring travel (by air and sea) on

that visa until certain requirements are met. Air and sea carriers that offer travel to the United States will be responsible for verifying the EVUS compliance statuses of covered aliens, a condition of visa validity and admissibility, prior to boarding. CBP will continually screen covered aliens with EVUS notifications of compliance, thus providing more frequent enhanced traveler screening than short-term visas provide. This continual screening will ensure that aliens continue to meet U.S. security and admission requirements throughout the validity period of their EVUS notification of compliance and visa.

CBP and DOS anticipate that EVUS may eventually be expanded to include a number of countries and nonimmigrant visa categories. However, as announced in the notice being published in this issue of the **Federal Register**, the program will initially be limited to nonimmigrant aliens holding unrestricted, maximum validity B-1 (business visitor), B-2 (visitor for pleasure), or combination B-1/B-2 visas contained in a passport issued by the People's Republic of China. The following regulatory impact analysis summary and its corresponding full analysis present the costs and benefits of EVUS in two ways: (1) on a per-alien and per-carrier basis and (2) on an aggregate basis for the population of covered aliens initially required to enroll in EVUS—nonimmigrant aliens holding unrestricted, maximum validity B-1, B-2, or B-1/B-2 nonimmigrant visas contained in a passport issued by the PRC and who seek travel to the United States. When analyzing these impacts of the rule, CBP does so against a baseline in which DOS issues one-year B-1, B-2, and B-1/B-2 visas. CBP analyzes the impact of EVUS on a one-year basis because the United States and the PRC agreed to longer-length visa issuances on the condition of EVUS's forthcoming implementation. To the extent that DHS/CBP and DOS expand EVUS to other countries and visa categories, the impacts of EVUS outlined in this analysis would be higher. CBP also anticipates that currently proposed U.S. legislation

establishing an \$8.00 EVUS fee will pass in FY 2017.^{11,12} Such fee legislation would require covered aliens to pay an \$8.00 EVUS fee per enrollment request, while allowing CBP to cover its costs of providing and administering EVUS. CBP includes the EVUS fee revenue in this analysis as a proxy for CBP's expected costs of setting up and administering EVUS.

2. Population Affected by Rule

This EVUS rule will impact covered aliens, air and sea carriers, CBP, and the public.¹³ Due to a myriad of factors that affect travel, CBP used three different projection methods to estimate the population of covered aliens initially affected by this rule—PRC B-1, B-2, and B-1/B-2 visa holders—over a 10-year period of analysis spanning from fiscal years (FYs) 2017 to 2026. Under CBP's primary estimation method, EVUS enrollment requests will measure 56.9 million during the period of analysis, with 56.9 million successful enrollments and about 2,100 unsuccessful enrollments (see Table 1).

¹¹ See Office of Management and Budget. *Budget of the United States Government, Fiscal Year 2017*. Available at <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/budget.pdf>. Accessed October 3, 2016.

¹² A detailed study on the EVUS fee calculation, which serves as the basis of the fee proposed in legislation, is available in the public docket for the EVUS rulemaking at www.regulations.gov.

¹³ For the purposes of this analysis, the public includes U.S. residents and visitors.

Table 1. Projected Numbers of EVUS Enrollment Requests (in Millions)

	Fiscal Year										Total
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	
Method 1 (Primary Estimate)- With Rule											
Total EVUS Requests	3.6	3.4	3.8	4.2	4.7	5.2	5.7	6.4	9.6	10.5	56.9
Successful	3.6	3.4	3.8	4.2	4.7	5.2	5.7	6.4	9.6	10.5	56.9
Unsuccessful	0.0003	0.0001	0.0001	0.0001	0.0002	0.0002	0.0002	0.0002	0.0003	0.0003	0.0021
Method 2- With Rule											
Total EVUS Requests	3.5	3.3	3.6	3.9	4.3	4.7	5.1	5.5	8.5	9.2	51.6
Successful	3.5	3.3	3.6	3.9	4.3	4.7	5.1	5.5	8.5	9.2	51.6
Unsuccessful	0.0003	0.0001	0.0001	0.0001	0.0001	0.0002	0.0002	0.0002	0.0003	0.0003	0.0019
Method 3- With Rule											
Total EVUS Requests	3.7	3.5	4.0	4.5	5.1	5.8	6.5	7.4	10.8	12.0	63.4
Successful	3.7	3.5	4.0	4.5	5.1	5.8	6.5	7.4	10.8	12.0	63.3
Unsuccessful	0.0003	0.0001	0.0001	0.0002	0.0002	0.0002	0.0002	0.0002	0.0004	0.0004	0.0023

Notes: The estimates in this table are contingent upon CBP's expectations of the population of covered aliens initially affected by this rule. Estimates may not sum to total due to rounding.

