

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

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

19 CFR Parts 4 and 122

USCBP-2008-xxxx

CBP Dec. No. 08-xx_

RIN 1651-AA77

Implementation of the Guam-CNMI Visa Waiver Program

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

ACTION: Interim final rule.

SUMMARY: Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA) extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. Accordingly, this interim final rule sets forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa for a period of authorized stay of no longer than forty-five (45) days total. In addition, this rule establishes six ports of entry

in the CNMI in order to administer and enforce the Guam-CNMI Visa Waiver Program and to allow for immigration inspections in the CNMI, including arrival and departure controls, under the Immigration and Nationality Act (INA).

DATES: Effective Date: This interim final rule is effective [Insert date 60 days from date of publication]. Comments must be received by [Insert date 60 days from date of publication].

Implementation Date: DHS Administration of and required compliance with this interim final rule will begin on June 1, 2009.

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

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2008-xxxx.

Mail: Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Mint Annex, 799 9th Street, NW, Washington, DC 20001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC.

Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Public Comments
- II. Background and Purpose
 - A. Current Requirements for the Guam Visa Waiver Program
 - 1. Admission requirements under the Current Guam Visa Waiver Program
 - 2. Country Eligibility under the Current Guam Visa Waiver Program
 - B. The Consolidated Natural Resources Act of 2008
 - C. The Guam-CNMI Visa Waiver Program
 - 1. Purpose and Scope
 - 2. Requirements for Admission
 - 3. Program Countries
 - a. General Eligibility Criteria
 - b. “Significant Economic Benefit” Criteria
 - c. Suspension and Removal of Program Countries
 - 4. Bond Provision
 - 5. Changes to CBP Form I-736 “Guam Visa Waiver Information” and to CBP Form I-760 “Guam Visa Waiver Agreement”
 - 6. Conforming Changes to Title 8 of the Code of Federal Regulations

- 7. Conforming Changes to Title 19 of the Code of Federal Regulations
 - D. Effects of Applying the U.S. Immigration Laws to the CNMI
 - 1. Applicability of Section 217 of the INA - Visa Waiver Program
 - 2. Applicability of Section 212 of the INA – Passport and Visa Requirement
 - E. Establishing Ports of Entry in the CNMI
 - F. Effective Date
- III. Statutory and Regulatory Requirements
- A. Administrative Procedure Act
 - B. Executive Order 12866
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act of 1995
 - E. Executive Order 13132
 - F. Executive Order 12988
 - G. Paperwork Reduction Act
 - H. Privacy

List of Subjects

Amendments to the Regulations

I. PUBLIC COMMENTS

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

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

II. BACKGROUND AND PURPOSE

This interim final rule implements the requirements of section 702(b) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-220, 122 Stat. 754, 860, which establishes the Guam-CNMI Visa Waiver Program. As explained in more detail below, this rule replaces the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program.

Pursuant to section 702(a) of the CNRA, which extends the immigration laws of the United States to the CNMI, this rule establishes six ports of entry in the CNMI to enable the Secretary of Homeland Security (the Secretary) to administer and enforce the Guam-CNMI Visa Waiver Program. Id.

A. Current Requirements for the Guam Visa Waiver Program

Pursuant to 8 U.S.C. 1182(l) and 8 CFR 212.1(e), aliens who are citizens of eligible countries may apply for admission to Guam at a Guam port of entry as nonimmigrant visitors for a period of fifteen (15) days or less, for business or pleasure, without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.¹

1. Admission Requirements under the Current Guam Visa Waiver Program

Under the current regulations, an alien may be admitted into Guam under the Guam Visa Waiver Program if the alien: (i) is classifiable as a visitor for business or pleasure;

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

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

2. Country Eligibility under the Current Guam Visa Waiver Program

In addition to satisfying the admission requirements outlined in 8 CFR 212.1(e)(1), the alien must be a citizen of a country that: (i) has a visa refusal rate of 16.9% or less, or is a country whose visa refusal rate exceeds 16.9% and has an established preinspection or preclearance program, pursuant to a bilateral agreement with the United States; (ii) is within geographical proximity to Guam unless the country has a substantial volume of nonimmigrant admissions to Guam as determined by the Commissioner and extends reciprocal privileges to citizens of the United States; (iii) is not designated by the Department of State as being of special humanitarian concern; and (iv) poses no threat to the welfare, safety or security of the United States, its territories or commonwealths.² The current regulations also provide that any potential threats to the welfare, safety, or security of the United States, its territories, or commonwealths will be dealt with on a country by country basis, and a determination by the Secretary that a threat exists will result in the immediate deletion of the country from the listing of eligible countries.

² This interim final rule provides new eligibility requirements for the Guam-CNMI Visa Waiver Program, as discussed in Section II.C.

