

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 212, 231, 235 and 286**

[INS No. 2202-02]

RIN 1115-AG68

**Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by providing that residents of Canada or Bermuda having a common nationality with Canadian nationals or with British subjects in Bermuda will be required to present a valid passport and visa when applying for admission to the United States. Nationals of Ireland and British Commonwealth countries, who reside in Canada, will be affected by this change. The Service is taking this action, revoking the prior passport and visa exemption for these individuals, in conjunction with the Department of State. (See Department of State regulations published elsewhere in this issue of the **Federal Register**.) This rule is intended to increase security and safeguard the United States.

**DATES:** *Effective date:* This rule is effective March 17, 2003.

*Comment date:* Written comments must be submitted on or before April 1, 2003.

**ADDRESSES:** Please submit written comments to the Director, Regulations, Forms and Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034,

Washington, DC, 20536. To ensure proper handling, please reference the INS No. 2202-02 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically, please include INS No. 2202-02 in the subject box. Comments are available for public inspection at the above location by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Joyce Broughman, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 514-3019.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 212(d)(4)(B) of the Immigration and Nationality Act (Act) permits the Attorney General and the Secretary of State (acting jointly) to waive the passport and visa requirements of section 212(a)(7)(B)(i) of the Act, 8 U.S.C. 1182(a)(7), for admission to the United States in nonimmigrant status. This waiver may be granted on the basis of reciprocity with respect to nationals of foreign contiguous territories or adjacent islands or for residents of those territories or islands who have a common nationality with those nationals.

Service regulations at 8 CFR 212.1(a) implement this waiver authority for Canadian citizens, British subjects in Bermuda and certain aliens from other islands. In addition, the current regulations provide a waiver of the passport and visa requirements for residents of Canada or Bermuda who have a common nationality with citizens of Canada or with British

subjects in Bermuda. This latter waiver includes citizens of British Commonwealth countries as well as citizens of Ireland. Nationals of 54 countries who reside in Canada or Bermuda currently benefit from this waiver. Country List "A" following the chart Current versus New Documentary Requirements lists the British Commonwealth countries as of the publication date of this regulation.

This rule eliminates the existing waiver for aliens, who are nationals of Ireland or the British Commonwealth countries listed above, who reside in either Canada or Bermuda and are not citizens of Canada or the British Overseas Territory of Bermuda.

Residents of Canada or Bermuda who are nationals of a designated Visa Waiver country listed in § 217.2(a), who present a valid passport issued by that country, may continue to be admitted without a visa if they are entering the United States for less than 90 days for business or pleasure. Countries that have been designated as eligible for the Visa Waiver Program may be found in Country List "B" after the chart "Current versus New Documentary Requirements".

This rule does not alter existing waivers of passport and visa for Canadian citizens or for British subjects in Bermuda. In amending § 212.1(a), it is broken into subsections (1) through (4) to make the documentary requirements clearer to the reader. This rule makes no changes to the current documentary requirements for Bahamian nationals or British subjects resident in The Bahamas or British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.

The following chart shows the current and new documentary requirements for residents of Canada and Bermuda.

**CURRENT VERSUS NEW DOCUMENTARY REQUIREMENTS**

<i>If you are:</i>	<i>And the purpose of your visit to the U.S. (and time of stay, if applicable) is:</i>	<i>Then the change this rule makes from current INS regulations is:</i>	<i>And you will need the following to enter the U.S.:</i>
1. Canadian citizen	Non-immigrant visitor (except E-1, E-2—treaty trader—and K-1 through K-4—spouses and fiancé(e)s of U.S. citizens)	No change from current regulations	Identification; If coming from outside the Western Hemisphere a passport is required. (The following nonimmigrant classifications require a passport and visa: E-1, E-2, K-1, K-2, K-3, K-4. See INA Section 101(a).)
2. Permanent resident of Canada or Bermuda who is a citizen of a British Commonwealth country—Country List "A"	Non-immigrant .....	Change to now require a valid passport and valid nonimmigrant visa	Valid passport and valid non-immigrant visa.
3. Citizen of a country participating in the Visa Waiver Program (VWP) regardless of place of residence—Country List "B"	Non-immigrant visitor for business or pleasure for <i>less than 90</i> days	No change from current regulations	Valid passport.