On account of this rule's longer-term visas, PRC B-1, B-2, and B-1/B-2 visa holders will be able to renew their visas on a less frequent basis. In fact, based on coordination with DOS, CBP estimates that DOS will issue 8.5 million fewer B-1, B-2, and B-1/B-2 visas to nonimmigrant aliens holding passports issued by the PRC over the period of analysis with EVUS's implementation according to CBP's primary estimation method (see Table 2).

Table 2. Projected Numbers of PRC B-1, B-2, and B-1/B-2 Visas Issuances with and without Rule (in Millions)

	Fiscal Year										
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	Total
Method 1 (Primary Estimate)											
Without Rule- Total PRC B-1, B-2, and B-1/B-2 Visa Issuances	2.4	2.8	3.4	4.0	4.7	5.6	6.7	8.0	9.5	11.3	58.5
With Rule- Total PRC B-1, B-2, and B-1/B-2 Visa Issuances	2.6	3.0	3.4	3.7	4.1	4.6	5.1	5.7	8.5	9.3	50.0
Difference	-0.2	-0.2	0.0	0.3	0.6	1.1	1.6	2.3	1.0	2.0	8.5
Method 2											
Without Rule- Total PRC B-1, B-2, and B-1/B-2 Visa Issuances	2.2	2.6	3.1	3.6	4.2	4.9	5.8	6.8	7.9	9.2	50.4
With Rule- Total PRC B-1, B-2, and B-1/B-2 Visa Issuances	2.6	2.9	3.2	3.5	3.8	4.1	4.5	4.9	7.6	8.2	45.3
Difference	-0.3	-0.3	-0.1	0.1	0.4	0.8	1.3	1.8	0.3	1.1	5.1
Method 3											
Without Rule- Total PRC B-1, B-2, and B-1/B-2 Visa Issuances	2.5	3.0	3.6	4.4	5.3	6.5	7.8	9.4	11.4	13.8	67.9
With Rule- Total PRC B-1, B-2, and B-1/B-2 Visa Issuances	2.6	3.1	3.6	4.0	4.5	5.1	5.8	6.6	9.6	10.7	55.7
Difference	-0.2	-0.1	0.1	0.4	0.8	1.3	2.0	2.9	1.8	3.1	12.2

Note: Estimates may not sum to total due to rounding.

Because this rule presents a new traveler eligibility check for U.S. travel, carriers that offer travel to the United States will need to modify their APIS systems to allow for EVUS compliance verifications. Based on its similar carrier requirements to the ESTA Air and Sea Final Rule, CBP believes that this rule will initially require 80 carriers to modify their APIS systems to confirm their

passengers' compliance with EVUS.¹⁴ In addition to covered aliens and carriers, this rule will affect CBP and the public. EVUS's continual traveler screening and advance inadmissibility determinations will strengthen national security and facilitate legitimate travel, providing important benefits to CBP and the public.

3. Costs of Rule

Covered aliens, CBP, and air and sea carriers will bear all the direct costs of this rule. As stated earlier, this EVUS rule will require covered aliens to periodically submit up-to-date biographical and other information through an EVUS enrollment request and receive a notification of compliance indicating successful enrollment in advance of travel or admission to the United States. Each EVUS enrollment request will take a covered alien an estimated 25 minutes to complete, at an opportunity cost of \$19.21 per request.¹⁵ CBP expects to sustain costs from providing and administering EVUS approximately equal to the \$8.00 EVUS fee that CBP anticipates covered aliens will pay beginning in FY 2017. CBP also anticipates that each

¹⁴ See 80 FR 32267 (June 8, 2015). This rule will apply to any carrier transporting PRC passport holders, which is likely to be the same as the carriers that transport VWP travelers. To the extent that the number of carriers affected by this rule is an overestimate, the costs of this rule would be lower.