Currently, the determination as to which countries may participate in the Guam Visa Waiver Program is based on the countries' geographical proximity to Guam on the premise that they maintain a traditional interchange with Guam. Countries that are not in geographic proximity to Guam may be included if they have a substantial volume of nonimmigrant admissions to Guam and extend reciprocal privileges to citizens of the United States. These two factors are provided for in the regulations but are not mandated by the INA, specifically 8 U.S.C. 1182(l). The Guam Visa Waiver Program was first implemented in 1987 and the decision to employ these two factors was based upon legislative history to the Omnibus Territories Act, Pub. L. No. 99-396, 100 Stat. 837 (1986). This decision and the Guam Visa Waiver Program are more fully described in the Guam Visa Waiver final rule, which the former Immigration and Naturalization Service published in the **Federal Register** on December 18, 1987, at 52 FR 48082.

The following countries are currently members of the Guam Visa Waiver Program: Australia, Brunei, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Solomon Islands, Taiwan (residents who begin travel in Taiwan and fly to Guam without an intermediate layover or stop en route), the United Kingdom (including citizens of Hong Kong), Vanuatu, and Western Samoa. See 8 CFR 212.1(e)(3)(i).

B. The Consolidated Natural Resources Act of 2008

On May 8, 2008, the President signed into law the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. No. 110-229, 122 Stat. 754. Section 702(a) of the CNRA calls for the extension of U.S. immigration laws to the CNMI. See 8 U.S.C. 1182, 1184.

Section 702(b) of the CNRA authorizes DHS to create a Guam-CNMI Visa Waiver Program. Section 702(b) requires the Secretary of Homeland Security to promulgate all necessary regulations in consultation with the Secretary of the Interior and Secretary of State, on or before the 180th day after the date of enactment of the CNRA.

Section 702(b) of the CNRA requires the Secretary of Homeland Security to consult with the Secretary of State and the Secretary of the Interior, the Governor of Guam and the Governor of the CNMI in the development of these regulations. Accordingly, representatives of DHS, including CBP, during their July 10-16, 2008 visit to Guam and the CNMI, met with officials of the Guam Government, the CNMI Government and representatives of the Marianas Visitors Authority, the Guam Visitors Bureau, the Hotel Association of the Northern Mariana Islands, and the Saipan Chamber of Commerce. At the request of the Governor of Guam, DHS officials met with Governor Camacho, his staff, and members of the Guam Visitor's Bureau on September 15, 2008, in Washington, D.C. Additionally, an interagency meeting was held on September 9, 2008, between DHS, the Department of State, and the Department of the Interior, among others, in order to come to an agreement over the implementation of the Guam-CNMI Visa Waiver Program.

C. Establishing the Guam-CNMI Visa Waiver Program

1. Purpose and Scope

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

missions of protecting our nation's borders and fostering legitimate international travel.

The CNRA gives the Secretary the authority to allow an alien to enter Guam or the CNMI as a nonimmigrant visitor for business or pleasure for a period not to exceed forty-five (45) days. Establishment of the Guam-CNMI Visa Waiver Program is predicated upon the Secretary of Homeland Security, in consultation with the Secretary of State, the Secretary of the Interior, the Governor of Guam, and the Governor of the CNMI, making a determination that: (i) adequate arrival and departure control systems have been developed in Guam and the CNMI, and (ii) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

2. Requirements for Admission

In addition to the requirements that aliens currently seeking admission to Guam under the current Guam Visa Waiver program must meet, DHS is adding three new admission requirements. Under this interim final rule, to be considered eligible for admission into Guam or the CNMI under the Guam-CNMI Visa Waiver Program, nonimmigrant aliens must also: (i) be in possession of a valid unexpired International Civil Aviation Organization (ICAO) machine readable passport issued by a country that meets the eligibility requirements as determined by the Secretary; (ii) have not previously violated the terms of any prior admissions to the United States under the Guam-CNMI Visa Waiver Program or the prior Guam Visa Waiver Program; and (iii) present a valid completed CBP Form I-94, known as the Arrival-Departure Record Form (Form I-94).³ Form I-94 is the Arrival-Departure record that nonimmigrant visitors are required to present when applying for admission into the United States. See 8 CFR 235.1(h).

³ Although nonimmigrant visitors must currently present a valid completed CBP Form I-94 to enter Guam under the Guam Visa Waiver Program, this requirement is not currently included in Section 212.1(e).

Additionally, consistent with existing Guam Visa Waiver Program regulations, an alien will not be admitted under the Guam-CNMI Visa Waiver Program unless the alien (i) has waived any right to review or appeal under the INA of a CBP officer's determination as to the admissibility of the alien and (ii) waives any right to contest any action for removal of the alien, other than on the basis of an application for withholding of removal under section 241(b)(3) of the INA or withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or an application for asylum if permitted under section 208 of the INA.⁴

3. Program Countries

a. General Eligibility Criteria

The country eligibility requirements established in this rulemaking under the Guam-CNMI Visa Waiver Program differ from those under the Guam Visa Waiver Program. The new requirements take into account the provisions and purposes of the CNRA and ensure that the regulations conform to current border security needs. In determining the criteria for making country eligibility determinations for the Guam-CNMI Visa Waiver Program, DHS considered a variety of statutory factors to ensure that the new Guam-CNMI Visa Waiver Program reflected the stated purposes of the statute to: (1) ensure effective border control procedures, (2) properly address national security and homeland security concerns in extending U.S. immigration law to the CNMI, and (3) maximize the CNMI's potential for future economic and business growth. See Pub. Law 110-229, 122 Stat. 754, § 701(a)(1).

