DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AH41

Guaranteed Loan Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: This document corrects the telephone number for the facsimile machine (''fax'') for submission of public comments on the proposed rule entitled Guaranteed Loan Fees published May 15, 2006 (71 FR 27978–27980) and extends the comment period. The original comment period for the proposed rule closed on July 14, 2006, and FSA is extending it until August 4, 2006. Respondents who sent comments to the earlier fax number are encouraged to contact the person named below to find out if their comments were received and re-submit them to fax number below if necessary.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet at (202) 720–3889. All comments and supporting documents on this rule may be viewed by contacting the information contact. All comments received, including names and addresses, will become a matter of public record.

SUPPLEMENTARY INFORMATION:

(1) This document corrects the proposed rule entitled Guaranteed Loan Fees published May 15, 2006 (71 FR 27978–27980). Due to a drafting error the telephone number for the fax machine for submission of comments was incorrect. Although the machine of the person sending the comment would have indicated that the transmission failed, and a correct number could have been obtained by calling the agency contact, FSA has decided to correct the proposed rule and extend the comment period to ensure that all parties who wish to comment on the proposed rule are provided the maximum opportunity to do so. Accordingly, in the proposed rule, in the first column, in the **ADDRESSES** section, the fax number shown, ''202–690–6797'' is corrected to read ''202–720–6797.''

(2) As a result of the correction, this document also extends the comment period until August 4, 2006, in order to ensure that the public can submit timely comments.

Signed in Washington, DC, on July 21, 2006.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E6–11979 Filed 7–26–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

8 CFR Parts 215 and 235

[DHS 2005–0037]

RIN 1601–AA35

United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Enrollment of Additional Aliens in US–VISIT

AGENCY: Office of the Secretary, DHS.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Homeland Security established the United States Visitor and Immigrant Status Technology (US–VISIT) program in 2003 to verify the identities and travel documents of aliens. US–VISIT automates this verification by comparing biometric identifiers, and by comparing biometric identifiers with information drawn from intelligence and law enforcement watchlists and databases. Aliens subject to US–VISIT may be required to provide fingerscans, photographs, or other biometric identifiers upon arrival at, or departure from, the United States. Currently, aliens entering the United States pursuant to a nonimmigrant visa, or those traveling without a visa as part of the Visa Waiver Program, are subject to US–VISIT requirements, with certain limited exceptions. Under this proposed rule, the Department of Homeland Security will be extending US–VISIT requirements to all aliens with the exception of aliens who are specifically exempted and Canadian citizens applying for admission as B1/B2 visitors for business or pleasure.

DATE: Written comments must be submitted on or before August 28, 2006.

ADDRESSES: You may submit comments identified by Docket Number DHS–2005–0037 by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting the comments. All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- Written comments may be submitted to Michael Hardin or Craig Howie, Senior Policy Advisors, US–VISIT, Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Michael Hardin or Craig Howie, Senior Policy Advisors, US–VISIT, Department of Homeland Security, 1616 Fort Myer Drive, 18th Floor, Arlington, Virginia 22209, (202) 298–5200.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) in accordance with several statutory mandates that collectively require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens; verifies the identities of aliens; and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. Aliens subject to US–VISIT may be required to provide fingerscans, photographs, or other biometric identifiers upon arrival at, or departure from, the United States. DHS views US–VISIT as a biometrically-driven program designed to enhance the security of United States citizens and visitors while expediting legitimate travel and trade, ensuring the integrity of the immigration system, and protecting visitors' personal information.

The statutes that authorize DHS to establish US–VISIT include, but are not limited to:

- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000, Public Law 106–215, 114 Stat. 337 (June 15, 2000);
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (October 30, 2000);
- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 271, 353 (October 26, 2001);
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act) Public Law 107–173, 116 Stat. 543, 552 (May 14, 2002); and

• Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (December 17, 2004).

DHS provided detailed abstracts of the particular sections of the statutes that established and authorized the US–VISIT program in two prior rulemakings. See 69 FR 468 (January 5, 2004); 69 FR 53318 (August 31, 2004).

