



**DEPARTMENT OF STATE**

**22 CFR Part 42**

**[Public Notice: 10641]**

**RIN 1400-AE74**

**Visas: Diversity Immigrants**

**AGENCY:** State Department.

**ACTION:** Interim final rule; notice of request for public comment.

**SUMMARY:** This interim final rule is promulgated to require alien petitioners for the Diversity Visa Program to provide certain information from a valid, unexpired passport on the electronic entry form.

**DATES:** This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Department of State will accept comments up to [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by either of the following methods:

*Internet:* At [www.Regulations.gov](http://www.Regulations.gov), you can search for the document using the Docket Number DOS-2019-0014 or using the notice RIN 1400-AE74.

*Email:* Taylor Beaumont, Acting Chief, Department of State, [VisaRegs@state.gov](mailto:VisaRegs@state.gov).

**FOR FURTHER INFORMATION CONTACT:** Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, 600 19<sup>th</sup> St, N.W., Washington, D.C. 20006, (202) 485-8910, [VisaRegs@state.gov](mailto:VisaRegs@state.gov).

**SUPPLEMENTARY INFORMATION:**

*What changes are in the amended rule?*

The Diversity Visa Program (“DV Program”) is administered annually by the Department of State (“Department”). Section 203(c) of the Immigration and Nationality Act (“INA”), 8 U.S.C. 1153(c), provides for a class of immigrants known as “diversity immigrants” from countries with historically low rates of immigration to the United States. An estimated 14 million aliens register annually for the DV Program through an electronic entry form. The entry form collects information on the petitioner’s full name; date and place of birth; gender; native country, if different from place of birth; current mailing address; and location of the consular post where the diversity visa should be adjudicated, if the petitioner is selected through the DV lottery. The electronic entry form also collects information about the names, dates and places of birth for the petitioner’s spouse and children. The entry process is open to all aliens who are natives of “low-admission” countries without numerical limitation, defined as countries with fewer than 50,000 natives admitted to the United States during the most recent five-year period. After the close of the DV Program entry period, petitioners are selected through a randomized computer drawing (“selectees”) for consideration for one of the 50,000 available diversity visa numbers. While INA 201(d) authorizes allocation of 55,000 diversity visas annually, 5,000 of those visas are allocated each year for use under the Nicaraguan Adjustment and Central American Relief Act. See Pub. L. No. 105-100, § 203(d) (INA § 201 note) (1997). Selectees may then apply for a diversity visa or, if present in the United States, apply for adjustment of status. To qualify for a visa, these selectees must meet certain requirements, including those provided for at INA 203(c), 8 U.S.C. 1153(c).

Section 204(a)(1)(I)(iii) of the INA, 8 U.S.C. 1154(a)(1)(I)(iii), vests the Secretary of State with authority to set by regulation the information and documentary evidence to support a petition for entry into the DV Program. The requirements are set out in 22 CFR 42.33.

With this rule, the Department is amending 22 CFR 42.33(b)(1) to require the petitioner to include on the electronic diversity visa entry form the unique serial or issuance number associated with the petitioner's valid, unexpired passport; country or authority of passport issuance; and passport expiration date. These requirements will apply only to the principal petitioner and not derivatives listed on the entry form. These requirements apply unless the petitioner is either stateless, a national of a Communist-controlled country and unable to obtain a passport from the government of the Communist-controlled country, or the beneficiary of an individual waiver approved by the Secretary of Homeland Security and the Secretary of State, consistent with the passport waivers for immigrant visa applicants provided for in 22 CFR 42.2(d), (e), and (g)(2). A petitioner who does not have a passport and is either stateless, is a national of a Communist-controlled country and unable to obtain a passport from the government of the Communist-controlled country, or has an individual waiver of the passport requirement from the Secretary of Homeland Security and the Secretary of State, must indicate that he or she falls into one of these three circumstances on the electronic entry form, instead of providing passport information. The requirements for information from a valid passport will not be waived under any other circumstances.