⁴ Section 702(a) of the CNRA provides that the asylum provision of section 208 of the INA will not apply to persons who are either physically present in the CNMI, or are arriving in the CNMI during the transition period, which expires on December 31, 2014.

In determining country eligibility, DHS considered the following statutory factors, listed under section 702(b)(3)(A) of the CNRA: “electronic travel authorizations, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.” Pursuant to the requirements of the CNRA, this rulemaking provides for these new eligibility conditions to ensure the safety, security, and welfare of the United States. In this regard, this rulemaking specifies that a country’s nationals may not participate in the Guam-CNMI Visa Waiver Program if the country poses a threat to the welfare, safety or security of the United States, its territories or commonwealths, if it is designated by the Department of State as being of special humanitarian concern, or if DHS so determines based on other factors. Additionally, as indicated above, one of the relevant factors listed in section 702(b)(3)(A) of the CNRA is the repatriation of aliens. Accordingly, this rulemaking also requires eligible countries, within three weeks after the issuance of a final order, to accept for repatriation any citizen former citizen, or national admitted into Guam or the CNMI under the Guam-CNMI Visa Waiver Program and who has been ordered removed from Guam or the CNMI.

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

civil and political instability. Indonesia, Vanuatu, and Western Samoa are not included on the list of eligible countries due to very high rates of refusal for nonimmigrant visitor visas. In addition, these four countries do not provide a “significant economic benefit” to the CNMI, as discussed in the section below. Therefore, DHS does not find their removal based on such factors as ongoing civil and political instability, or high nonimmigrant visa refusal rates, to outweigh any existing economic benefits from their past inclusion under the Guam Visa Waiver Program.

b. “Significant Economic Benefit” Criteria

Section 702(b) of the CNRA generally requires the Secretary to provide a list of those countries from which the CNMI has received a “significant economic benefit” from the number of visitors for pleasure within the one-year period preceding the date of enactment of the CNRA. However, if the Secretary determines that such a country’s inclusion represents a threat to the welfare, safety, or security of the United States, or determines that such country is not eligible based on other factors the Secretary deems relevant, then that country will not qualify as an eligible country.

DHS has determined that during the relevant time frame visitors for pleasure from the People’s Republic of China (PRC) and Russia provided a significant economic benefit to the CNMI. This determination takes into account the total on-island spending of these visitors on a per country basis. However, at this time, due to security concerns, nationals of the PRC and Russia will not be eligible to participate in the Guam-CNMI Visa Waiver Program when that program takes effect. After additional layered security measures including, but not limited to electronic travel authorization to screen and approve potential visitors prior to arrival in Guam and the CNMI, biometric entry-exit

collection system for alien travelers arriving/departing Guam and the CNMI, and other border security infrastructure have been established, DHS will make a determination as to whether nationals of the PRC and Russia can participate in the Guam-CNMI Visa Waiver Program. In making such a determination, DHS will consider the welfare, safety, and security of the United States and its territories, as well as other considerations deemed relevant by the Secretary.

If DHS determines that nationals from the PRC and/or Russia may participate in the Guam-CNMI Visa Program without posing a threat to the welfare, safety, and security of the United States or its territories, DHS will announce the eligibility of the PRC and/or Russia to participate in the Guam-CNMI Visa Waiver Program via notice published in the **Federal Register**.

c. Suspension of Program Countries

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

The CNRA also provides that the Secretary may suspend the Guam-CNMI Visa Waiver Program on a country-by-country basis for other good cause.

4. Bond Provision

Section 702(b) of the CNRA also requires that the regulations include any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstays or other potential problems. See section 702(b)(3). This rule implements this new bonding provision in section 212.1(e) which provides that the Secretary may require a bond on behalf of an alien seeking admission under the Guam-CNMI Visa Waiver Program when the Secretary deems it appropriate.

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

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

Currently, transportation lines transporting nonimmigrant visitors under the Guam Visa Waiver Program into Guam from foreign territories must enter into a contract with CBP by executing CBP Form I-760 “Guam Visa Waiver Agreement” (I-760). The I-760

will be revised so that it will be titled “Guam-CNMI Visa Waiver Agreement” and references to the CNMI will be inserted, where appropriate.⁵

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

Part 215 of title 8 of the CFR describes the procedures concerning aliens who depart from the United States. Section 215.1 sets forth the definitions for 8 CFR Part 215. This rule amends 8 CFR 215.1 to add the CNMI to the definition of the United States to ensure that the INA applies to the CNMI.

