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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

RIN 1601-AA54

Designation of Greece for the Visa Waiver Program

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule; technical amendment.

SUMMARY: Citizens and eligible nationals of participating Visa Waiver Program countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. On March 4, 2010, the Secretary of Homeland Security, in consultation with the Secretary of State, designated Greece as a country that is eligible to participate in the Visa Waiver Program. Accordingly, this rule updates the list of countries authorized to participate in the Visa Waiver Program by adding Greece.

DATES: This final rule is effective on April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Gianfranco Corti, Department of Homeland Security, Office of Policy, (202) 282-8732.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries if

certain requirements are met. Those requirements include, without limitation: (1) Meeting the statutory rate of nonimmigrant visa refusal for nationals of the country; (2) a government certification that it issues machine-readable passports that comply with internationally accepted standards; (3) a U.S. government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (4) an agreement to report, or make available through other designated means, to the U.S. government information about the theft or loss of passports; (5) government acceptance for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final order of removal; and (6) an agreement with the United States to share information regarding whether citizens or nationals of the country represent a threat to the security or welfare of the United States or its citizens.

The INA also sets forth requirements for continued eligibility and, where appropriate, probation and/or termination of program countries.

The designated countries in the VWP include Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.¹ See 8 CFR 217.2(a).

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. To travel to the United States under the VWP, an alien must be from a participating country and must satisfy the following:

- (1) Be seeking entry as a tourist for ninety days or less;
- (2) Be a national of a program country;
- (3) Present an electronic passport or a machine-readable passport issued by a designated VWP participant country to the air or vessel carrier before departure;²
- (4) Execute the required immigration forms;
- (5) If arriving by air or sea, arrive on an authorized carrier;
- (6) Not represent a threat to the welfare, health, safety or security of the United States;
- (7) Have not violated U.S. immigration law during a previous admission under the VWP;
- (8) Possess a round-trip ticket;
- (9) Waive the right to review or appeal a decision regarding admissibility or to contest, other than on the basis of an application for asylum, any action for removal; and
- (10) Obtain an approved travel authorization via the Electronic System for Travel Authorization (ESTA) in advance of travel. For more information about the ESTA, please see the interim final rule at 73 FR 32440 (June 9, 2008), and implementing notice at 73 FR 67354 (November 13, 2008). See Sections 217(a) and 217(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a)-(b). See also 8 CFR part 217.

DHS, in consultation with the Department of State, has evaluated the country of Greece for VWP designation to ensure that it meets the requirements set forth in section 217 of the INA, as amended by section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act). The Secretary has determined that Greece has satisfied the statutory requirements to be a VWP country; therefore, the Secretary, in consultation with the Secretary of State, has designated Greece as a program country.³

This final rule adds Greece to the list of countries authorized to participate in

² For countries designated as VWP member countries prior to November 17, 2008, passports issued before October 26, 2006 [see 8 U.S.C. 1732(c)(2)], need not contain the electronic chip that includes the biographic and biometric information of the passport holder provided the passports comply with the International Civil Aviation Organization's machine-readable standards.

³ The Secretary of State nominated Greece for participation in the VWP on August 31, 2007.

¹ 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.

the VWP. Accordingly, beginning April 5, 2010, citizens and eligible nationals from Greece may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule merely lists a country that the Secretary of Homeland Security, in consultation with the Secretary of State, has designated as a VWP eligible country in accordance with 8 U.S.C. 1187(c). This amendment is a technical change simply updating the list of VWP eligible countries. Therefore, notice and comment for this rule are unnecessary and contrary to the public interest because the rule has no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

This final rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States, because it advances the President's foreign policy goals, involves a bilateral agreement that the United States has entered into with Greece, and directly involves relationships between the United States and its alien visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(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 a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required "to publish a general notice of proposed rulemaking for any proposed rule." Because this rule is being issued

as a final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

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). Accordingly, 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.

C. 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.

D. Executive Order 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

E. Executive Order 13132

The 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, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. 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.

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to the Regulations

■ For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217), as set forth below.

PART 217—VISA WAIVER PROGRAM

■ 1. The general authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

* * * * *

■ 2. In section 217.2 the definition of the term "Designated country" in paragraph (a) is revised to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. 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. After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program.

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Janet Napolitano,

Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2009-0921; Airspace Docket No. 09-AWA-3]

RIN 2120-AA66

Revision of Prohibited Area P-49; Crawford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Prohibited Area 49 (P-49) Crawford, TX. While the United States Secret Service (USSS) recognizes the ongoing security