On January 5, 2004, DHS implemented the first phase of the US–VISIT biometric component by publishing an interim final rule in the **Federal Register** providing that aliens seeking admission into the United States through nonimmigrant visas must provide fingerprints, photographs, or other biometric identifiers upon arrival in or departure from the United States at air and sea ports of entry. Effective September 30, 2004, nonimmigrants seeking to enter the United States without visas under the Visa Waiver Program (VWP) also are required to provide biometric information under US–VISIT. 69 FR 53318 (August 31, 2004). US–VISIT is now operational for entry at 115 airports, 15 sea ports, and at 154 land border ports of entry. The most up-to-date list of ports of entry where US–VISIT is operational can be found at: *http://www.dhs.gov/usvisit.*

The following categories of aliens currently are expressly exempt from US–VISIT requirements:

• Aliens admitted on an A–1, A–2, C–3, G–1, G–2, G–3, G–4, NATO–1, NATO–3, NATO–4, NATO–5, or NATO–6 visa;

• Children under the age of 14;

• Persons over the age of 79; and

• Certain officials of the Taipei Economic and Cultural Representative Office and members of their immediate families seeking admission on E–1 visas.

8 CFR 235.1(d)(1)(iv). In addition, the Secretary of State and Secretary of Homeland Security may jointly exempt classes of aliens from US–VISIT. The Secretaries of State and Homeland Security, as well as the Director of the Central Intelligence Agency, also may exempt any individual from US–VISIT. 8 CFR 235.1(d)(iv)(B).

In many cases, US–VISIT begins overseas, at United States consular offices issuing visas, where aliens' biometrics (digital finger scans and photographs) are collected and checked against a database of known criminals, suspected terrorists, and those who have previously violated immigration laws. When the alien arrives at the port of entry, US–VISIT compares the biometrics of the person (finger scans and a digital photograph) to verify that the person at the port of entry is the same person who received the visa. For those whose biometrics were not captured overseas, a Customs and Border Protection (CBP) officer at the port of entry collects digital finger scans and a digital photograph of the alien. These biometrics may be

• Checked against watchlists and previous uses of the document;

• Verified at the time of exit; and

• Compared during subsequent interactions, such as a future admission.

There are additional aliens that have not yet been subject to the requirements of US–VISIT, but who are not expressly exempt from US–VISIT requirements. Through this proposed rule, DHS proposes to amend its regulations to expand DHS biometric collection and processing through the US–VISIT program to all aliens except those specifically exempted. DHS will implement this rule in a way that minimizes risk of impact to travel and trade.[1]

DHS has determined that expanding US–VISIT to additional aliens will improve public safety, national security, and the integrity of the immigration process. Establishing and verifying the identity of an alien and whether that alien is admissible to the United States based on all relevant information is critical to the security of the United States and the enforcement of the United States immigration laws. Processing additional aliens in US–VISIT reduces the risk that an individual traveler's identity (and travel document) could be used by another individual to enter the United States. By linking the alien's biometric information with the alien's travel documents, DHS reduces the likelihood that another individual could later assume that identity or use that document to gain admission to the United States.

At present, US–VISIT biometrically screens alien arrivals at all air and sea ports of entry at primary inspection. US–VISIT also screens alien arrivals at land border ports of entry during secondary inspection rather than primary inspection because of the volume and facility limitations of the land border ports. Referral of aliens to secondary inspection at the land border ports of entry is premised on processes that already require secondary inspection (*e.g.*, Form I–94 issuance) or an officer's indication that further investigation of the alien's identity or admissibility is needed to properly determine that the alien is admissible.

Since US–VISIT biometric processing was initiated on January 5, 2004, the program has successfully identified a number of aliens with criminal or immigration violations that would not otherwise have been known. Between January 5, 2004, and May 25, 2006, DHS took adverse action against more than 1160 individuals based on information obtained through the US–VISIT biometric screening process. By ''adverse action,'' DHS means that the alien was:

• Arrested pursuant to a criminal arrest warrant;

• Denied admission, placed in expedited removal, and returned to the country of last departure; or

• Otherwise detained and denied admission to the United States.