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

The deletion of “the Canal Zone” from 8 CFR 215.1 is being made to reflect that the United States no longer has control over the Canal Zone, pursuant to the Panama Canal Zone Act of 1979, Pub. L. No. 96-70. Similarly, the term “Trust Territory of the Pacific Islands” is being removed from 8 CFR 215.1 to update the regulations to reflect current law.⁶

This rule makes additional technical changes to 8 CFR 233.5 to include references to the CNMI where appropriate.

⁵ The current provisions of the Guam visa waiver program set forth in 8 CFR 212.1(e) will apply to nonimmigrant visitors seeking admission to Guam under the Guam Visa Waiver Program through May 31, 2009. The current CBP Forms I-736 and I-760 are to be used for purposes of the Guam Visa Waiver program through this date.

⁶ The “Trust Territory of the Pacific Islands” (TTIP) is no longer in existence. On November 3, 1986, President Reagan announced by Proclamation that the TTIP agreement between the CNMI and the United States was terminated after the Trusteeship Council of the United Nations concluded that the United States satisfactorily discharged its obligations under the agreement. See 51 FR 40399. As announced by President Reagan’s Proclamation, the United States fully established its agreement with CNMI. See Proclamation No. 5564, 41 FR 216 (November 7, 1986). This agreement is entitled “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, Pub. L. 99-239, 48 U.S.C. 1801. With regard to the CNMI, the CNMI then became a self-governing Commonwealth in political union with and under the sovereignty of the United States. Therefore, DHS is deleting the term “Trust Territory of the Pacific Islands” to conform the regulations to existing law.

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

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

D. Effects of Applying the U.S. Immigration Laws to the CNMI

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

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

Section 217 of the INA, 8 U.S.C. 1187, establishes the Visa Waiver Program (VWP). Under the VWP, nationals of designated countries can apply for admission to the United States at ports of entry for business or pleasure for up to 90 days without first obtaining a nonimmigrant visa. The regulations implementing the VWP are at 8 CFR part 217. Under this interim final rule, both the VWP and the Guam-CNMI Visa Waiver Program will be in operation in the CNMI. Thus, nonimmigrant visitors may be able to apply for admission to the CNMI under one or both programs, depending on the eligibility status of the country of their nationality. The permitted length of stay depends on whether they are admitted under the VWP (up to 90 days) or under the Guam-CNMI Visa Waiver Program (up to 45 days).⁷

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

⁷ The immigration laws of the United States already apply to Guam. Thus, nonimmigrant visitors from designated countries can already apply for admission to Guam under the VWP. Under this interim final rule, visitors will be able to apply for admission to Guam under the VWP or the Guam-CNMI Visa Waiver Program. The permitted length of stay depends on whether they are admitted under the VWP (up to 90 days) or under the Guam-CNMI Visa Waiver Program (up to 45 days).

Another result of applying the U.S. Immigration laws to the CNMI, is that, pursuant to 8 U.S.C. 1182, nonimmigrant visitors who seek admission to the CNMI must possess a valid passport and a valid visa, unless they are applying for entry under a visa waiver program. This means that nonimmigrant visitors who are not eligible for either the VWP or the Guam-CNMI Visa Waiver Program must possess a valid passport and must obtain a U.S. visa from a U.S. Embassy or Consulate. They will no longer be able to visit the CNMI using the CNMI Visitor Entry Permit.⁸

E. Establishing Ports of Entry in the CNMI

Currently, CBP does not have a presence in the CNMI. In order to implement section 702 of the CNRA, CBP must establish operations in the CNMI to allow for immigration inspections, including arrival and departure controls, under the INA. Such operational controls are necessary to establish the Guam-CNMI Visa Waiver Program. Therefore, the Secretary is designating six ports of entry in the CNMI for immigration purposes only. The CNMI will continue to enforce and administer its own customs laws in the CNMI. This rule amends 8 CFR part 100 to establish Ports-of-Entry, as defined in 8 CFR section 100.4(c), to provide air and sea ports in close proximity to the CNMI facilities on the islands of Saipan, Tinian, and Rota.⁹

F. Effective Date

⁸ Nonimmigrant visitors who seek admission to Guam must already possess a valid passport and a valid visa, unless they are applying for entry under a visa waiver program. This will not change under this interim final rule.

⁹ Because the INA already applies to Guam and ports of entry have already been established in Guam to administer and enforce the INA, no amendments to 8 CFR part 100 are needed with respect to Guam. Guam will continue to administer its own customs laws.

