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**DEPARTMENT OF STATE**

**22 CFR Part 41**

[Public Notice: 6324 ]

**Documentation of Nonimmigrants under the Immigration and Nationality Act, as Amended: Fingerprinting**

**AGENCY:** Department of State.

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the Department of State's regulations relating to the application for a nonimmigrant visa, to generally require all applicants, with certain exceptions, to provide a set of ten scanned fingerprints as part of the application process. The scanning of ten fingerprints of nonimmigrant visa applicants has already been implemented. For the purposes of verifying and confirming identity, conducting background checks, and to ensure that an applicant has not received a visa or entered into the United States under a different name, the Department of State may use the fingerprints in order to ascertain from the appropriate authorities whether they have information pertinent to the applicant's eligibility to receive a visa and for other purposes consistent with applicable law, regulations, and Department policy.

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

**FOR FURTHER INFORMATION CONTACT:** Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520-0106, (202) 663-1202, e-mail ([robertsonce3@state.gov](mailto:robertsonce3@state.gov)).

## **SUPPLEMENTARY INFORMATION:**

*Why is the Department promulgating this rule?*

This rule updates the regulations concerning documents and fingerprints to be provided in support of nonimmigrant visa applications. This amendment is necessary because regulations currently in place do not contain information about the general requirement for non-immigrant visa applicants to provide ten fingerprints. In response to the requirements established by the Enhanced Border Security and Visa Entry Reform Act of 2002, the collection of fingerprints from most nonimmigrant visa applicants was announced to the public in December 2004 as part of the Biometric Visa Program. At that time, available technology allowed for efficient capture and comparisons of two fingerprints by means of scanning (fingerscans). Later, the process was expanded to 10 fingerscans. Notice of the transition to ten fingerprints was published in the Federal Register at 72 Fed. Reg. 25351 (4 May 2007).

*What effect does this rule change have on the nonimmigrant visa applicant?*

The Biometric Visa Program was introduced gradually, as technology allowed, and is now in place at all posts. Therefore, this rule change will have no effect on applicants.

*Must all applicants be fingerprinted?*

As described in the Federal Register notice, the majority of nonimmigrant visa applicants are required to be finger-scanned as part of the application process. There are currently some exceptions to the fingerprint requirement, including most applicants under the age of 14 years or over the age of 79.

## **REGULATORY FINDINGS**

*Administrative Procedure Act*

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.*

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulates individual aliens who seek consideration for nonimmigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

*The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

*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, Pub. L. 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.

*Executive Order 12866: Regulatory Review*

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

*Executive Order 12988: Civil Justice Reform*

The Department has reviewed the proposed 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.

*Paperwork Reduction Act*

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

For the reasons stated in the preamble, the Department of State amends 22 CFR

Part 41 to read as follows:

**PART 41—[AMENDED]**

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7290 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

2. In § 41.105 add paragraph (b) to read as follows:

**§41.105 Supporting documents and fingerprinting.**

\* \* \* \* \*

(b) *Fingerprinting*. Every applicant for a nonimmigrant visa must furnish fingerprints, as required by the consular officer.

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(Date)

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Janice L. Jacobs,  
Assistant Secretary for Consular Affairs,  
Department of State.

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