Adding additional aliens to the US–VISIT program will likely result in DHS identifying additional aliens who are inadmissible or who otherwise present security and criminal threats, including those who may be traveling improperly on previously established identities and those who potentially pose a threat to the security interests of the United States.

II. Additional Aliens Subject to US–VISIT

A. Specific Groups of Aliens Proposed To Be Added

Under existing regulations, DHS has been collecting and storing biometric data on specific classes of aliens in US–VISIT. Nonimmigrant aliens seeking admission to the United States pursuant to a nonimmigrant visa, B–1/B–2 Visa and Border Crossing Card (Form DSP 150), or under the Visa Waiver Program, currently provide biometrics for processing in US–VISIT. 8 CFR 235.1(d)(1)(ii). This proposed change to the regulations would permit enrollment of any alien in US–VISIT, with the exception of those Canadian citizens applying for admission as B–1/B–2 visitors for business or pleasure, and those specifically exempted.

Several large classes of aliens will be affected by this change in the regulations, including:

• Lawful Permanent Residents (LPRs).

• Aliens seeking admission on immigrant visas.

• Refugees and asylees.

[1] Immediately following the introduction of US–VISIT in January 2004, CBP introduced a ''wait time mitigation strategy.'' In the event that wait times at air and sea primary inspection last longer than one hour, and if the threat level was at yellow, green, or blue, a port may incrementally relieve congestion by eliminating the fingerprinting requirement for successive classifications of people, for example, aliens aged 14–17 when accompanied by an adult, or aliens between the ages of 60–79. However, this mitigation strategy has rarely been needed even after the inclusion of Visa Waiver Program aliens. Nonetheless, the procedures remain in place and can be used following the inclusion of additional aliens, if necessary.

• Certain Canadian citizens who receive a Form I–94 at inspection or who require a waiver of inadmissibility.

• Aliens paroled into the United States.

• Aliens applying for admission under the Guam Visa Waiver Program.

The authorizing statutes, which all refer to ''aliens'' without differentiation, support the inclusion of lawful permanent residents (LPRs) into the US–VISIT program. See section 101(a)(3) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101(a)(3) (''The term 'alien' means any person not a citizen or national of the United States''). For an LPR, a Form I–551, permanent resident card, serves as a travel or entry document. Pursuant to 8 CFR 211.1(a)(2), a Form I–551 is a documentary substitute for an immigrant visa for readmission to the United States as a permanent resident. Accordingly, the US–VISIT biometric collection will now apply to LPRs.

DHS is not proposing that LPRs submit any additional information above and beyond that which is currently required. As part of the adjustment of status process, under current regulations, an alien between the ages of 14 and 79 (the same age parameters as applied to US–VISIT enrollment and verification) must submit a set of 10 fingerprints and photographs to DHS, Citizenship and Immigration Services (USCIS), as applicable. (See Form I–485, ''Application to Register Permanent Residence or Adjust Status''). As part of the immigrant visa BioVisa process, the Department of State has collected two index finger prints. Thus, many LPRs have already submitted fingerprints and, for US–VISIT purposes, taking finger scans at the time of admission will be a biometric verification of the LPR's identity against those prints previously collected. However, DHS does not have electronically-searchable fingerprints for all LPRs. When those LPRs are encountered, their finger scans will be collected for an initial electronic enrollment. The LPR will provide the same biometrics (finger scans, photograph), under either the ''verification'' or ''enrollment'' scenario. There is no difference in what information is collected from the perspective of the LPR or in how other aliens are processed.

Similarly, DHS already possesses biometric data through the USCIS application process for asylees and refugees. *See, e.g.*, Form I–589 (Application for Asylum). To the greatest extent practicable, DHS will use this existing information to initially ''enroll'' these aliens into US–VISIT. The US–VISIT process at ports of entry is generally therefore a verification against the biometric information previously submitted to DHS, to ensure that the alien is the person whom he or she claims to be.