The CNRA requires that the Secretary promulgate all necessary regulations, on or before the 180th day after the date of enactment of the CNRA, which was May 8, 2008. Accordingly, these regulations must be promulgated on or before November 4, 2008. These regulations will be effective [insert date of publication in the **Federal Register**]. Beginning June 1, 2009, the CNRA applies the U.S. immigration laws to the CNMI and the Guam-CNMI Visa Waiver Program will be implemented and DHS will begin the administration and enforcement of the program. The date of June 1, 2009, may be delayed by the Secretary of Homeland Security, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the Commonwealth, for up to an additional 180 days if the date for application of the immigration laws to the CNMI is delayed pursuant to section 702(b) of the CNRA. Any delay in the implementation date of the Guam-CNMI Visa Waiver Program will be published in the **Federal Register**. Prior to June 1, 2009, the current requirements pertaining to the Guam Visa Waiver Program will apply to nonimmigrant visitors seeking admission into Guam. Additionally, section 702(b) directs that the promulgation of the regulations shall be considered a foreign affairs function for purposes of the notice and comment requirements under the Administrative Procedure Act. See 5 U.S.C. 553(a).

III. STATUTORY AND REGULATORY REQUIREMENTS

A. Administrative Procedure Act

1. Foreign Affairs Function Exception

In Section 702(b) of CNRA, Congress specified that the promulgation of the Guam-CNMI Visa Waiver Program shall be considered a foreign affairs function for purposes

of the notice and comment requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553(a). Accordingly, this interim final rule is excluded from the notice and comment rulemaking provisions of the APA. Although DHS is not required to provide prior public notice or an opportunity to comment, DHS is nevertheless providing the opportunity for public comments. In accordance with section 702(a) of the CNRA, the effective date of this interim final rule is delayed until June 1, 2009.

2. Good Cause Exception

This interim final rule is also exempt from the APA rulemaking requirements under the “good cause” exception set forth at 5 U.S.C. 553(b)(3)(B). This exemption applies when the agency for good cause finds that the notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. The instant rule establishes the Guam-CNMI Visa Waiver Program and makes other necessary changes for this program to become operational, including the establishment of six ports of entry in the CNMI and other conforming regulatory changes, such as including the CNMI in the definition of United States. In this case, DHS concludes that implementation of this rule without notice and comment is necessary to ensure that the DHS has the authority and infrastructure in place to fully administer the Guam-CNMI Visa Waiver Program by June 1, 2009. CBP does not currently have a presence in the CNMI and must establish operations and ports of entry to allow for immigration inspections. The establishment of the six ports of entry and the other conforming changes are an integral part of and essential to the establishment and operation of the Guam-CNMI Visa Waiver Program. Accordingly, DHS finds that adherence to notice and comment procedures would be impracticable and contrary to the public interest.

B. Executive Order 12866

This interim final rule is not considered a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, due to the foreign affairs exemption described above. OMB has not reviewed this regulation under that Executive Order; however, an economic analysis of the potential impacts of this interim final rule has been prepared. A summary of the analysis is presented below. The complete details of the analysis can be found in the Economic Analysis in the public docket for this rule.

The most significant change for admission to the CNMI as a result of the rule will be for visitors from those countries who are not included in either the existing U.S. Visa Waiver Program or the Guam-CNMI Visa Waiver Program established by the rule. These visitors must apply for U.S. visas, which require in-person interviews at U.S. embassies or consulates and higher fees than the CNMI currently assesses for its visitor entry permits. For admission to Guam, the primary change will be the extension of the maximum allowable period of stay from 15 days for 45 days for visitors of countries included in the Guam-CNMI Visa Waiver Program and the opportunity for visitors admitted under the Guam-CNMI Visa Waiver Program to travel between Guam and the CNMI without the requirement to obtain a visa or a visitor entry permit.

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

regulated), we consider these impacts because tourism represents a major component of the economies of both the CNMI and Guam.

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

For Guam, we do not anticipate that the interim final rule will significantly affect its economy because the Guam-CNMI Visa Waiver Program only modifies the existing Guam visa waiver program by extending the allowable duration of stay from 15 days to 45 days. Thus, we qualitatively assess two of the issues that may arise as a result of implementing the Guam-CNMI Visa Waiver Program, namely: 1) the impact of extending the allowable period of stay from 15 days to 45 days on visitor behavior, spending, and the Guam economy in general; 2) the impact of adding the CNMI to the existing Guam visa waiver program on visitor decisions to visit the CNMI instead of or in addition to Guam; and 3) the impact of excluding Indonesia, the Solomon Islands,

Vanuatu, and Western Samoa in the list of program-eligible countries (these four countries currently are in the Guam Visa Waiver Program).

