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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 212, 214, and 233

[Docket No. USCBP–2023–0020; CBP Dec. 23–07]

RIN 1651–AB37

### Guam-Commonwealth of the Northern Mariana Islands (CNMI) Visa Waiver Program Automation and Electronic Travel Authorization; Creation of CNMI Economic Vitality & Security Travel Authorization Program (EVS–TAP)

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This rule amends the Department of Homeland Security regulations to require persons intending to travel to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program (G–CNMI VWP) to submit Form I–736 electronically in advance of travel and receive an electronic travel authorization prior to embarking on a carrier for travel to Guam or the CNMI. Under the current G–CNMI VWP regulations, a paper U.S. Customs and Border Protection (CBP) Form I–736 is presented to CBP upon arrival. This rule also establishes the CNMI Economic Vitality & Security Travel Authorization Program (EVS–TAP) as a restricted sub-program of the G–CNMI VWP. This program is being established based on recommendations made pursuant to consultations between the United States and the CNMI under Section 902 of the Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Once implemented, the CNMI EVS–TAP will allow prescreened nationals of the People's Republic of China to travel to the CNMI without a visa under specified conditions.

#### DATES:

*Effective date:* This interim final rule is effective September 30, 2024.

*Comment date:* Comments must be received by March 18, 2024.

*Implementation date:* CNMI EVS–TAP will be implemented 45 days after publication of a subsequent notification in the **Federal Register**.

**ADDRESSES:** Please submit any comments, identified by docket number [USCBP–2023–0020], by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* 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.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

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#### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. The Department of Homeland Security (DHS) and CBP also invite comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data,

information, or authority that supports the recommended change.

## II. Background

### A. Legal Authority

The Secretary of Homeland Security (Secretary) has broad authority to administer and enforce the immigration and naturalization laws of the United States. *See* section 103(a)(1) of the Immigration and Nationality Act of 1952 (INA) (Pub. L. 82–414, 66 Stat. 163), as amended (8 U.S.C. 1103(a)(1)); *see also* 6 U.S.C. 202. The Secretary is authorized to establish such regulations as the Secretary deems necessary to carry out this authority under the immigration laws. *See* INA sec. 103(a)(3) (8 U.S.C. 1103(a)(3)). Section 214(a)(1) of the INA specifically authorizes the Secretary to prescribe regulations specifying the period of admission and any conditions for the admission of nonimmigrants to the United States (8 U.S.C. 1184(a)(1)).<sup>1</sup>

The Secretary has authorized the Commissioner of U.S. Customs and Border Protection (CBP) to enforce and administer the immigration laws relating to the inspection and admission of noncitizens<sup>2</sup> seeking admission to the United States, including the authority to make admissibility determinations and set the duration, terms, and conditions of admission. *See* Delegation Order 7010.3, II.B.5 (Revision No. 03.1, Incorporating Change 1) (Nov. 25, 2019).

### B. Guam-Commonwealth of the Northern Mariana Islands Visa Waiver Program (G–CNMI VWP)

On May 8, 2008, the Consolidated Natural Resources Act of 2008 (CNRA), Public Law 110–229, 122 Stat. 754, became law. Section 702 of the CNRA extended, subject to a transition period, the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI)<sup>3</sup> and