The inclusion of aliens being admitted with an immigrant visa is to ensure parity with LPRs and because an immigrant visa is a United States-issued travel document. As noted above, these aliens submitted fingerprints as part of the immigrant visa application process. Aliens applying for admission with an immigrant visa are currently submitting fingerprints and photographs as part of the admission process.

Most Canadians traveling from within the Western Hemisphere do not require a visa or other documentation to enter the United States for short business or pleasure trips. This rule does not change 8 CFR 212.1(a)(1), which exempts those Canadian citizens from the requirement to present a passport or nonimmigrant visa prior to admission into the United States. This will be addressed in upcoming rulemakings involving the Western Hemisphere Travel Initiative. See 70 FR 52037 (September 1, 2005) (ANPRM). Canadians, other than those described below, will not be enrolled in, or verified against, US–VISIT at this time. Canadian citizens accustomed to border crossings for the purposes of shopping, visiting friends and family, or taking a holiday in the United States (typically activities encompassed by the nonimmigrant B–2, visitor for pleasure category) are not included in US–VISIT by the provisions of this proposed rule.

Canadians who would be included in US–VISIT as a result of adoption of this proposed rule will be those issued a Form I–94, including:

(1) Canadians applying for admission in the following nonimmigrant classifications:

• C, aliens in transit to or through the United States;

• D, alien crew members (Form I–95);

• F, all alien students and dependents;

• H, all alien specialty, nurse, temporary agricultural and nonagricultural workers, trainees and dependents;

• I, all representatives of foreign media and dependents;

• J, exchange visitors and dependents;

• L, intracompany transferees and dependents;

• M, vocational or nonacademic student and dependents;

• O, aliens of extraordinary ability or achievement, including assistants and dependents;

• P, aliens internationally recognized as athletes, entertainers or participants in a culturally unique program and dependents;

• Q–1 and Q–3, international cultural exchange program participant and dependents;

• R, religious workers and dependents;

• S, alien witnesses or informants and dependents;

• T, victims of trafficking and dependents;

• TN under the provisions of the North American Free Trade Agreement; and

(2) Canadians who are granted a waiver of inadmissibility in order to enter the United States.

Processing these Canadian citizens biometrically through US–VISIT will ensure parity with other aliens applying for admission to the United States, and it will increase security. Aliens who are currently required to present a valid nonimmigrant visa are required to provide biometrics as part of admission, including those Canadian citizens required to obtain either an E (Treaty Trader or Investor) nonimmigrant or K (fiancé/fiancée or spouse of a United States citizen) nonimmigrant visa. Canadians who require a waiver of inadmissibility are already required to provide biometric data in secondary inspection at the port of entry as part of the waiver application. This change in regulations will permit DHS to better verify identity and determine if new derogatory information exists on subsequent encounters.

DHS acknowledges that some Canadian citizens holding valid nonimmigrant status, such as an H–1B worker, commute into the United States daily for purposes of employment while continuing to reside in Canada. At northern land borders, CBP officers at ports of entry have existing protocols for this situation and will not refer Canadian commuter to secondary inspection for a biometric verification against the US–VISIT system. These Canadian citizens will be screened biometrically via US–VISIT when applying for a new multiple-entry Form I–94 which typically happens at approximately six month intervals or when referred to secondary inspection for other reasons.

All aliens paroled into the United States will provide biometrics and be processed through US–VISIT. Parolees are aliens who are permitted to enter the United States at a port of entry without being legally admitted, and may be subject to specific terms as a condition of the parole. Section 212(d) of the Act, 8 U.S.C. 1182(d). Because these aliens

are ultimately allowed physically into the United States, they should be subject to the same requirements as other aliens admitted to the United States.