The Department is also clarifying that failure to accurately include any information required by 22 CFR 42.33(b)(1) and (2) will result in mandatory

disqualification of the petitioner for that fiscal year. The existing regulations require the petitioner to submit specific information, including, but not limited to: name, date of birth, and place of birth for the principal petitioner and any relatives that may accompany the petitioner, if selected to apply for a diversity visa, as well as a digital photo. While these are currently requirements for the diversity visa entry form, existing regulations do not make clear the consequence for failure to provide the information. The revised regulation clarifies that failure to provide the required information, including a compliant photograph, will result in the disqualification of the entry, the petitioner, and derivatives from the DV Program for that fiscal year.

*Why is the Department promulgating this rule?*

The Department has historically encountered significant numbers of fraudulent entries for the DV Program each year, including entries submitted by criminal enterprises on behalf of individuals without their knowledge. Individuals or entities that submit unauthorized entries will often contact unwitting individuals whose identities were used on selected DV Program entries, inform them of the opportunity to apply for a diversity visa, and hold the entry information from the named petitioner in exchange for payment.

Requiring that each entry form include a valid passport number at the time of the DV Program entry will make it more difficult for third parties to submit unauthorized entries, because third parties are less likely to have individuals' passport numbers. Entries submitted by unauthorized third parties using a duplicative passport number will also be easily identified and automatically disqualified.

The Department is also adding a sentence to the regulation to clarify that entries, and the individual identified as the entrant, are disqualified if they fail to include all

required information and comply with instructions. This will provide increased transparency to DV Program entrants who might question why their entry was disqualified, by explaining that disqualification will result from failure to submit required information. While all DV entrants must submit a completed entry form to qualify for selection in the DV lottery, current instructions are not clear that failure to provide that information results in mandatory disqualification. The information collected on the entry form is vital to the integrity of the DV Program, by ensuring the Department's ability to match the identity of DV lottery selectees and diversity visa applicants. Also, entry forms must be complete and accurate to ensure that the Department is selecting entries from individuals who may be eligible for visa issuance. Providing clear notice that failure to accurately provide required information will result in disqualification will reduce the number of incomplete forms and reduce entries from individuals who will not be eligible for visas, for example, because they cannot provide the required information.

### **Regulatory Findings**

#### *Administrative Procedure Act*

The Department is publishing this rule as an interim final rule because it is exempt from notice and comment under the foreign affairs exception of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(a). This rule clearly and directly impacts a foreign affairs function of the United States. *See City of N.Y. v. Permanent Mission of India to the U.N.*, 618 F.3d 172, 202 (2d Cir. 2010). Specifically, as explained below, this regulation pertains to a visa program which serves as a clear tool of diplomacy and outreach to countries around the world. Furthermore, this rule addresses a vulnerability in the current application process by making it more difficult for third

parties to submit fraudulent or unauthorized entries, a practice that has significant negative consequences.

Under Section 204(a)(1)(I) of the INA, the Secretary has the authority to determine the information or documents required for the diversity visa application and prescribe regulations necessary to carry out the DV Program. This rule will add a requirement that foreign nationals seeking to enter the DV Program must provide valid passport information at the time of DV Program entry.

The DV Program was established to diversify the immigrant population in the United States, but it also serves as an outreach tool, as its focus is on building relations with foreign populations around the world, particularly with diversity visa eligible countries. Diversity visa-eligible countries qualify for that status based on limited immigration to the United States by nationals of the country. Consequently, the DV Program is an important public diplomacy tool for the Department of State, because it offers foreign nationals an opportunity to immigrate to the United States without having to qualify under a more targeted family-based or employment-based classification. This opportunity helps create allies and goodwill overseas, while simultaneously promoting U.S. foreign policy interests. A program thus tailored to foster allies and goodwill overseas clearly qualifies as the exercise of diplomacy. Therefore, this regulation is exempt from 5 U.S.C. 553 the APA because it involves a foreign affairs function of the United States.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

Because this interim final rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 601 et

seq.). Nonetheless, consistent with the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule only regulates individual petitioners for the DV Program and does not regulate any small entities or businesses.

*Small Business Regulatory Enforcement Fairness Act of 1996*

The Office of Information and Regulatory Affairs has determined that this is not a major rule as defined by 5 U.S.C. 804.