CURRENT VERSUS NEW DOCUMENTARY REQUIREMENTS—Continued

If you are:	And the purpose of your visit to the U.S. (and time of stay, if applicable) is:	Then the change this rule makes from current INS regulations is:	And you will need the following to enter the U.S.:
4. Citizen of a country participating in the Visa Waiver Program (VWP) regardless of place of residence—Country List “B”	Non-immigrant visitor for business or pleasure for <i>more than 90</i> days or for any other non-immigrant purpose	No change from current regulations.	Valid passport and valid visas in the appropriate classification (Section 101(a)(15) of the INA).
5. Citizen of the British Overseas Territory of Bermuda	Nonimmigrant .....	No change from current regulations	Evidence of citizenship; if coming from outside the Western Hemisphere a passport is required.
6. Citizen of an country, other than Canada or Bermuda, not listed in Country List “B”, Visa Waiver Countries	Nonimmigrant .....	No change from current regulation	Valid passport and valid non-immigrant visa.

The following list of countries comprises Country List “A”—British Commonwealth Countries: Antigua and Barbuda, Australia, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Cyprus, Dominica, Fiji Islands, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Swaziland, The Bahamas, The Gambia, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, Zambia, and Zimbabwe

The following list of countries comprises Country List “B”—Visa Waiver Program countries (see 8 CFR 217.2): Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories’ citizens, or citizens of British Commonwealth countries.

**Elimination of the Passport and Visa Waiver for Nationals of Commonwealth Countries or of Ireland who are Residents of Canada or Bermuda**

In light of the terrorist attacks of September 11, 2001, the Service, in conjunction with the Department of State, has determined that it is in the

public interest to reconsider the existing waiver for such aliens. Because the Department of State requires special clearance procedures for nationals of some countries that are beneficiaries of the waiver, the Department of State and the Service have determined that requiring a passport and visa for these aliens will provide a higher level of security for the United States. Current beneficiaries of the waiver include nationals from countries with high rates of documentary and immigration fraud and abuse and nationals from countries with high nonimmigrant refusal rates. In many cases, documents presented by beneficiaries of the waiver do not meet current document security standards.

In view of these determinations, the Service is amending its current nonimmigrant documentary regulations in § 212.1(a) to eliminate the passport and visa waiver for residents of Canada or Bermuda who have a common nationality with citizens of Canada or with British subjects in Bermuda. Accordingly, such nationals will be required to present visas and passports when applying for admission to the United States. The Service also notes that, as a result of eliminating this existing waiver, these aliens will now be subject to 8 CFR 235.1(f)(1) and upon arrival shall be issued, upon payment of the appropriate fee for land border admissions, a Form I-94 Arrival/Departure Record as evidence of the terms of their admission.

**Other Regulation Changes**

In addition, the Service is changing the reference to “British subjects in Bermuda” to British Overseas Territory citizens in accordance with the British Overseas Territories Act of 2002.

In view of the elimination of the existing passport and visa waiver, this rule makes necessary changes to other portions of the regulations.

The interim rule amends § 231.1(d) to require the residents of Canada and

Bermuda who are nationals of Ireland or British Commonwealth countries, who are entering the United States for business or pleasure to complete the Form I-94, Arrival/Departure Record.

As a result of the requirement for a passport and nonimmigrant visa, residents of Canada who must present those documents for admission to the United States will no longer be eligible for a Canadian Border Boat Landing Permit (Form I-68) described in § 235.1(e). United States citizens, Canadian citizens and those residents of Canada who are nationals of a designated Visa Waiver country listed in § 217.2(a) will continue to be eligible for the Canadian Boat Landing Permit.

Service regulations at 8 CFR 286.9(b) regarding the payment of a fee for a Form I-68, Canadian Border Boat Landing Permit, § 286.9(b) are being revised to remove the reference to lawful permanent resident of Canada having a common nationality with Canadians since this group of aliens will no longer be eligible for the program.

**Good Cause Exception**

The Service’s implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the “good cause” exceptions found at 5 U.S.C. 553(b)(B).