Because of limitations in the data, we cannot reliably predict and quantify what percentages of visitors to Guam would elect to stay in Guam longer than 15 days, by how many additional days, and the resulting impact on Guam's economy. On-island tourist expenditures in Guam are quite substantial, and additional days of stay on the island would have a positive impact on Guam's economy. Conversely, adding the CNMI to the existing Guam visa waiver program to establish the Guam-CNMI Visa Waiver Program could divert visitor travel away from Guam to the CNMI. Under the interim final rule, nationals from those countries included in the Guam-CNMI Visa Waiver Program, which includes all the countries currently included in the Guam visa waiver program, can now enter the CNMI without having to apply for and obtain a CNMI visitor entry permit. Such a change may increase the potential for visitors from these countries to travel to the CNMI instead of or in addition to Guam. The Guam-CNMI Visa Waiver Program will facilitate travel between Guam and the CNMI, and packaged tours of both islands may appeal to some tourists, especially visitors that have already visited Guam. However, we do not have sufficient data to reliably predict and quantify the extent to which visitors from countries included in the Guam-CNMI Visa Waiver Program would elect to spend part or all of a planned visit in the CNMI instead of, or in addition to, Guam and how this change would affect the Guam economy.

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

Impacts to the CNMI

The two largest foreign markets for visitors to the CNMI in the baseline year of our analysis (May 2007 to April 2008) are Japan and Korea. Because this rule does not change the baseline conditions for Japanese visitors and will ease requirements for Korean visitors, we do not estimate any significant changes in visitation levels for these two countries.

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

not the Philippines, were eligible for admission to the CNMI under its visitor entry permit program).

Based on visitor spending data provided by the Marianas Visitors Authority, we estimate that the associated reductions in spending would have been \$4.9 million from the Chinese, \$0.8 million from the Russians, and \$0.5 million from the Filipinos. In sum, the total visitor spending in the CNMI could potentially have declined by \$6.2 million, or 2.0 percent of the \$317 million in total visitor spending. Using economic multiplier data available from the published literature, we estimate that the potential reduction in visitor spending of \$6.2 million leads to a reduction of between \$8.3 million and \$12.5 million in economic output, \$2.1 million and \$2.4 million in income, and between 131 and 162 jobs in the CNMI.

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

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

Country	Potential number of lost visitors annually	Annual lost CNMI visitor spending (undiscounted) (\$M)	Estimated total on-island spending (\$M)	% of on-island spending lost
Japan	0	\$0.0	\$162	0.0%
Korea	0	0.0	65	0.0%
China	5,017	4.9	38	12.9%

Russia	194	0.8	20	4.2%
Philippines	618	0.5	3	18.3%
Others	0	0.0	29	0.0%
Total	5,829	\$6.2	\$317	2.0%

Table 2. Summary of Economic Impacts, CNMI Economic Analysis

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

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

Impacts to Guam

We attempted to quantify the potential economic impact of the interim final rule on Guam, although we anticipate it to be minimal. Because of limitations in the available data, we could not reliably predict and quantify how many Guam-CNMI VWP-eligible visitors would elect to stay in Guam longer than the current 15-day limit and by how many days, or elect to spend part or all of their planned visit in the CNMI instead of or in addition to Guam. Additional days of stay on the island would have a positive impact on Guam’s economy. However, visitors diverting their travel plans from Guam to the CNMI and visitors from Indonesia, the Solomon Islands, Vanuatu, and Western Samoa

forgoing travel to Guam would have a negative impact. The net economic effect of these two factors is unknown.

Government Costs

Finally, CBP estimates that it will incur costs to establish and administer six new air and sea ports of entry in the CNMI. The costs consist of two primary categories: 1) non-recurring capital costs and other initial or one-time expenses incurred in the first year or prior to implementation of the Guam-CNMI VWP, and 2) recurring operating, maintenance, and personnel costs expected to be incurred each year. CBP will need to build, operate, and maintain the infrastructure needed at the six ports of entry to achieve the requisite level of security (e.g., arrival and departure control) and operational efficiency commensurate with other CBP-operated ports. CBP estimates a capital cost of approximately \$25.8 million to develop this infrastructure, and a recurring cost of \$153,100 per year for port operation and maintenance. CBP plans to staff these ports initially with experienced temporary duty assignment staff on a short-term basis, gradually replacing them with permanent staff. CBP estimates initial costs of approximately \$3.7 million for personnel relocation as well as recurring costs of approximately \$7.8 million per year for personnel salary and benefits and \$5.3 million per year for associated temporary duty costs (e.g., airfare, per diem food and housing allowances, vehicle rental). Applying these estimated costs to the applicable years of our 5-year analysis period results in total present value cost for government implementation of \$87.3 million to \$91.7 million, depending on the discount rate applied.

Sources of Uncertainty

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

The key sources of uncertainty in our analysis are the value of time and demand elasticity for Chinese, Russian, and Filipino visitors. These data are key inputs into our estimates of the reduction in the number of these visitors to the CNMI. To estimate the value of time, we apply the wages from the highest paid industry category among all industries reported in an International Labor Organization (ILO) database; however, we recognize that these data are imperfect. First, comparing wages, and by extension opportunity costs, across countries is notoriously difficult. In addition, it is likely that only the more affluent citizens of these countries would engage in international travel to the CNMI and, therefore, we likely understate their value of time. We test the sensitivity of our wage estimates and find that the estimated loss in CNMI visitor spending could increase by about 40 percent assuming a much higher wage rate (\$20 per hour).