*Executive Orders 12866 and 13563*

Executive Orders 13563 and 12866 direct agencies to assess 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, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is a significant, though not economically significant, regulatory action under Section 3(f) of Executive Order 12866.

From 2016 to 2018, the average number of entrants for the DV Program each year was 14,589,023. The Department estimates that, on average, responding to this information request will take approximately 5 minutes, which includes gathering the passport and supplying the number. This estimate does not account for the effort needed to acquire a passport for those individuals who do not already have a passport, and the Department cannot provide a greater estimate of the time required to do that given the varied processes in foreign countries to obtain a passport. Using the average hourly wage

for all private, non-farm, payrolls as calculated by the Bureau of Labor Statistics for March 2019, \$27.70 multiplied by a factor of 1.479 (to account for overhead costs) gives a fully-loaded wage of \$40.97. Thus the opportunity costs associated with the time burden to supply the information for this collection are approximately \$49,809,356. This burden does not account for the capital costs associated with acquiring the passport for any individuals who do not already have one. The Department acknowledges that some portion of the applicant population will need to procure a passport, but has no way of estimating how many applicants this would apply to and similarly does not have data indicating distributional impacts of this requirement. The benefits of enhancing the requirements to enter the DV Program, while difficult to quantify, will include reducing fraud and unauthorized entries on behalf of unwitting individuals that could result in disqualifying the victim.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

*Executive Order 12988: Civil Justice Reform*

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

*Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments*



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 Section 5 of Executive Order 13175 do not apply to this rulemaking.

#### *Paperwork Reduction Act*

The Department invites comment on any increase in burden imposed by the proposed collection of information. Comments are encouraged and will be accepted for 30 days from the publication date of the interim final rule. All submissions received must include the OMB Control Number 1405-0153 in the body of the letter and the agency name. Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail*: oira\_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax*: 202-395-5806. Attention: Desk Officer for Department of State.

#### **Abstract of Proposed Collection**

The Department of State utilizes the Electronic Diversity Visa (“EDV”) Entry Form to elicit information necessary to establish the eligibility of the petitioner for the DV Program. The two primary requirements of the program are: (1) the petitioner is a native of a low admission country, and (2) has at least a high school education or its equivalent, or within five years of the date of an application for a visa has two years of work experience in an occupation which requires at least two years of training or

experience. This rule proposes to amend the EDV Entry Form to require that entrants provide information for a valid, unexpired passport. The Department of State randomly selects qualified entrants for further participation in the program.

### **Methodology**

The EDV Entry Form is available online at [www.dvlottery.state.gov](http://www.dvlottery.state.gov) and can only be submitted electronically during the annual entry period.

- *Title of Information Collection:* Electronic Diversity Visa Entry Form
- *OMB Control Number:* 1405-0153
- *Type of Request:* Revision to a Currently Approved Collection
- *Originating Office:* CA/VO/LR
- *Form Number:* DS-5501
- *Respondents:* Electronic Diversity Visa Entry Form Respondents
- *Estimated Number of Respondents:* 14,589,023
- *Estimated Number of Responses:* 14,589,023
- *Average Time Per Response:* 35 minutes
- *Total Estimated Burden Time:* 8,510,263 hours
- *Frequency:* Annually
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

### **List of Subjects in 22 CFR Part 42**

Immigration; Passports and visas

For the reasons stated in the preamble, the Department amends 22 CFR part 42 as follows:

#### **PART 42- VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

1. The authority citation for part 42 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; 8 U.S.C. 1151; 8 U.S.C. 1153-1154; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

2. In § 42.33, add paragraphs (b)(1)(viii) and (ix) to read as follows:

**§ 42.33 Diversity immigrants.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(viii) The unique serial or issuance number associated with the petitioner's valid, unexpired passport, country or authority of passport issuance, and expiration date, unless the petitioner would be exempt from the passport requirement pursuant to 22 CFR 42.2(d), (e), or (g)(2).

(ix) Failure to accurately include any information or documents required by paragraphs (b)(1)(i) through (viii) or paragraph (b)(2) of this section will result in disqualification of the entry for that fiscal year.

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**Carl C. Risch,**  
*Assistant Secretary for  
Consular Affairs,  
Department of State.*

**Billing Code: 4710-06**

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