Implementation of this rule as an interim rule is necessary to ensure the national security needs of the United States. Specifically, the implementation of the passport and visa requirement on aliens residing in Canada or Bermuda including those aliens who are nationals of countries that require special clearance procedures, nationals of countries with high rates of documentary and immigration fraud and abuse, and nationals from countries with high nonimmigrant refusal rates, will ensure that these applicants for admission are properly screened via the Department of State’s visa issuance process prior to arrival at a port-of-entry

to the United States and possess positive evidence of their identity and the intended purpose of their stay in the United States upon such arrival. This will lessen the possibility that persons who pose security risks to the United States and other potential immigration violators may improperly gain admission to the United States. There is reasonable concern that publication of the rule as a proposed rule could lead to an increase in applications for admissions by mala fide non-citizen residents of Canada or Bermuda seeking to avoid the passport requirement and consular screening process during the period between the publication of a proposed and a final rule. Accordingly, the Service finds that it is impracticable and contrary to the public interest to publish this rule with prior notice and comment period.

#### **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 removes the passport and visa waiver for certain residents of Canada and Bermuda having a common nationality with Canadian nationals or with British subjects in Bermuda respectively. Residents of Canada or Bermuda who are affected by the rule will be required to obtain a passport and nonimmigrant visa for entry to the United States. This rule will affect individual nonimmigrant aliens who are not considered small entities as that term is defined 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 one 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 costs 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 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 this regulation has been submitted to the Office of Management and Budget for review.

By requiring residents of Canada and Bermuda who are citizens of British Commonwealth countries to have a passport and nonimmigrant visa to enter the United States, they will also be required to complete Form I-94, Arrival/Departure Record and pay the appropriate fee, currently \$6, at land border ports-of-entry. For those residents who travel frequently from Canada to the United States, the Service may issue the Form I-94, Arrival/Departure Record, allowing multiple entries.

The Service estimates approximately 1 million British Commonwealth nationals are living as permanent residents of Canada, and that there will be approximately 500,000 entries to the United States each year at land border ports-of-entry. Based on this total annual estimate of 500,000 entries of British Commonwealth nationals, the Service anticipates that the additional fees collected from Form I-94s, issued to these residents of Canada who are British commonwealth nationals, may amount to as much as 3 million dollars per year.

The Service believes inspections staffing already planned for the affected land border ports-of-entry will be sufficient to accommodate the workload that will be generated by the British Commonwealth nationals, an no increased staff payroll costs will be incurred to inspect and process the 500,000 annual estimated applicants.

Because currently planned staffing will be sufficient to accommodate the increased numbers of applicants, a cost benefit would accrue from the collection of the Form I-94 fee from British Commonwealth nationals. The cost benefit would result by offsetting part of the current payroll subsidy that is required because current Form I-94 fees do not fully recover the costs of the associated inspections operations.

Therefore, the collection of the fee from British Commonwealth nationals will serve to improve border security and will also contribute to clearer fiscal

as well as operational separation of the inspections enforcement operations from the immigration service operations associated with Form I-94 applications. \$3 million in new collections will fund the annual payroll cost of 48 of approximately 74 currently subsidized inspector positions at land border ports-of-entry.

As previously stated, the passport and visa requirement is being imposed to increase security and safeguard the United States. The events of September 11, 2001 resulted in the need to assess and evaluate current practices in order to strengthen the law enforcement and security interests of the United States. Requiring permanent residents of Canada and Bermuda who are British Commonwealth nationals to have a nonimmigrant visa will ensure that these applicants for admission are properly screened via the Department of State's visa issuance process prior to arrival at a port-of-entry to the United States and possess positive evidence of their identity and the intended purpose of their stay in the United States upon such arrival. This will lessen the possibility that potential immigration violators or persons who pose security risks to the United States may improperly gain admission to the United States.

Of the 54 countries affected by this regulation, only 6, Australia, Brunei, Ireland, New Zealand, Singapore and the United Kingdom, are eligible for the Visa Waiver Program. In order to be designated as a participating Visa Waiver Program country, nationals of the country must have a low refusal rate for U.S. visas. In addition, the Attorney General, in consultation with the Secretary of State must determine that the country's designation for the Visa Waiver Program would not compromise U.S. law enforcement or national security interests, including interests in enforcing immigration laws.

Implementation of this regulation will align the visa requirement for permanent residents of Canada or Bermuda who are nationals of the British Commonwealth countries with that of other permanent residents of Canada or Bermuda. All permanent residents of Canada or Bermuda who are not citizens of Canada or Bermuda will require a passport and nonimmigrant visa unless they are nationals of a country designated as eligible for the Visa Waiver Program, in which case they will only require a valid passport.