¹⁵ CBP bases this calculation on the U.S. Department of Transportation's ("DOT") hourly time value of \$46.10 for all-purpose, intercity air travelers. CBP believes that this DOT wage rate provides the best available time value for covered aliens initially affected by this rule and those affected if EVUS requirements are expanded to include a number of countries and visa categories. CBP posits that those traveling to the United States for temporary leisure or business purposes likely have higher time values and disposable income closer to the DOT rate than reflected by the average wage rate of individuals in their country. CBP acknowledges that this rate may not be entirely representative of the initial population affected by this rule. To the extent that the DOT rate is an overestimate, the costs and benefits of this rule would be lower. CBP adjusted the DOT estimate reported in 2013 U.S. dollars to 2017 U.S. dollars by applying a 1.0 percent annual growth rate to the estimate, as recommended by DOT's value of travel time guidance. Source: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update). "Table 4 (Revision 2-corrected): Recommended Hourly Values of Travel Time Savings for All-Purpose, Intercity Air and High-Speed Rail Travel" (Apr. 29, 2015), available at <http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf>.

covered alien will incur a foreign transaction fee of \$0.02 per enrollment request.¹⁶ Together, CBP and covered aliens will incur undiscounted opportunity costs and fee or government administration costs totaling \$27.23 per EVUS enrollment request, which will translate to an overall undiscounted cost to the population of covered aliens initially affected by this rule of \$1.6 billion between FY 2017 and FY 2026 under CBP’s primary estimation method.

CBP estimates that air and sea carriers will each spend an average of \$1.35 million during this rule’s first year of implementation to test and modify their APIS systems to allow for EVUS compliance checks, and \$150,000 in subsequent years on system operation and maintenance related to EVUS verifications. During the 10-year period of analysis, these costs will total \$2.7 million (undiscounted). Using the number of carriers initially affected by this rule and their estimated EVUS-related costs, the overall undiscounted cost of this rule to carriers will measure \$216.0 million over the entire period of analysis. To the extent that carriers use their existing systems for EVUS compliance verifications, the cost of this rule to carriers will be lower.

Collectively, the undiscounted costs of this rule will total \$1.8 billion under CBP’s primary estimation method. In present value terms, the overall cost will equal \$1.3 billion to \$1.5 billion, while its annualized cost will measure \$168.9 million to \$173.1 million (using 7 and 3 percent discount rates, respectively; see Table 3). These costs vary according to the projection method and discount rate applied.

Table 3. Total Monetized Present Value and Annualized Costs of Rule, FY 2017–FY 2026 (in Millions; 2017 U.S. Dollars)

	3% Discount Rate		7% Discount Rate	
	Present Value Cost	Annualized Cost	Present Value Cost	Annualized Cost
Method 1 (Primary Estimate)- With Rule	\$1,520.9	\$173.1	\$1,269.7	\$168.9

¹⁶ This \$0.02 foreign transaction fee is based on the fee charged by Unionpay, China’s largest bank card provider.

Method 2- With Rule	\$1,401.7	\$159.5	\$1,176.1	\$156.5
Method 3- With Rule	\$1,665.0	\$189.5	\$1,383.0	\$184.0

Note: The estimates in this table are contingent upon CBP's expectations of the population of covered aliens initially affected by this rule and the discount rates applied.

4. Benefits of Rule

This rule will offer benefits to covered aliens, the public, air and sea carriers, and CBP, with covered aliens enjoying the most monetized benefits from this rule. The lengthened visa validity periods negotiated based on implementation of this rule will allow PRC B-1, B-2, and B-1/B-2 visa holders to renew their visas on a less frequent basis in the future, saving covered aliens \$430.50 per visa renewal foregone and a total of \$3.6 billion (undiscounted) over the period of analysis according to this rule's decrease in visa issuances under CBP's primary estimation method (see Table 2).

