

Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

#### History

On August 28, 2007, the U.S. Army requested the FAA take action to modify R-5107A, White Sands Missile Range, NM, by subdividing the area to reduce the size of R-5107A and establish R-5107K. The U.S. Army assessed the utilization of the existing R-5107A, and determined their operations are contained to the west side of War Highway 11, 70 to 90 percent of the time. The requested action makes the unused area available for use by nonparticipating civil aircraft. The U.S. Army has also determined that a small area at the northwest corner of the existing R-5107A is not needed and requested a boundary reduction. The subdivision of R-5107A, into R-5107A and R-5107K, will allow airspace managers the opportunity to return unused airspace east of War Highway 11 for use by nonparticipating civil aircraft during periods of inactivity.

#### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising R-5107A, White Sands Missile Range, NM, by dividing the area into 2 sub areas, R-5107A and R-5104K. Together, R-5107A and R-5107K will occupy the same vertical, but slightly smaller lateral area by eliminating the northwest corner of the existing R-5107A. Additionally, R-5107K will only be active 0700-2000 local time, Monday through Friday, rather than the current continuous time of designation. Since this action permits greater access to airspace by both Visual Flight Rules and Instrument Flight Rules aircraft during periods of activation of R-5107A and R-5107K, notice and public procedures under 5 U.S.C. 533(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends restricted areas in New Mexico.

#### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

#### List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

#### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

#### PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

#### § 73.51 [Amended]

■ 2. § 73.51 is amended as follows:

\* \* \* \* \*

#### R-5107A White Sands Missile Range, NM [Revised]

**Boundaries.** Beginning at lat. 32°19'30" N., long. 106°34'02" W.; to lat. 32°19'30" N., long. 106°23'49" W.; to lat. 32°14'33" N., long. 106°23'46" W.; to lat. 32°12'17" N., long. 106°24'17" W.; to lat. 32°08'51" N., long. 106°30'01" W.; to lat. 32°08'40" N., long. 106°34'02" W.; to the point of beginning.

\* \* \* \* \*

#### R-5107K White Sands Missile Range, NM [New]

**Boundaries.** Beginning at lat. 32°19'30" N., long. 106°23'49" W.; to lat. 32°19'30" N., long. 106°20'38" W.; to lat. 32°24'48" N., long. 106°09'02" W.; to lat. 32°23'18" N., long. 106°07'05" W.; to lat. 32°05'00" N., long. 106°18'22" W.; to lat. 32°05'00" N., long. 106°29'02" W.; to lat. 32°06'20" N., long. 106°34'02" W.; to lat. 32°08'40" N., long. 106°34'02" W.; to lat. 32°08'51" N., long. 106°30'01" W.; to lat. 32°12'17" N., long. 106°24'17" W.; to lat. 32°14'33" N., long. 106°23'46" W.; to the point of beginning.

**Designated altitudes.** Surface to unlimited.  
**Time of designation.** 0700-2000 local time, Monday-Friday, other times by NOTAM.

**Controlling agency.** FAA, Albuquerque, ARTCC.

**Using agency.** Commanding General, U.S. Army Air Defense Artillery Center and Fort Bliss Center, (USAADCENFB) Fort Bliss, TX.

\* \* \* \* \*

Issued in Washington, DC, on August 14, 2008.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

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## DEPARTMENT OF STATE

### 22 CFR Part 41

[Public Notice: 6324]

#### Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended: Fingerprinting

**AGENCY:** Department of State.

**ACTION:** Final rule.

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

**DATES:** This rule is effective on August 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, (202) 663-1202, e-mail (robertsonc3@state.gov).

**SUPPLEMENTARY INFORMATION:**

**Why is the Department promulgating this rule?**

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

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

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

**Must all applicants be fingerprinted?**

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

**Regulatory Findings**

*Administrative Procedure Act*

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rulemaking procedures set forth at 5 U.S.C. 553.

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

Because this final rule is exempt from notice and comment rulemaking under

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

*The Unfunded Mandates Reform Act of 1995*

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

*The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

*Executive Order 12866: Regulatory Review*

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

*Executive Orders 12372 and 13132: Federalism*

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

*Executive Order 12988: Civil Justice Reform*

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 41**

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and Visas.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR part 41 to read as follows:

**PART 41—[AMENDED]**

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

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

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

**§ 41.105 Supporting documents and fingerprinting.**

\* \* \* \* \*

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

\* \* \* \* \*

Dated: August 6, 2008.

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

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