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Issued in Washington, DC, on June 23, 2006.

**Edith V. Parish,**

*Manager, Airspace and Rules.*

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## DEPARTMENT OF STATE

### 22 CFR Part 41

[Public Notice 5459]

#### **Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended**

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** This rule expands guidance to consular offices for the review of nonimmigrant visa issuances and refusals contained at 22 CFR 41.113(i) (new) and 22 CFR 41.121(c), respectively, to specify who should conduct the reviews, the types of cases to be reviewed, and the goals of the reviews.

**DATES:** *Effective Date:* This rule is effective on June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106. Phone: 202-663-3969. E-mail: [robertsonce3@state.gov](mailto:robertsonce3@state.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Why Is the Department Promulgating These Rules?**

Nonimmigrant visa refusals and issuances are generally committed by law to the adjudicating consular officer. The Department nevertheless provides for them to be reviewed by consular experts in a supervisory capacity. Such reviews are a significant management and instructional tool useful in maintaining the highest professional standards of adjudication and ensuring uniform and correct application of the law and regulations. The purpose of this rule revision is to expand the scope of reviews of nonimmigrant visa applications to ensure that Department supervisors are reviewing both issuances and refusals to the greatest extent practicable, while balancing workload considerations at consular posts.

#### **Why Has the Department Imposed a Review of Applications of Nonimmigrant Issuances?**

Current regulations require that the section chief or designee review all visa refusals. The Foreign Affairs Manual (FAM) calls for a spot check of NIV issuances. In order to enhance U.S. border security, we are placing greater emphasis on reviewing issuances to ensure that visas are issued in compliance with law and procedures. This rule revision will provide a regulatory framework for a regular and targeted review of both visa issuances and refusals.

#### **Why Has the Department Reduced the Degree of Review of Refusals?**

Due to the need to formalize our review of visa issuances beyond spot checks in order to promote border security, it will no longer be possible to review all visa refusals. We will continue to review refusals to ensure appropriate adjudication standards are maintained, while striking the appropriate balance between resources and essential functions.

#### **Who Will Review the Applications?**

The reviewing officer will be the adjudicating consular officer's direct supervisor, or a designated alternate. If the reviewing officer disagrees with the consular officer's decision, and he or she has a consular commission and title, the reviewing officer can assume responsibility for the case and readjudicate it. If the reviewing officer does not have a consular commission and title, he or she must consult with the adjudicating officer, or with the Visa Office, to resolve any disagreement. The Department's regulation at 22 CFR 41.121(c) specifies that a refusal must be reviewed without delay; that is, on the day of the refusal or as soon as is administratively possible. This rule will be applied to review of visa issuances as well.

#### **Regulatory Findings**

##### *Administrative Procedure Act*

The Department's implementation of this regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

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

This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act, and, accordingly it does not

require analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

##### *The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law No. 104-121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

##### *The Unfunded Mandates Reform Act of 1995*

This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act, and, accordingly it does not require analysis under the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4). Moreover, this rule is not expected to result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. Nor will it significantly or uniquely affect small governments.

##### *Executive Orders 12372 and 13132: Federalism*

The Department finds that 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. Nor does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

##### *Executive Order 12866: Regulatory Review*

The Department does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in this Executive Order.

*Executive Order 12988: Civil Justice Reform*

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

*The Paperwork Reduction Act of 1995*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 41**

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and visas, Students.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR part 41 as follows:

**PART 41—[AMENDED]**

■ 1. The authority citation for part 41 shall continue to read as follows:

**Authority:** 8 U.S.C. 1104; Public Law No. 105–277, 112 Stat. 2681–795 through 2681–801. Additional authority is derived from Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Public Law 104–208, 110 Stat. 3546.

■ 2. In § 41.113, add paragraph (i) to read as follows:

**§ 41.113 Procedures in issuing visas.**

\* \* \* \* \*

(i) Nonimmigrant visa refusals must be reviewed, in accordance with guidance by the Secretary of State, by consular supervisors, or a designated alternate, to ensure compliance with applicable laws and procedures. Visa issuances must be reviewed without delay; that is, on the day of issuance or as soon as is administratively possible. If the reviewing officer disagrees with the decision and he or she has a consular commission and title, the reviewing officer may assume responsibility and readjudicate the case. If the reviewing officer does not have a consular commission and title, he or she must consult with the adjudicating officer, or with the Visa Office, to resolve any disagreement.