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

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. The OMB previously approved the information collection requirements contained in this rule for use. INS has submitted changes to the burden hours with regards to Form I-94, Arrival/Departure Record and Form I-68, Canadian Border Boat Landing Permit. As a result of this regulation, the burden hours associated with Form I-94 have increased by 33,000 total annual hours. The OMB control number associated with Form I-94 collection is 1115-0077. The burden hours associated with Form I-68 have decreased by 830 hours. The OMB control number associated with Form I-68 is 1115-0065.

#### List of Subjects

##### 8 CFR Part 212

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

##### 8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

##### 8 CFR Part 235

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

##### 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is 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, 1127; 8 CFR part 2.

2. In § 212.1, paragraph (a) is revised to read as follows:

##### § 212.1 Documentary requirements for nonimmigrants.

\* \* \* \* \*

(a) *Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands.*

(1) *Canadian citizens.* A passport is not required except after a visit outside of the Western Hemisphere. A visa is not required.

(2) *Citizens of the British Overseas Territory of Bermuda.* A passport is not required except after a visit outside of the Western Hemisphere. A visa is not required.

(3) *Bahamian nationals or British subjects resident in the Bahamas.* A passport is required. A visa required of such an alien unless, prior to or at the time of embarkation for the United States on a vessel or aircraft, the alien satisfied the examining U.S. immigration officer at the Bahamas, that he or she is clearly and beyond a doubt entitled to admission, under section 212(a) of the Immigration and Nationality Act, in all other respects.

(4) *British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.* A passport is required. A visa is required of such an alien unless he or she arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

\* \* \* \* \*

#### PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

3. The authority citation for part 231 is revised to read as follows:

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

4. Section 231.1, is amended by:

a. Revising the last sentence in paragraph (d) introductory text; and by

b. Removing paragraphs (d)(1) and (d)(2).

The revision reads as follows:

##### § 231.1 Arrival manifest for passengers.

\* \* \* \* \*

(d) \* \* \* Citizens of Canada or the British Overseas Territory of Bermuda are not required to complete the departure portion of the Form I-94 if they are entering the United States for business or pleasure under section 101(a)(15)(B) of the Act, and intend to remain in the United States for less than 6 months.

\* \* \* \* \*

#### PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

5. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

6. Section 235.1 is amended by:

a. Revising paragraph (e) introductory text;

b. Revising paragraph (e)(1)(v); and by

c. Revising the last sentence in paragraph (e)(5)(ii).

The revisions read as follows:

##### § 235.1 Scope of examination.

\* \* \* \* \*

(e) *U.S. citizens, lawful permanent residents of the United States, and other aliens, entering the United States along the northern border, other than at a port-of-entry.* A citizen of Canada or a permanent resident of Canada who is a national of a country listed in § 217.2(a) of this chapter may, if in possession of a valid, unexpired, Canadian Border Boat Landing Permit (Form I-68) or evidence of enrollment in any other Service Alternative Inspections program (e.g., the Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS) or the Port Passenger Accelerated Service System (PORTPASS)), enter the United States by means of a pleasure craft along the northern border of the United States from time-to-time without further inspection. No persons other than those described in this paragraph may participate in this program.

Permanent residents of Canada who are nationals of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter must be in possession of a valid, unexpired passport issued by his or her country of nationality, and an unexpired multiple entry Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form, or an unexpired passport, valid unexpired United States visa and I-94 Arrival/Departure Form. When an entry to the United States is made by a person who is a Canadian citizen or a permanent resident of

Canada who is a national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter, entry may be made under this program only for a purpose as described in section 101(a)(15)(B)(ii) of the Act as a visitor for pleasure. Persons seeking to enter the United States for any other purpose must do so at a port-of-entry staffed by immigration inspectors. Persons aboard a vessel which has crossed the international boundary between the United States and Canada and who do not intend to land in the United States, other than at a staffed port-of-entry, are not required to be in possession of Form I-68, Canadian Border Boat Landing Permit, or evidence of enrollment in an Alternative Inspections program merely because they have crossed the international boundary. However, the Service retains the right to conduct inspections or examinations of all persons applying for admission or readmission to or seeking transit through the United States in accordance with the Act.