B. Mechanism for Enrolling Additional Aliens

Operationally, these additional aliens will be processed through US–VISIT differently at the air and sea ports of entry than at the land ports of entry.

At air and sea ports of entry, the controlled environment—where all arriving aliens and United States citizens are interviewed by a CBP officer—currently allows for biometric collection and US–VISIT processing at primary inspection for the majority of the arriving aliens addressed in this rulemaking. Therefore, DHS expects to be able to include all non-exempt aliens into US–VISIT almost immediately at the air and sea ports.

At the land border ports of entry, where aliens arrive by vehicle and as pedestrians, the additional aliens will be processed through US–VISIT somewhat differently at the time of initial application for admission to the United States. LPRs will go through biometric collection if they are referred to secondary inspection by the primary inspecting officer. The officer has the discretion to send any person to secondary inspection if the officer has any question as to the true identity of person bearing the document or of person's admissibility to the United States. The remaining aliens will be processed through US–VISIT in secondary inspection the same way other aliens currently subject to US–VISIT (those that require a Form I–94) at the land ports of entry. This will not impose an additional imposition since these aliens are already processed in secondary since they generally require a Form I–94.

DHS is including additional aliens into the US–VISIT program in the same way it has included aliens with Form DSP–150 Border Crossing Cards (BCCs). To date, at land borders only holders of BCCs who use the BCC as a visa and thus require a Form I–94 are generally required to be processed through US–VISIT. US–VISIT currently does not process, on a regular basis, applicants for admission with BCCs who wish to use the document simply as a BCC, which authorizes them to stay in the United States for up to 30 days, within 25 miles of the United States-Mexican border (75 miles in parts of Arizona). This policy has allowed DHS to take a measured approach to implementing US–VISIT at the land borders and to ensure that US–VISIT processing does not have a negative impact on the land border communities. However, even under this current policy, an alien seeking admission with a BCC and not obtaining a Form I–94 can still be required to undergo US–VISIT processing at the discretion of the inspecting officer.

DHS requests public comment on all of these issues, but would regard as most helpful comments on the ramifications of adding additional classifications at land borders. DHS places a great deal of importance on input from the public concerning the performance and implementation of the US–VISIT program. In particular, DHS seeks input on specific steps or milestones that should take place prior to processing future additional classifications of aliens in US–VISIT at land borders.

III. Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). There is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities and DHS does not believe that US–VISIT processing will impede the free flow of travel and trade, especially such travel and trade relating directly to small entities.

B. Executive Order 12866

Under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993) (as amended), DHS has determined that this proposed rule is a ''significant regulatory action'' because there is significant public interest in issues pertaining to national security, immigration policy, and international trade and travel relating to this proposed rule. Accordingly, this proposed rule has been submitted to the Office of Management and Budget (OMB) for review.

DHS currently processes through US–VISIT, using biometrics, all aliens entering the United States with a nonimmigrant visa or under the Visa Waiver Program at any air, sea, or land port of entry. As of May 25, 2006, US–VISIT biometric screening has resulted in DHS's ability to take adverse action against 1160 aliens whose prior criminal actions rendered the alien ineligible for admission or who pose a security threat to the United States. This proposed rule will strengthen the ability of CBP officers to identify and take action against persons whose conduct renders them security threat and therefore ineligible for admission. For example, DHS expects that, just as 1160 nonimmigrants have been intercepted by DHS using the biometric screening of US–VISIT, additional individuals applying for admission with permanent resident cards or reentry permits will be found, by the comparison of biometric identifiers, to have violated the terms of their permanent resident status. Such violations may be the result of the commission of various crimes, tampering with the actual permanent resident card, or attempting to gain entry by attempting to assume the identity of another LPR. Such violations could ultimately result in the LPR losing permanent resident status and possible removal from the United States, or the exclusion or removal of an individual from the United States for fraud. Based on the number of permanent resident cards that are seized by CBP officers at ports of entry (approximately 15,000 in FY 2005) and DHS Forensic Document Laboratory analyses each month (approximately 250), DHS estimates that US–VISIT biometric screening has the potential to identify a significant number of aliens each month in need of additional investigation prior to being admitted to the United States. In addition, based on the numbers of refugee travel documents (519) and immigrant visas (2,287) that CBP officers intercepted in attempts to use the documents fraudulently by aliens during FY2005, US–VISIT estimates that interception of fraudulently used documents will increase with the introduction of biometric verification of identity.