The demand elasticity value we use (-1.04) is also a significant source of uncertainty because it may not be representative of visitor demand to the CNMI (demand elasticities for specifically the CNMI or other Pacific Islands are not available). On the one hand, for the more affluent travelers, the additional travel (visa) costs may not currently represent a significant portion of their household budget or travel cost and thus may not be a major factor influencing their travel decisions (less elastic). There may not be very many travelers from China, Russia, and the Philippines for whom the visa costs and

burden are particularly meaningful – they are either wealthy enough that it does not matter, or their economic status is such that international travel is out of reach regardless of the additional travel costs. On the other hand, other alternative destinations exist that would provide these visitors with a comparable experience to that of the CNMI. As a result, some of these visitors may simply choose to forgo travel to the CNMI because of the additional burden associated with the visa requirements and instead seek other alternative destinations (more elastic).

Finally, in applying an own-price elasticity of travel demand, we have presented a binary choice for a traveler based solely on price – “go” or “do not go.” In reality, travelers are faced with complex decisions and myriad substitutes for particular trips. There is evidence in the travel literature that price may not be a very big determinant of destination selection. Additionally, a traveler could still choose to visit the CNMI but may spend less while on the islands. This would still be a loss to the CNMI economy, but it would be less than what we have estimated in this analysis. We have chosen to estimate direct costs using demand elasticities to avoid deliberately misrepresenting these costs (we would not want to assume that travelers’ decisions will be completely unaffected by the new entry requirements), knowing that we may then be overstating the simplicity of the traveler’s decision-making process. In doing this, we have likely overstated indirect costs.

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

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

C. Regulatory Flexibility Act

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

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. No. 104-4, 109 Stat. 48, on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the UMRA is any provision in a Federal agency regulation that will

impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

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

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

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

G. Paperwork Reduction Act

The collections of information encompassed within this rule have been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.

3507) under OMB Control Number 1651-0109 (Guam Visa Waiver Information) for CBP Form I-736 and OMB Control Number 1651-0111 for Form I-94 (Arrival and Departure Record).

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

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

Estimated annual average reporting and/or recordkeeping burden: 1.8 million hours

Estimated annual average number of respondents: 360,000

Estimated average burden per respondent: 5 minutes

Estimated frequency of responses: once per year.

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

Estimated annual average reporting and/or recordkeeping burden: 3.6 million hours

Estimated annual average number of respondents: 360,000

Estimated average burden per respondent: 10 minutes

Estimated frequency of responses: once per year.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

H. Privacy

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

LIST OF SUBJECTS

8 CFR part 100

Organization and functions (Government agencies)

8 CFR part 212

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

8 CFR part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR part 233

Air carriers, Maritime carriers, Aliens, Government Contracts.

8 CFR part 235

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

19 CFR part 4

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

19 CFR part 122

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

AMENDMENTS TO THE REGULATIONS

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

8 CFR CHAPTER 1—AMENDMENTS

PART 100—STATEMENT OF ORGANIZATION

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

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

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

§ 100.4 Field Offices.

* * * * *

(2) * * *

DISTRICT NO. 17—HONOLULU, HAWAII

Class A

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

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

Rota, the Commonwealth of the Northern Mariana Islands

Saipan, the Commonwealth of the Northern Mariana Islands

Tinian, the Commonwealth of the Northern Mariana Islands

* * *

(3) * * *

DISTRICT NO. 17—HONOLULU, HAWAII

Agana, Guam, Guam International Airport Terminal

Honolulu, HI, Honolulu International Airport

Honolulu, HI, Hickam Air Force Base

Rota, the Commonwealth of the Northern Mariana Islands

Saipan, the Commonwealth of the Northern Mariana Islands

Tinian, the Commonwealth of the Northern Mariana Islands

* * * * *

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

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

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

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

4. Section 212.1(e) is revised to read as follows:

§ 212.1 Documentary Requirements for Nonimmigrants.

* * * * *

(e) Aliens admissible under the Guam-CNMI Visa Waiver Program. (1) Eligibility for Program. In accordance with Public Law 110-229, the Secretary may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or to the

Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program. To be admissible under the Guam-CNMI Visa Waiver Program, prior to embarking on a carrier for travel to Guam or the CNMI, each nonimmigrant alien must:

- (i) Be a national of a country listed in (e)(2) of this section;
- (ii) Be classifiable as a visitor for business or pleasure;
- (iii) Be solely entering and staying on Guam or the CNMI for a period not to exceed forty-five days;
- (iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI. "Round trip ticket" includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;
- (v) Be in possession of a completed and signed Guam-CNMI Visa Waiver Information form (CBP Form I-736);
- (vi) Be in possession of a completed Arrival-Departure Record form (CBP Form I-94);
- (vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by a country that meets the eligibility requirements of (e)(2) of this section;

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

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

(x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, an application for asylum if permitted under section 208 of the INA; and