Through its continual traveler screening and advance inadmissibility determinations, this rule will strengthen national security and facilitate legitimate travel, thereby providing important benefits to the public. Air and sea carriers and CBP will also enjoy benefits from EVUS's advance review of passengers to help avoid problems at ports of entry that could impose burdens on carriers. Each carrier will save an estimated \$1,500 in avoided return trip costs per unsuccessful EVUS enrollment.¹⁷ Such savings will total \$3.1 million (undiscounted) over the entire period of analysis based on the number of unsuccessful EVUS enrollments under CBP's primary estimation method (see Table 1). With an estimated 80 carriers initially affected by this rule, these benefits will average nearly \$39,000 per carrier. For each inadmissible covered alien arrival avoided, CBP will save \$170.94 in avoided processing and inspection time costs. Based

¹⁷ This cost includes the airfare and any lodging and meal expenses incurred while the alien awaits transportation out of the United States. See 80 FR 32267 (June 8, 2015).

on these processing and inspection time cost savings and the total number of potentially inadmissible covered alien arrivals avoided through the EVUS enrollment process, under CBP’s primary estimation method (see Table 1- Unsuccessful EVUS Requests), CBP will save between \$325,000 and \$392,000 (undiscounted) with this rule from FY 2017 to FY 2026. Note that these are not budgetary savings, they are savings that CBP will dedicate to other agency mission areas, such as improving security and expediting the processing of other travelers.

Altogether, the undiscounted monetized benefit of this rule will total \$3.7 billion under CBP’s primary estimation method. As Table 4 shows, the total benefit of this rule under this method will measure \$2.3 billion to \$3.0 billion in present value terms over the period of analysis and between \$299.6 million and \$336.3 million when annualized (using 7 and 3 percent discount rates, respectively). EVUS will also strengthen national security and facilitate legitimate travel. These benefits vary according to the projection method and discount rate applied.

Table 4. Total Monetized Present Value and Annualized Benefits of Rule, FY 2017–FY 2026 (in Millions; 2017 U.S. Dollars)

	3% Discount Rate		7% Discount Rate	
	Present Value Benefit	Annualized Benefit	Present Value Benefit	Annualized Benefit
Method 1 (Primary Estimate)- With Rule	\$2,955.1	\$336.3	\$2,251.5	\$299.6
Method 2-With Rule	\$1,749.3	\$199.1	\$1,305.8	\$173.8
Method 3-With Rule	\$4,254.3	\$484.2	\$3,260.4	\$433.8

Note: The estimates in this table are contingent upon CBP’s expectations of the population of covered aliens initially affected by this rule and the discount rates applied.

5. Net Impact of Rule

Table 5 summarizes the monetized and non-monetized costs and benefits of the EVUS rule, covered aliens, the public, air and sea carriers, and CBP. As shown, the total monetized

present value net benefit of this rule over ten years is \$981.8 million to \$1.4 billion, while its annualized net benefit totals \$130.6 million to \$163.2 million according to CBP’s primary estimation method (using 7 and 3 percent discount rates, respectively). In addition to these benefits, the rule will strengthen national security and facilitate legitimate travel through continual traveler screening and advance inadmissibility determinations. These impacts vary according to the projection method and discount rate applied.

Table 5. Net Benefit of Rule, FY 2017-FY 2026 (Monetized Values in Millions; 2017 U.S. Dollars)

	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
Method 1 (Primary Estimate)- With Rule				
<i>Total Cost</i>				
Monetized	\$1,520.9	\$173.1	\$1,269.7	\$168.9
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	--	--	--	--
<i>Total Benefit</i>				
Monetized	\$2,955.1	\$336.3	\$2,251.5	\$299.6
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation	
<i>Total Net Benefit</i>				
Monetized	\$1,434.2	\$163.2	\$981.8	\$130.6
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation	

Table 5, Continued. Net Benefit of Rule, FY 2017-FY 2026 (Monetized Values in Millions; 2017 U.S. Dollars)

	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
Method 2- With Rule				
<i>Total Cost</i>				
Monetized	\$1,401.7	\$159.5	\$1,176.1	\$156.5
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	--	--	--	--
<i>Total Benefit</i>				
Monetized	\$1,749.3	\$199.1	\$1,305.8	\$173.8
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation	
<i>Total Net Benefit</i>				
Monetized	\$347.6	\$39.6	\$129.7	\$17.3
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation	

Table 5, Continued. Net Benefit of Rule, FY 2017-FY 2026 (Monetized Values in Millions; 2017 U.S. Dollars)