DHS expects similar results—an increase in the number of aliens identified with possible admission-related or immigration problems—by including the other groups of aliens highlighted in this proposed rule into the US–VISIT biometric screening protocol. For example, aliens holding immigrant visas have a six-month

validity window from the date the visa is issued to arrive in the United States. Events could occur during this time period that could result in the alien being found inadmissible to the United States that might only be discovered as the result of biometric comparisons. Over the last several years, over one million aliens have entered the United States annually on immigrant visas.

Refugees and asylees—appearing before Government officers in many instances without the benefit of even the most basic form of identity documentation—potentially pose a risk to public safety and security. In many instances, the United States Government is providing these individuals with a new identity. It is important to recognize that for refugees and asylees, US–VISIT will be verifying the identity of these aliens by comparing the biometrics collected at the time of an application for admission to the United States with the biometrics that were already collected during the initial refugee or asylee adjudication process.

Similarly, aliens paroled into the United States warrant the additional screening derived by using US–VISIT. While the majority of these aliens have been screened overseas in order to determine whether a parole should be granted, it is in the security interest of the United States to verify that the individuals who arrive at the border are the same individuals screened for parole. Approximately 150,000 aliens are granted parole into the United States each year.

The costs associated with implementation of this proposed rule for select travelers not otherwise exempt from US–VISIT requirements include an increase of approximately 15 seconds in initial inspection processing time (additional biometric collection) per applicant over the current average inspection time. No significant difference is anticipated in the processing of an alien traveling with a visa or under the VWP, as compared to any other alien who is exempted from the visa requirements. These ports of entry encompass over 99% of all air and sea border traffic and over 95% of all land border traffic for these alien classifications. DHS, through CBP, has carefully monitored the impact of US–VISIT biometric data collection on the inspection of applicants for admission at air, sea, and land borders. At air and sea ports, internal studies have established that the biometric collection adds no more than 15 seconds on average to the inspection processing time at primary inspection. At land border ports, internal studies have shown positive results, and in some POEs the amount of time to process an alien for admission using the US–VISIT process was actually shorter than it had been previously due to the automation of data collection and implementation of a standard process. A close examination of the first three land ports of entry to begin US–VISIT biometric collection as part of admission found that the average processing time for applicants requiring a Form I–94 or Form I–94W actually decreased and sometimes resulted in significantly reduced processing times.

Port of entry	Average form I–94 processing time before implementing US–VISIT	Average form I–94 processing time after implementing US–VISIT
Port Huron, MI	11 minutes, 42 seconds	9 minutes, 58 seconds.
Douglas, AZ	4 minutes, 16 seconds	3 minutes, 12 seconds.
Laredo, TX	12 minutes, 10 seconds	2 minutes, 18 seconds.

Accordingly, DHS does not believe that US–VISIT processing impedes the free flow of travel and trade.

In addition, over time, the efficiency with which the process is employed will increase, and the process can be expected to further improve. DHS will not apply this rule to all aliens crossing land borders until technological advancements are identified, tested, and implemented to ensure that the land border commerce and traffic concerns are significantly mitigated. DHS may choose to implement this rule in the air and sea environment before the land border environment. As mentioned in the August 31, 2004, rule, DHS has developed a number of mitigation strategies, not unlike those already available to CBP under other conditions to mitigate delays. DHS, while not anticipating significant delays for travelers, will nevertheless develop procedures and strategies to deal with any significant delays that may occur through unanticipated and unusually heavy travel periods.

C. Executive Order 13132

Executive Order 13132 requires DHS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Such policies are defined in the Executive Order to include rules that 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.''