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

(2) Program Countries. (i) Eligibility Criteria. A country's nationals may not participate in the Guam-CNMI Visa Waiver Program if the country poses a threat to the welfare, safety or security of the United States, its territories, or commonwealths, or if it has been designated a Country of Particular Concern under the International Religious Freedom Act of 1998 by the Department of State, or identified by the Department of State as a source country of refugees designated of special humanitarian concern to the United States. A Country's cooperation in the repatriations of its nationals, rate of refusal for nonimmigrant visas, rate of overstays, cooperation in information exchange with the

United States, and any other factors deemed relevant by DHS shall be used to determine whether a country is eligible to participate. If, in addition to the above considerations, DHS determines that the CNMI has received a significant economic benefit from the number of visitors for pleasure from particular countries during the period of May 8, 2007 through May 8, 2008, those countries are eligible to participate in the Guam-CNMI Visa Waiver Program unless the Secretary of Homeland Security determines that such country's inclusion in the Guam-CNMI Visa Waiver Program would represent a threat to the welfare, safety, or security of the United States and its territories.

(ii) Eligible Countries. Nationals of the following countries are eligible to participate in the Guam-CNMI Visa Waiver Program for purposes of admission to both Guam and the CNMI: Australia, Brunei, Hong Kong (Hong Kong Special Administrative Region (SAR) passport and Hong Kong identification card is required), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom.

(iii) Additional Eligible Countries based on significant economic benefit. DHS has determined that visitors for pleasure from the People's Republic of China (PRC) and Russia have provided significant economic benefit to the CNMI during the period of May 8, 2007 through May 8, 2008. DHS has determined that the PRC and Russia are not eligible to participate in the Guam-CNMI Visa Waiver Program because their inclusion represents a threat to the welfare, safety, or security of the United States or its territories. If DHS determines that nationals from the PRC and/or Russia may participate in the Guam-CNMI Visa Program without posing a threat to the welfare, safety, and security of the United States or its territories, DHS will announce the eligibility of the PRC and/or

Russia to participate in the Guam-CNMI Visa Waiver Program via notice published in the **Federal Register**.

(iv) Repatriation of aliens. An alien admitted under the Guam-CNMI Visa Waiver Program is subject to repatriation. Specifically, not later than three weeks after the issuance of a final order of removal, the government of the eligible country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal or reconsideration for release or removal of any alien.

(3) Suspension of program countries. Suspension of a country from the listings in paragraph (e)(2) of this section may be made on a country-by-country basis for good cause including, but not limited to: the admissions of visitors from a country have resulted in an unacceptable number of visitors from a country remaining unlawfully in Guam or the CNMI, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or seeking asylum; or that visitors from a country pose a risk to law enforcement or security interests, including the enforcement of immigration laws of Guam, the CNMI, or the United States. Countries in the program that become designated as a Country of Particular Concern under the International Religious Freedom Act of 1998 by the Department of State, or identified by the Department of State as a source country of refugees designated of special humanitarian concern to the United States will be automatically suspended from participation in the Guam-CNMI Program

pending an evaluation and determination by the Secretary.

(4) Restrictions on aliens. Admission under the Guam-CNMI Visa Waiver Program renders an alien ineligible for:

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

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

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

(i) Enter into a contract on CBP Form I-760, made by the Secretary of Homeland Security on behalf of the government;

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

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

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

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

(C) Issued by a carrier which has entered into an agreement described in

paragraph (e)(5) of this section.

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

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

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

* * * * *

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

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

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

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

§ 215.1 Definitions.

* * * * *

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

* * * * *

(g) The term geographical part of the United States means: (1) The continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) American Samoa, (8) Swains Island, or (9) the Commonwealth of the Northern Mariana Islands.

* * * * *

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

* * * * *

PART 233—CONTRACTS WITH TRANSPORTATION LINES

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

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

8. Section 233.5 is revised to read as follows:

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

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

PART 235--- INSPECTION OF PERSONS APPLYING FOR ADMISSION

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

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

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

§ 235.5 Preinspection.

(a) In United States territories and possessions. In the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the INA may be made prior to the departure of the aircraft, and in such event, final determination of admissibility must be made immediately prior to such departure. The examination will be conducted in accordance with sections 232, 235, and 240 of the INA and 8 CFR parts 235 and 240. If it appears to the examining CBP officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination will be deferred and further proceedings regarding removability conducted as provided in section 240 of the INA and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible will be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the

aircraft. No other person will be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

* * * * *

19 CFR CHAPTER 1—AMENDMENTS

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

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

* * * * *

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

* * * * *

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

§ 4.7b Electronic passenger and crew arrival manifests.

(a) * * *

United States. "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

* * * * *

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

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

* * * * *

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

* * * * *

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

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

(a) * * *

United States. “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

* * * * *

Date:

W. Ralph Basham
Commissioner
U.S. Customs and Border Protection

Michael Chertoff
Secretary