

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 212

[INS. No. 1696–95]

RIN 1115–AD96

#### Establishing Criteria for Determining Countries Whose Citizens Are Ineligible for the Transit Without Visa (TWOV) Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Transit Without Visa (TWOV) program allows the Immigration and Naturalization Service (Service), acting jointly with the Department of State, to waive the passport and visa requirement for aliens from certain countries who request immediate and continuous transit privileges through the United States. This rule proposes to amend Service regulations by removing the list of those countries that are ineligible to participants in the TWOV program from the regulation. In its place the Service proposes to publish and update the list of countries that are ineligible to participate in the TWOV Program by **Federal Register** notice. This rule also sets forth a non-exhaustive list of factors that may be considered in determining those countries whose citizens or nationals are ineligible for the TWOV program.

The criteria established in this rule will allow the Service to identify ineligible countries and provide for a regular review of all countries to determine their eligibility for participation in the TWOV program.

**DATES:** Written comments must be submitted on or before March 6, 2001.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure

proper handling please reference INS No. 1696–95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

#### FOR FURTHER INFORMATION CONTACT:

Robert Hutnick, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 616–7499.

#### SUPPLEMENTARY INFORMATION:

#### What Is the Authority for Participation in the TWOV Program?

Section 212(d)(4)(C) of the Immigration and Nationality Act (Act) provides authority for the Attorney General acting jointly with the Secretary of State to waive nonimmigrant visa requirements for aliens who are proceeding in immediate and continuous transit through the United States and are using a carrier which has entered into a contract with the Service authorized under section 233(c) of the Act. This contract is an Immediate and Continuous Transit Agreement, Form I–426, also known as a TWOV Agreement.

#### What Changes Are Proposed in This Rule?

This rule proposes to amend § 212.1(f)(2) by removing the list of countries ineligible to participate in the TWOV program (see Department of State regulation published elsewhere in this issue of the **Federal Register**). Instead, the Service, in conjunction with the Department of State, is proposing to publish and update the list of countries whose citizens or nationals are ineligible to participate in the TWOV Program by notice published in the **Federal Register**. This rule also sets forth the authority of the Service and the Department of State to designate citizens or nationals of certain countries to be ineligible to participate in the TWOV program. It also provides a non-exhaustive list of factors to be considered in determining whether citizens or nationals of a particular country should not be eligible for participation in the TWOV program.

#### How Will Citizens From Ineligible Countries Know They Are Ineligible for the TWOV Programs?

The Service and the Department of State will compile a revised list of countries ineligible for the TWOV privilege and from time to time, will publish this list as a notice in the **Federal Register**. The Service and Department of State will review this list periodically and publish by notice in the **Federal Register** any additions or deletions. The list will be made available upon written request to the Service's Headquarters Office of Inspections or on the Service's website.

#### What Other Changes Is the Service Making in This Proposed Rule?

This rule also proposes to amend § 212.1(f)(1) by revising the reference to section “238(d)” of the Act to read “233(c)”. This is a necessary conforming change to reflect the current provision of law, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which grants the Attorney General the power to enter into contracts with transportation lines to guarantee the passage through the United States in immediate and continuous transit of aliens destined for foreign countries.

#### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs whether a citizen or national from a participant country may use the TWOV program. These aliens are not considered small entities as that term is defined under in 5 U.S.C. 601(6).

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

### 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, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### Executive order 12988 Civil Justice Reform

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

### List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and Visas. Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

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

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by:

a. Revising the reference to "238(d)" to read: "233(c)" in the first sentence in paragraph (f)(1); and by

b. Revising paragraph (f)(2), to read as follows:

#### § 212.1 Documentary requirements for nonimmigrants.

\* \* \* \* \*

(f) \* \* \*

(2) *Unavailability to transit.* (i) Notwithstanding the provisions of paragraph (f)(1) of this section, the waiver of the passport and visa requirement is not available to an alien who is a citizen or national of a country designated by the Service and the Department of State to be ineligible. The Service and Department of State may designate such countries based on a variety of considerations including, but not limited to, the following:

(A) Whether citizens or nationals of the country have abused the transit without visa privilege in the past;

(B) Whether citizens or nationals of the country have a high nonimmigrant visa refusal rate;

(C) Whether there is an insurrection or instability in the country, such that citizens or nationals of the country should apply for nonimmigrant visas to ensure that they are not intending immigrants;

(D) Whether a significant number of citizens or nationals of the country are linked to terrorist activity, narcotics trafficking, or international criminal activity;

(E) Whether the President has issued a proclamation under section 212(f) of the Act suspending or restricting the entry of citizens or nationals of the country; or,

(F) Whether the country poses significant security concerns.

(ii) By notice in the **Federal Register**, the Service, acting jointly with the Department of State, shall review periodically and publish an updated list of countries ineligible for transit without visa privileges.

(iii) A list of countries whose citizens or nationals are ineligible for TWOV privileges will be maintained by the Service's Headquarters Office of Inspections and is available upon written request.

Dated: December 21, 2000.

**Mary Ann Wyrusch,**

*Acting Commissioner, Immigration and Naturalization Service.*

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**BILLING CODE 4410-10-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-284-AD]

RIN 2120-AA64

### Airworthiness Directives; Various Transport Category Airplanes Equipped With Certain Air Traffic Control (ATC) Transponders Manufactured by Rockwell Collins

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various transport category airplanes equipped with certain Mode C air traffic control (ATC) transponders manufactured by Rockwell Collins, Inc. This proposal would require testing each transponder; replacing certain parts in any transponder which fails the initial test and performing additional test(s); and making repairs, as necessary so that the transponder passes the test. This proposal is prompted by reports that indicate that the equipment used to conduct earlier tests of certain transponders did not detect certain malfunctions. An airplane equipped with such malfunctioning transponders could transmit inaccurate data concerning its altitude to a nearby airplane equipped with the traffic alert and collision avoidance system (TCAS II), causing the TCAS II to issue an erroneous resolution advisory to the pilot. The actions specified by the proposed AD are intended to prevent transmission of inaccurate data concerning altitude from one airplane to another, which could cause the pilot receiving the data to change course, either ascending or descending, and possibly lead to a mid-air collision or near mid-air collision.

**DATES:** Comments must be received by February 20, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-284-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the