DHS has analyzed this proposed rule in accordance with the principles and criteria in the Executive Order and has determined that this proposed rule would not have a substantial direct effect 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, DHS has determined that this proposed rule does not have federalism implications. This rule provides for the collection by the Federal Government of biometric identifiers from certain aliens seeking to enter or depart from the United States, for the purpose of improving the administration of federal immigration laws and for national security. States do not conduct activities with which the provisions of this specific rule would interfere.

D. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that the regulation clearly identifies preemptive effects, effects on existing federal laws and regulations, identifies any retroactive effects of the proposal, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (March

22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA requires DHS to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome option that achieves the objective of the rule. Section 205 allows DHS to adopt an alternative, other than the least costly, most cost-effective, or least burdensome option if DHS publishes an explanation with the final rule. This proposed rule will not result in the expenditure, by State, local or tribal governments, or by the private sector, of more than $100 million annually. Thus, DHS is not required to prepare a written assessment under UMRA.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, as this proposed rule will not result in an annual effect on the economy of $100 million or more.

G. Trade Impact Assessment

The Trade Impact Agreement Act of 1979, Public Law 96–39, tit IV, secs. 401–403, 93 Stat. 242 (July 26, 1979), as amended (19 U.S.C. 2531–2533), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for United States standards. DHS has determined that this proposed rule will not create unnecessary obstacles to the foreign commerce of the United States and that any minimal impact on trade that may occur is legitimate in light of this rule's benefits for the national security and public safety interests of the United States. In addition, DHS notes that this effort considers and utilizes international standards concerning biometrics, and will continue to consider these standards when monitoring and modifying the program.

H. National Environmental Policy Act of 1969

DHS will analyze the actions contained in this proposed rule for purposes of complying with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and Council on Environmental Quality (CEQ) regulations, 40 CFR parts 1501–1508. Depending upon the environmental impacts, DHS will conduct the appropriate level of analysis in accordance with NEPA.

I. Paperwork Reduction Act

This proposed rule establishes the process by which DHS will require certain aliens who cross the borders of the United States to provide fingerprints, photograph(s), and potentially other biometric identifiers upon their arrival and departure at designated ports. These requirements constitute an information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB Control Number for this collection is 1600–0006.

Since this rule provides a mechanism for the addition of new aliens by Notice in the **Federal Register** who may be photographed and fingerprinted, and who may be required to provide other biometric identifiers, DHS has submitted the required Paperwork Reduction Change Worksheet (OMB–83C) to the Office of Management and Budget (OMB) reflecting the increase in burden hours and OMB has approved the changes.

J. Public Privacy Interests

As discussed in the January 5, 2004, (69 FR 468) and August 31, 2004, (69 FR 53318) interim rules, US–VISIT records will be protected consistent with all applicable privacy laws and regulations. Personal information will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside US–VISIT other than as authorized by law and as required for the performance of official duties. In addition, careful safeguards, including appropriate security controls, will ensure that the data is not used or accessed improperly. The DHS Chief Privacy Officer will review pertinent aspects of the program to ensure that these proper safeguards and security controls are in place. The information will also be protected in accordance with the DHS published privacy policy for US–VISIT. Affected persons will have a three-stage process for redress if there is concern about the accuracy of information. An individual may request a review or change, or a DHS officer may determine that an inaccuracy exists in a record. A DHS officer can modify the record. If the individual remains dissatisfied with this response, he or she can request assistance from the US–VISIT Privacy Officer, and can ask that the Privacy Officer review the record and address any remaining concerns.

The DHS Privacy Office will advise US–VISIT to further ensure that the information collected and stored in IDENT and other systems associated with US–VISIT is being properly protected under the privacy laws and guidance. US–VISIT also has a program-dedicated Privacy Officer to handle specific inquiries and to provide additional advice concerning the program.