■ 3. In § 41.121, revise paragraph (c) to read as follows:

**§ 41.121 Refusal of individual visas.**

\* \* \* \* \*

(c) Nonimmigrant visa issuances must be reviewed, in accordance with guidance by the Secretary of State, by consular supervisors, or a designated alternate, to ensure compliance with laws and procedures. If the ground(s) of

ineligibility upon which the visa was refused cannot be overcome by the presentation of additional evidence, the refusal must be reviewed without delay; that is, on the day of the refusal or as soon as it is administratively possible. If the ground(s) of ineligibility may be overcome by the presentation of additional evidence, and the applicant has indicated the intention to submit such evidence, a review of the refusal may be deferred for not more than 120 days. If the reviewing officer disagrees with the decision and he or she has a consular commission and title, the reviewing officer can assume responsibility and readjudicate the case. If the reviewing officer does not have a consular commission and title, he or she must consult with the adjudicating officer, or with the Visa Office, to resolve any disagreement.

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Dated: June 16, 2006.

**Maura Harty,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

**[CGD09–06–047]**

**Safety Zone: Captain of the Port Detroit Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of final rule.

**SUMMARY:** The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during July 2006. This action is necessary to provide for the safety of life and property on navigable waters during these events. These safety zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

**DATES:** Effective from 12:01 a.m. (local) on July 1, 2006 to 11:59 p.m. (local) on July 31, 2006.

**FOR FURTHER INFORMATION CONTACT:**

LTJG Cynthia Channell, Waterways Management, Sector Detroit, 110 Mt. Elliott Ave., Detroit, MI at (313) 568–9580.

**SUPPLEMENTARY INFORMATION:** The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907

(published May 21, 2001, in the **Federal Register**, 66 FR 27868), for fireworks displays in the Captain of the Port Detroit Zone during July 2006. The following safety zones are in effect for fireworks displays occurring in the month of July 2006:

(1) *Lake Erie Metro Park Fireworks*, Brownstown, MI. Location: All waters off Lake Erie Metro Park, Lake Erie bounded by the arc of a circle with a 300-yard radius with its center located at approximate position 42° 03' N, 083° 11' W (NAD 1983), on July 1, 2006, from 10 p.m. to 10:45 p.m.

(2) *Grosse Pointe Farms Fireworks*, Grosse Pointe Farms, MI. Location: All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42° 23' N, 082° 52' W (NAD 1983), about 300 yards east of Grosse Pointe Farms, MI on July 1, 2006, from 10 p.m. to 11:30 p.m. Rain date: On July 2, 2006, from 10 p.m. to 11:30 p.m.

(3) *Caseville Fireworks*, Caseville, MI. Location: The waters off the Caseville breakwall, Saginaw River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43° 55' N, 083° 17' W (NAD 1983) on July 1, 2006 from 10 p.m. to 11 p.m.

(4) *Algonac Pickerel Tournament Fireworks*, Algonac, MI. Location: All waters of the St. Clair River within a 300-yard radius of the fireworks barge in approximate position 42° 37' N, 082° 32' W (NAD 1983), between Algonac and Russell Island, St. Clair River-North Channel, on July 1, 2006 from 10 p.m. to 11 p.m. Rain date: On July 2, 2006, from 10 p.m. to 11 p.m.

(5) *Port Sanilac Fireworks*, Port Sanilac, MI. Location: All waters off the South Harbor breakwall, Lake Huron bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43° 25' N, 082° 31' W (NAD 1983) on July 1, 2006 from 10 p.m. to 10:30 p.m.

(6) *Lexington Independence Festival Fireworks*, Lexington, MI. Location: All waters of Lake Huron within a 300-yard radius of the fireworks barge in approximate position 43° 13' N, 082° 30' W (NAD 1983), about 300 yards east of the Lexington breakwall Lake Huron, on July 3, 2006 from 10 p.m. to 10:45 p.m.

(7) *City of St. Clair Fireworks*, St. Clair, MI. Location: All waters off the St. Clair City Park, St. Clair River bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42° 49' N, 082° 29' W (NAD 1983) on July 4, 2006 from 10:45 p.m. to 11:30 p.m.

(8) *Port Austin Fireworks*, Port Austin, MI. Location: All waters off the Port Austin breakwall, Lake Huron bounded