

- a. Adding the phrase “appropriate to on-farm and aquatic operations” after the word “services” in paragraph (a); and
- b. Removing the phrase “appropriate to cooperative operations of” and adding in its place, the word “to” in paragraph (c).

Dated: July 15, 2004.

**Jeanette C. Brinkley,**  
Secretary, Farm Credit Administration Board.  
[FR Doc. 04-16553 Filed 7-20-04; 8:45 am]  
BILLING CODE 6705-01-P

## DEPARTMENT OF STATE

### 22 CFR Part 41

[Public Notice: 4767]

RIN 1400-AB49

#### Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Elimination of Crew List Visas

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final the Department’s interim final regulations regarding the elimination of crew list visas.

**DATES:** The interim final rule became effective June 16, 2004. This rule is adopted as a final rule as of July 21, 2004.

**ADDRESSES:** You may view this rule online at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ron Acker, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, (202) 663-1205 or e-mail [ackerrl@state.gov](mailto:ackerrl@state.gov).

**SUPPLEMENTARY INFORMATION:** On December 13, 2002, the Department published a rule (67 FR 76711) proposing to eliminate crew list visas. After review of comments to the proposed rule, on March 18, 2004, the Department published an interim final rule which allowed a final comment period until May 17, 2004, followed by a 30 day period for further Department review of comments. The Department is now making final the interim final rule.

DHS has authorized this regulation pursuant to the Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of

2002. The requirements of 22 CFR 41.42 are being removed in coordination with the removal of similar requirements by DHS in its corresponding regulations.

#### What Are the Statutory Authorities Pertaining to the Crew List Visa?

Authority for the issuance of a crew list visa is derived from sections 101(a)(15)(D) and 221(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D) and 1201(f), respectively. Section 101(a)(15)(D) exempts aliens serving in good faith as crewmen on board a vessel (other than a fishing vessel having its home port or an operating base in the United States, unless temporarily landing in Guam), or aircraft from being deemed immigrants. Section 221(f), permits an alien to enter the United States on the basis of a crew manifest that has been visaed by a consular officer. However, the latter section does not require a consular officer to visa a crew manifest and it authorizes the officer to deny admission to any individual alien whose name appears on a visaed crew manifest. Further, according to the wording of section 221(f) the use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used only until such time as it becomes practicable to issue individual documents to each member of a vessel’s or aircraft’s crew.

#### Why Has the Department Eliminated the Crew List Visa?

The Department has eliminated the crew list visa for security reasons. Since the September 11, 2001 attacks, the Department has reviewed its regulations to ensure that every effort is being made to screen out undesirable aliens. By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States is required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks. Additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date.

#### Did the Department Solicit Comments to the Interim Final Rule?

The Department did solicit comments, and 18 were received. This is in addition to the 82 comments received earlier to the proposed rule. The text of most of the comments was identical. Other letters expressed the same views. The substance of the comments was

similar to comments made previously to the proposed rule. A summary of the comments received and the Department’s responses follows.

Most of the commenters expressed disappointment that the United States issued the interim final rule despite opposition from the majority of commenters. They referred to the special circumstances of seafarers, which often made it difficult for them to know an exact itinerary in advance. The also mentioned the hardship for seafarers of the waiting time to receive a U.S. visa. Most commenters referred to proposed ILO Convention No. 185 and expressed the hope that the U.S. would have encouraged widespread ratification of this convention by providing more favorable treatment to holders of the seafarers identity document proposed by this convention. Previous commenters have remarked that the proposed ID could serve as a substitute for a passport and that its security features would make crew list visas more secure, even in the absence of consular interviews of all crew members, which is typical when crew list visas are issued. While the Department recognizes that a seafarer’s ID containing biometrics could be useful, it is likely to take years for such a document to be developed and adopted widely. Further, one of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant. Adoption of the new ID card will not address the need for interviews.

Regarding difficulties for crewmen obtaining individual visas caused by last-minute scheduling, the Department recognizes the problem, but continues to believe that the security of the U.S. demands individual crew visas despite the dislocations that the requirement may cause initially. Nevertheless, the Department hopes that shipping companies and unions will encourage their employees and members to obtain visas where there is a reasonable possibility that a crewman may be required to enter the U. S. at any time. The visa, once obtained, and depending upon bilateral reciprocity for like documents held by U.S. seamen, will generally be valid for up to five years. Therefore, once individual crew visas are obtained and used generally by seamen working for companies that ship to the U.S., there should be reasonable certainty that most of the crew will be able to enter the U.S. on short notice.

### How Did This Rule Amend the Department's Regulations?

This rule removed the Department's regulations at 22 CFR 41.42 that establish the crew list visa. By doing so, all crewmembers seeking to enter the United States in that capacity are required to apply for individual crew visas.

### Regulatory Findings

#### *Administrative Procedure Act*

The Department is publishing this rule as a final rule, after a 60-day provision for post-promulgation public comments and review, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity to ensure that every effort is being made to screen out undesirable aliens; additionally, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173) requires that all visas issued after October 26, 2004 have a biometric indicator, which means crew list visas would necessarily be eliminated by that date.

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

These changes to the regulations are hereby certified as not expected to have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

#### *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 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*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 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 does not result in any such expenditure nor will

it significantly or uniquely affect small governments.

#### *Executive Order 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 of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department submitted the interim rule to the Office of Management and Budget for its review and there is no change in the final rule.

#### *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.

#### *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, Nonimmigrants, Passports, Visas.

In view of the foregoing, the interim final rule that amended 22 CFR Part 41 published on March 18, 2004 (69 FR 12797) is adopted as final.

Dated: June 10, 2004.

**Maura Harty,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD13-04-034]

RIN 1625-AA08

#### Special Local Regulations; Annual Kennewick, WA, Columbia Unlimited Hydroplane Races

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is restricting general navigation and anchorage on the Columbia River by establishing a special local regulation. The Captain of the Port, Portland, is taking this action to safeguard individuals from safety hazards associated with hydroplanes operating at a high rate of speed. Entry into the area established is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 6 a.m. on July 23, 2004, until 9 p.m. (P.d.t.) on July 25, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD 13-04-034] and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Belen Audirsch, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at 503-240-9320.

#### **SUPPLEMENTARY INFORMATION:**

#### **Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the hydroplane races. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. A final rule was published establishing this special local regulation in 1985