	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
Method 3- With Rule				
<i>Total Cost</i>				
Monetized	\$1,665.0	\$189.5	\$1,383.0	\$184.0
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	--	--	--	--
<i>Total Benefit</i>				
Monetized	\$4,254.3	\$484.2	\$3,260.4	\$433.8
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation	
<i>Total Net Benefit</i>				
Monetized	\$2,589.3	\$294.7	\$1,877.4	\$249.8
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation	

Notes: The estimates in this table are contingent upon CBP's expectations of the population of covered aliens initially affected by this rule and the discount rates applied. Estimates may not sum to total due to rounding.

F. 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 final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. Executive Order 12988 requires agencies to conduct reviews on civil justice and

litigation impact issues before proposing legislation or issuing proposed regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or the other matters addressed in the Executive Order.

H. Paperwork Reduction Act

The collection of information in this document was submitted to OMB for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). Approval and assigned OMB control number are pending. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. These regulations provide for a new collection of information for biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to this regulation will be required to periodically enroll in EVUS and obtain a valid notification of compliance prior to travel to the United States. DHS will use the information collected through EVUS to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS will aid DHS in facilitating legitimate travel while also ensuring national security.

The proposed information collection requirements will result in the following estimated burden hours:

Estimated Number of Annual Respondents: 3,595,904

Estimated Number of Annual Responses per Respondent: 1

Estimated Total Annual Responses: 3,595,904

Estimated Time per Response: 25 minutes (0.417 hours)

Estimated Total Annual Burden Hours: 1,499,492

I. Privacy

DHS will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule and has issued a Privacy Impact Assessment that fully outlines processes that will ensure compliance with Privacy Act protections. This Privacy Impact Assessment is posted on the DHS website at <https://www.dhs.gov/publication/dhscbppia-033-electronic-visa-update-system-evus>. DHS has also prepared a System of Records Notice (SORN) which was published in the **Federal Register** on September 1, 2016 (81 FR 60371).

LIST OF SUBJECTS

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 273

Administrative practice and procedure, Air carriers, Aliens, Maritime carriers, Penalties.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, we are amending 8 CFR parts 212, 214, 215, and 273 as set forth below.

PART 212 – DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The general authority citation for part 212 is revised to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); 8 CFR part 2.

* * * * *

§ 212.1 [Amended]

2. In §212.1, in the introductory text, after the word “visa” add the words “that meets the requirements of part 215, subpart B, of this chapter, if applicable,” and remove the words “, valid for the period set forth in section 212(a)(26) of the Act,” after the word “passport”.

PART 214 – NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 6 U.S.C. 202, 236; 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; Public Law 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; 48 U.S.C. 1806; 8 CFR part 2.

§ 214.1 [Amended]

4. In § 214.1, paragraph (a)(3)(i), third sentence, after the words “or of this chapter” add the words “, as well as compliance with part 215, subpart B, of this chapter, if applicable”.

**PART 215 – CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES;
ELECTRONIC VISA UPDATE SYSTEM**

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

Authority: 6 U.S.C. 202(4), 236; 8 U.S.C 1101, 1103, 1104, 1184, 1185 (pursuant to Executive Order 13323 (Dec. 30, 2003)), 1365a note, 1379, 1731-32; and 8 CFR part 2.

6. Revise the heading for part 215 to read as set forth above.

§§ 215.1 through 215.9 [Designated as Subpart A]

7. Designate §§ 215.1 through 215.9 as subpart A and add a heading for subpart A to read as follows:

Subpart A--Controls of Aliens Departing from the United States

§ 215.1 [Amended]

8. In § 215.1, amend the introductory text by removing the word “part” and adding in its place the word “subpart”.

9. Add subpart B to read as follows:

Subpart B- Electronic Visa Update System

Sec.

215.21 Purpose.

215.22 Applicability.

215.23 Definitions.

215.24 Electronic Visa Update System (EVUS) requirements.

§ 215.21 Purpose.

The purpose of this subpart is to establish an electronic visa update system for nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category.

§ 215.22 Applicability.