Finally, DHS will maintain secure computer systems that will ensure that the confidentiality of an individual's personal information is maintained. In doing so, the Department and its information technology personnel will comply with all laws and regulations applicable to government systems, such as the Federal Information Security Management Act of 2002, Title X, Public Law 107–296, 116 Stat. 2259–2273 (Nov. 25, 2002) (codified in scattered sections of titles 6, 10, 15, 40, and 44 U.S.C.); Information Management Technology Reform Act (Clinger-Cohen Act), 40 U.S.C. 11101 *et seq.*; Computer Security Act of 1987, 40 U.S.C. 1441 *et seq.* (as amended); Government Paperwork Elimination Act, 44 U.S.C. 101, 3504; and Electronic Freedom of Information Act of 1996, 5 U.S.C. 552.

List of Subjects

8 CFR Part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR Part 235

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 215—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

1. The authority citation for part 215 continues to read as follows:

Authority: 8 U.S.C. 1104; 1184; 1185 (pursuant to E.O. 13323, published January 2, 2004), 1365a and note, 1379, 1731–32.

2. Section 215.8 is proposed to be amended by revising paragraph (a)(1) as follows:

§ 215.8 Requirements for biometric identifiers from aliens on departure from the United States.

(a)(1) The Secretary of Homeland Security, or his designee, may establish pilot programs at land border ports of entry, and at up to fifteen air or sea ports of entry, designated through notice in the **Federal Register**, through which the Secretary or his delegate may require an alien admitted to or paroled into the United States, other than aliens exempted under paragraph (a)(2) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who were not otherwise required to present a visa or have been issued Form I–94 or Form I–95 upon arrival at the United States, who departs the United States from a designated port of entry, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

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

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323 published on January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.

4. Sections 235.1 is proposed to be amended by revising paragraphs (d)(1)(ii) as follows:

§ 235.1 Scope of examination.

* * * * *

(d) * * *

(1) * * *

(ii) The Secretary of Homeland Security or his delegate may require any alien seeking admission to or parole into the United States, other than aliens exempted under paragraph (d)(1)(iv) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who are not otherwise required to present a visa or be issued Form I–94 or Form I–95 for admission or parole into the United States, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States. The failure of an applicant for admission to comply with any requirement to provide biometric identifiers may result in a determination that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act or any other law.

* * * * *

Dated: July 13, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–11993 Filed 7–26–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771 and 774

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–05–22884]

RIN 2125–AF14 and 2132–AA83

Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This proposal would modify the procedures for granting approvals under 23 U.S.C. 138 and 49 U.S.C. 303 (hereafter referred to as ''Section 4(f)'' [1]) in several ways. First, this proposal clarifies the factors to be considered and the standards to be applied when determining if an alternative for avoiding the use of Section 4(f) property is feasible and prudent. Second, this NPRM proposes to clarify the factors to be considered when selecting a project alternative in situations where all alternatives use Section 4(f) property and no feasible and prudent avoidance alternative exists. Third, this proposal would establish procedures for determining that the use of a Section 4(f) property has *de minimis* impacts. Fourth, the proposal updates the regulation to recognize statutory and common-sense exceptions for uses that advance Section 4(f)'s preservationist goals; as well as the option of conducting certain Section 4(f) evaluations on a programmatic basis. Fifth, this proposal would move the Section 4(f) regulations out of the agencies' National Environmental Policy Act regulations (23 CFR part 771, ''Environmental Impact and Related Procedures''), into a separate part of 23 CFR, with a reorganized structure that is easier to use.

DATES: Comments must be received on or before September 25, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written Comments: Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

Comments. You may submit comments identified by the docket number (FHWA–05–22884) by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2478.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Supplementary Information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to the Docket Management System (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: For FHWA, Diane Mobley, Office of the

[1] Section 4(f) of the Department of Transportation Act of 1966 was technically repealed in 1983 when it was codified without substantive change at 49 U.S.C. 303. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions. This regulation continues to refer to Section 4(f) as such because it would create needless confusion to do otherwise; the policies Section 4(f) engendered are widely referred to as ''Section 4(f)'' matters.