(1) \* \* \*

(v) A permanent resident of Canada who is a national of a Visa Waiver Program may apply for admission simultaneously with the Form I-68 application and thereby obtain a Form I-94 or I-94W.

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \* Participants who are permanent residents of Canada who are nationals of a Visa Waiver Program country listed in § 217.2(a) of this chapter must also be in possession of proper documentation as described in paragraph (e) of this section.

\* \* \* \* \*

## PART 286—IMMIGRATION USER FEE

7. The authority citation for part 286 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1356; 8 CFR part 2.

8. Section 286.9 is amended by revising paragraph (b)(4).

The revision reads as follows:

### § 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

\* \* \* \* \*

(b) \* \* \*

(4) A citizen or lawful permanent resident alien of the United States or a Canadian citizen or permanent resident of Canada who is a national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter who requests Form I-68, Canadian Border Boat Landing Permit, pursuant to § 235.1(e) of this chapter, for

entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at the time of application for Form I-68.

Dated: January 24, 2003.

**Michael J. Garcia,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 03-2164 Filed 1-30-03; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF STATE

### 22 CFR Part 41

[Public Notice 4163]

RIN 1400-AB43

### Visas: Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda

**AGENCY:** Department of State.

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** This rule amends the Department of State's regulation that allows certain permanent residents of Canada and Bermuda who share a common nationality with nationals of Canada or with British subjects in Bermuda to enter the United States without a passport or visa. The Department is taking this action in conjunction with the Immigration and Naturalization Service of the Department of Justice (INS) due to the heightened border security concerns following the events of September 11, 2001. Aliens affected by this change will hereafter be required to present a passport and a visa when applying for entry into the United States. The Department is also changing the reference in the current regulation to "British subjects in Bermuda". In the amended regulation, in accordance with recent legislation adopted by the United Kingdom, those persons will instead be referred to as "citizens of the Overseas Territory of Bermuda". Canadian nationals and citizens of the Overseas Territory of Bermuda will retain their current waiver privileges.

**DATES:** *Effective Date:* This rule is effective 45 days from the date of publication in the **Federal Register**.

*Comment Date:* Interested persons should submit comments on or before 60 days from date of publication in the **Federal Register**.

**ADDRESSES:** Submit comments, in duplicate, to H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State,

Washington, DC 20522-0113; or by e-mail to [visaregs@state.gov](mailto:visaregs@state.gov).

**FOR FURTHER INFORMATION CONTACT:** For information regarding the publication of this regulation under the Administrative Procedures Act contact Patrick A. Chairge, Legislation and Regulations Division, Visa Office, Room L603-C, SA-1, Department of State, Washington, DC 20520-0106, (202) 663-1260; or e-mail: [chairgepa@state.gov](mailto:chairgepa@state.gov). For information regarding the possible effect of this regulation on individual visa applicants or any group of applicants contact the Public Inquiries Division of the Directorate for Visa Services at (202) 663-1225, or by e-mail to [usvisa@state.gov](mailto:usvisa@state.gov).

### SUPPLEMENTARY INFORMATION:

#### On What Authority Has the Department Granted This Waiver?

Section 212(d)(4)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(4), permits the Secretary of State and the Attorney General, acting jointly, to waive the passport and visa requirements of section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7). This waiver is granted on the basis of reciprocity with respect to nationals of foreign contiguous territories or adjacent islands or for residents who have a common nationality with those nationals.

#### Who Currently Benefits From This Waiver?

Currently, subsection (b) of 22 CFR 41.2 benefits Canadian permanent residents who have a common nationality with Canadians, British subjects in Bermuda and aliens who have a common nationality with such subjects. The waiver thus includes citizens of Commonwealth countries as well as citizens of Ireland. Nationals of 54 countries currently benefit from this waiver.

#### Why Is the Department Removing Part of This Waiver?

In light of the terrorist attacks of September 11, 2001, the Department has determined that it is in the public interest to reconsider this waiver, in part. Findings from the Department's review indicate that some beneficiaries of the waiver who are lawful permanent residents of Canada or Bermuda include nationals from countries requiring special clearance procedures. Beneficiaries also include nationals from countries with high rates of fraud and abuse and nationals from countries with high nonimmigrant refusal rates. In view of these determinations, the Department is removing that part of its