This subpart is applicable to nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. The Secretary, in the Secretary's discretion and in consultation with the Secretary of State, may identify countries and designate nonimmigrant visa categories for purposes of this subpart. Notice of the identified countries and designated nonimmigrant visa categories will be published in the **Federal Register**.

§ 215.23 Definitions.

The following definitions apply for purposes of this subpart.

(a) Covered alien. A covered alien is a nonimmigrant alien who holds a passport issued by an EVUS country (as defined in paragraph (c) of this section) containing a U.S. nonimmigrant visa of a designated category.

(b) Electronic Visa Update System (EVUS). The Electronic Visa Update System (EVUS) is the electronic system used by a covered alien to provide required information to DHS after the receipt of his or her visa of a designated category.

(c) EVUS country. An EVUS country is a country that has been identified for inclusion in EVUS, through publication of a notice in the **Federal Register**, by the Secretary after consultation with the Secretary of State.

(d) Notification of compliance. A notification of compliance is a verification from CBP that a covered alien has successfully enrolled in EVUS. A notification of compliance is a positive determination that an alien's visa is:

- (1) Not automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3); and
- (2) Is considered valid for travel to the United States as of the time of notification.

§ 215.24 Electronic Visa Update System (EVUS) requirements.

(a) Enrollment required. Each covered alien must initially enroll in EVUS, in accordance with paragraph (c)(1) of this section, by providing the information set forth in paragraph (d) of this section electronically through EVUS. Each covered alien who intends to travel to the United States must have a valid notification of compliance as set forth in paragraph (c)(2) of this section. Upon each successful enrollment or re-enrollment, CBP will issue a notification of compliance.

(b) Validity period of notification of compliance--(1) General validity period. A notification of compliance will generally be valid for a period of two years from the date the notification of compliance is issued, except as provided in paragraph (b)(2) or (3) of this section.

(2) Exception. If the nonimmigrant alien's passport or nonimmigrant visa will expire in less than two years from the date the notification of compliance is issued, the notification will be valid until the date of expiration of the passport or nonimmigrant visa, whichever is sooner.

(3) Change in validity period of notification of compliance. The Secretary, in consultation with the Secretary of State, may increase or decrease the notification of compliance validity period otherwise authorized by paragraph (b)(1) of this section for an EVUS country. Any such increase or decrease would apply to subsequently issued notifications of compliance.

Any changes to the validity period will be done through rulemaking. The EVUS website will be updated to reflect the specific duration of notification of compliance validity periods for each EVUS country.

(4) Relation to nonimmigrant visa validity. A notification of compliance is not valid unless the alien's nonimmigrant visa also is valid.

(c) Schedule for EVUS enrollment--(1) Initial EVUS enrollment--(i) Visas received prior to November 29, 2016. Each covered alien who received his or her nonimmigrant visa of a designated category prior to November 29, 2016 must initially enroll in EVUS by December 14, 2016, unless the covered alien intends to travel to the United States before that date, in which case the requirements for EVUS enrollment outlined in paragraph (c)(2) of this section apply.

(ii) Visas received on or after November 29, 2016. Each covered alien who received his or her nonimmigrant visa of a designated category on or after November 29, 2016 must initially enroll in EVUS upon receipt of such visa.

(2) EVUS re-enrollment requirements prior to travel to the United States--(i) Individuals arriving at air or sea ports of entry. Each covered alien who intends to travel by air or sea to the United States on a nonimmigrant visa of a designated category must have a notification of compliance that is valid, as described in paragraph (b) of this section, prior to boarding a carrier destined for travel to the United States through the date when the covered alien will arrive at a U.S. port of entry.

(ii) Individuals arriving at land ports of entry. Each covered alien who intends to travel by land to the United States on a nonimmigrant visa of a designated category must have a notification of compliance that is valid, as described in paragraph (b) of this section, through the date of application for admission to the United States.

(d) Required EVUS enrollment elements. DHS will collect such information from covered aliens as DHS deems necessary in its discretion, after consultation with the Department of State. The required information will be reflected in the EVUS enrollment questions.

