



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

Update to Procedures for Listing Designated Countries and Location of List

AGENCY: Office of the Secretary, Department of Homeland Security (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: This rule updates the DHS practice for notifying the public of countries designated for participation in the Visa Waiver Program (VWP). It amends the definition of “designated country” by referring to countries that the Secretary of Homeland Security (Secretary) has designated for VWP participation and noting that a list of such countries is available on the public-facing DHS VWP website. This rule does not alter which countries have been designated for the VWP or the criteria for initial and continued designation as a program country. This update refers the public to the applicable website www.dhs.gov/visa-waiver-program and will allow DHS to update designations more efficiently and expeditiously.

DATES: This final rule is effective on [INSERT DATE OF FILING FOR PUBLIC INSPECTION].

FOR FURTHER INFORMATION CONTACT: Anjum Agarwala, U.S. Department of Homeland Security; Office of Strategy, Policy, and Plans; VWP Office (202) 790-5207.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary, in consultation with the Secretary of State, may designate certain countries as VWP countries if certain requirements are met.¹ Once a country has met the requirements and been

¹ All references to “country” or “countries” in the laws authorizing the VWP are read to include Taiwan. *See* Taiwan Relations Act of 1979, Pub. L. No. 96-8, section 4(b)(1) (codified at 22 U.S.C. 3303(b)(1)) (providing that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar

designated by the Secretary as a program country, eligible citizens and nationals of a program country may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.

II. List of Designated Countries

As noted above, the Secretary, in consultation with the Secretary of State, may designate a country for participation in the VWP, or suspend or terminate such participation, consistent with section 217 of the INA. The regulations currently define “designated country” as a country listed explicitly in 8 CFR 217.2(a).

Historically, DHS, and before DHS the legacy Immigration and Naturalization Service (INS), have maintained a list in the *Code of Federal Regulations* (CFR) of currently designated countries participating in the VWP. This practice started with the designation of the United Kingdom as the first VWP country. *See* 53 FR 24898 (June 30, 1988). Subsequent designations or terminations have been the subject of a rule in the *Federal Register*. Such rules update the list of countries in the CFR. *See, e.g.*, 73 FR 79597 (Dec. 30, 2008) (Malta); 75 FR 15992 (Mar. 31, 2010) (Greece); 77 FR 64411 (Oct. 22, 2012) (Taiwan); 79 FR 17854 (Mar. 31, 2014) (Chile); 84 FR 60318 (Nov. 8, 2019) (Poland); 86 FR 54031 (Sept. 30, 2021) (Croatia); 88 FR 67065 (Sept. 29, 2023) (Israel); and 89 FR 78785 (Sept. 26, 2024) (Qatar).

Through this final rule, DHS is amending 8 CFR 217.2(a) to remove references to specific countries in the regulations. Instead, DHS will define “designated country” as “any country currently designated by the Secretary for participation in the Visa Waiver Program.” The updated definition will also point readers to the list of currently designated countries on the DHS VWP website, <https://www.dhs.gov/visa-waiver-program>.

entities, such terms shall include and such laws shall apply with respect to Taiwan”). This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

With this change, DHS will continue to update the list of designated countries on the DHS VWP website. In addition, DHS will continue its outreach to stakeholders and the public, such as through press releases, directly notifying air carriers, and updating the Electronic System for Travel Authorization (ESTA) to account for future changes to the list of designated countries participating in the VWP.

Following this change, however, DHS will no longer pursue the separate administrative step of publishing a technical amendment in the *Federal Register* for each new designation. This change removes an unnecessary administrative burden and allows for more expedient updates to the list of designated countries participating in the VWP. It will also reduce any risk of confusion by the public or international partners due to a time lag between the Secretary's designation and the publication of a technical amendment in the *Federal Register*.

This rule does not change which countries are designated to participate in the VWP.

III. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)(B)), an agency may waive notice and comment requirements if it finds, for good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. This rule reflects an administrative change that merely removes the list of designated countries participating in the VWP from the CFR and adds a reference to the DHS VWP website. This rule does not alter which countries have been designated or the criteria for initial and continued designation as a program country. Because the VWP country list is readily available online, the update would not affect the public's rights, interests, or access to information. Therefore, notice and comment for this rule is unnecessary.

This rule is further excepted from the notice and comment requirement as a procedural rule. For the same reasons previously stated, the rule has no substantive impact or effect on public interest. In removing the list of VWP participating countries from the CFR, while including a reference to another location where a list can be found, the rule is technical in nature

and relates only to organization, procedure, and practice. This rule only changes whether a list of designated countries is available in the CFR, making it a procedural rule exempt from notice and comment.

For the reasons above, DHS also finds that the 30-day delayed effective date requirement for substantive rules does not apply. See 5 U.S.C. 553(d). Good cause exists to make this technical amendment effective immediately under 5 U.S.C. 553(d)(2) and (d)(3).

Finally, this rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States. Designating VWP countries advances the President’s foreign policy goals and directly involves relationships between the United States and its noncitizen visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing this final rule.

List of Subjects in 8 CFR Part 217

Air carriers, aliens, maritime carriers, passports, and visas.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217) as set forth below.

PART 217—VISA WAIVER PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.2(a), revise the definition of “Designated country” to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to any country currently designated by the Secretary for participation in the Visa Waiver Program. DHS maintains a list of designated countries at

<https://www.dhs.gov/visa-waiver-program>.

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Alejandro N. Mayorkas
Secretary of Homeland Security.

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