(e) EVUS re-enrollment required. Each covered alien must re-enroll in EVUS and obtain a new notification of compliance from CBP if any of the following occurs:

(1) The alien is issued a new passport or new nonimmigrant visa of a designated category;

(2) The alien changes his or her name;

(3) The alien changes his or her gender;

(4) There is any change to the alien's country of citizenship or nationality, including becoming a dual national; or

(5) The circumstances underlying the alien's previous responses to any of the EVUS enrollment questions requiring a "yes" or "no" response (eligibility questions) have changed.

(f) Limitation. A notification of compliance is not a determination that the covered alien is admissible to the United States. A determination of admissibility is made after an applicant for admission is inspected by a CBP officer at a U.S. port of entry.

(g) Noncompliance, expiration of notification of compliance, and change in EVUS status resulting in rescission of notification of compliance--(1) Initial EVUS enrollment. Failure to initially enroll in EVUS in accordance with paragraph (c)(1) of this section will result in the automatic provisional revocation of the covered alien's nonimmigrant visa pursuant to 22 CFR 41.122(b)(3), pending enrollment.

(2) Expiration of notification of compliance. Upon expiration of a notification of compliance, as described in paragraph (b) of this section, the covered alien's nonimmigrant visa

will be automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3), pending re-enrollment. To prevent the automatic provisional revocation of his or her nonimmigrant visa due to the expiration of the notification of compliance, each covered alien must re-enroll in EVUS prior to such expiration.

(3) Unsuccessful EVUS enrollment. If a covered alien's EVUS enrollment or re-enrollment is unsuccessful, his or her nonimmigrant visa will be automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3), pending successful enrollment or re-enrollment.

(4) Change in EVUS status after receipt of a notification of compliance. In the event that irreconcilable errors are discovered after the issuance of a notification of compliance, or other circumstances occur including but not limited to a change in the validity period of the notification of compliance as provided in paragraph (b) of this section, CBP may rescind the notification of compliance. If a covered alien's notification of compliance is rescinded, his or her nonimmigrant visa will be automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3), pending successful enrollment. CBP will attempt to provide notification of a change in EVUS status to the covered alien through the provided e-mail address.

(h) Reversal of an automatically provisionally revoked visa and steps to address an unsuccessful EVUS enrollment or rescission of a notification of compliance--(1) Reversal of an automatically provisionally revoked visa. If a covered alien's nonimmigrant visa has been automatically provisionally revoked as described in paragraph (g)(1) or (2) of this section, the revocation of the alien's visa will be automatically reversed, following compliance with EVUS, if the visa remains valid and was not also revoked on other grounds. After a reversal of the revocation the visa will immediately resume the validity provided for on its face, pursuant to 22 CFR 41.122(b)(3), after the alien enrolls in EVUS and receives a notification of compliance.

(2) Unsuccessful EVUS enrollment. If a covered alien’s EVUS enrollment is unsuccessful per paragraph (g)(3) of this section, the covered alien may re-attempt enrollment or contact CBP.

(3) Rescission of notification of compliance. If a covered alien’s nonimmigrant visa has been automatically provisionally revoked as described in paragraph (g)(4) of this section, the covered alien may re-attempt enrollment or contact CBP.

PART 273 - CARRIER RESPONSIBILITIES AT FOREIGN PORTS OF EMBARKATION; REDUCING, REFUNDING, OR WAIVING FINES UNDER SECTION 273 OF THE ACT

10. The authority citation for part 273 continues to read as follows:

Authority: 8 U.S.C. 1103, 1323; 8 CFR part 2.

§ 273.3 [Amended]

11. Amend § 273.3 as follows:

a. In paragraph (b)(1)(ii), remove the word “and”;

b. In paragraph (b)(1)(iii), remove the period at the end of the paragraph and add in its place “; and”; and

c. Add paragraphs (b)(1)(iv) and (b)(4).

The additions read as follows:

§ 273.3 Screening procedures.

* * * * *

(b) * * *

(1) * * *

(iv) Passengers described in part 215, subpart B, of this chapter have complied with EVUS requirements as appropriate.

* * * * *

(4) Transmitting visa numbers. Carriers must transmit to U.S. Customs and Border Protection the visa number for any passenger who requires a visa. The visa number must be transmitted using the Advance Passenger Information System, consistent with the procedural requirements for transmission of electronic passenger manifests in 19 CFR parts 4 (vessel) and 122 (aircraft).

Jeh Charles Johnson,
Secretary.

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