provides for a visa waiver program for travel to Guam or the CNMI.<sup>4</sup>

Specifically, section 702(b)(3) of the CNRA amends the INA to provide for such visa waiver program, the G–CNMI VWP, and provides that all necessary regulations to implement the G–CNMI VWP shall be promulgated by the Secretary of Homeland Security, in consultation with the Secretary of the Interior and the Secretary of State.<sup>5</sup> Section 702(b)(3) of the CNRA directs that at a minimum the regulations should include a listing of all countries whose nationals may participate in the G–CNMI VWP, except that such regulations shall provide for a listing of any country from which the CNMI has received a significant economic benefit from the number of visitors for pleasure within the one-year period preceding the date of enactment of the CNRA, unless the Secretary of Homeland Security determines that such country's inclusion on such list would represent a threat to the welfare, safety, or security of the United States or its territories.<sup>6</sup> Section 702(b)(3) of the CNRA also provides that the promulgation of such regulations shall be considered a foreign affairs function for purposes of 5 U.S.C. 553(a), section 553(a) of the Administrative Procedure Act (APA), excepting such regulations from the rule making requirements, including notice and comment, detailed in 5 U.S.C. 553.<sup>7</sup> Section 702(b)(3) of the CNRA also provides for the addition of countries to the G–CNMI VWP, stating that the Governor of Guam and the Governor of the CNMI may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain a visa waiver under the G–CNMI VWP, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary's sole discretion, may impose prior to allowing nationals of that country to

obtain the visa waiver under the G–CNMI VWP.<sup>8</sup>

On January 16, 2009, DHS, through CBP, published an interim final rule (IFR) in the **Federal Register** (74 FR 2824) replacing the then-existing Guam Visa Waiver Program with the G–CNMI VWP and setting forth the requirements for nonimmigrant visitors seeking admission into Guam or the CNMI under the G–CNMI VWP. As directed by section 702(b)(3) of the CNRA,<sup>9</sup> DHS considered this rulemaking a foreign affairs function for purposes of section 553(a) of the APA and noted that consequently DHS was not “required to provide prior public notice or an opportunity to comment.” 74 FR at 2829. DHS “nevertheless provid[ed] the opportunity for public comments” prior to the implementation date of the G–CNMI VWP. 74 FR at 2824–5, 2829.

The January 2009 IFR provided that, beginning June 1, 2009, DHS would begin the administration and enforcement of the G–CNMI VWP. 74 FR at 2824, 2829. This program allows certain nonimmigrant visitors to seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa for a period of authorized stay not to exceed 45 days. Travelers from the following countries and geographic areas are eligible to participate in the G–CNMI VWP: Australia, Brunei, Hong Kong Special Administrative Region (Hong Kong), Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, Taiwan, and the United Kingdom. 8 CFR 212.1(q)(2)(ii).

On March 31, 2009, the Secretary of Homeland Security, after the necessary consultations, announced the delayed start of the transition period until November 28, 2009.<sup>10</sup> On May 28, 2009, a technical amendment to the January 2009 IFR was published in the **Federal Register** (74 FR 25387), extending the implementation date of the G–CNMI VWP from June 1, 2009 to November 28, 2009. DHS noted that, as indicated in the January 2009 IFR, pursuant to section 702(b) of the CNRA, the implementation of the G–CNMI VWP is considered a foreign affairs function for purposes of section 553(a) of the APA, and that accordingly, this technical amendment to the IFR was statutorily

<sup>1</sup> *See also* sections 402, 1512, and 1517 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2142, 2187), as amended (6 U.S.C. 202, 552, and 557) (regarding transfer of authority to enforce immigration laws and prescribe regulations necessary to carry out that authority from the Attorney General to the Secretary).

<sup>2</sup> For purposes of this document, CBP uses terms such as “traveler,” “individual,” and “noncitizen” in place of the term “alien.” However, DHS regulations continue to use the term “alien,” as defined by the INA. *See* INA sec. 101(a)(3) (8 U.S.C. 1101(a)(3)).

<sup>3</sup> Section 702(a) of the CNRA. *See* section 6 of the Joint Resolution entitled “A Joint Resolution to approve the ‘Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America’, and for other purposes”, approved Mar. 24, 1976 (Pub. L. 94–241, 90 Stat. 263), as amended (48 U.S.C. 1806).

<sup>4</sup> Section 702(b) of the CNRA. *See* sections 212 and 214 of the INA (8 U.S.C. 1182 and 1184).

<sup>5</sup> INA sec. 212(l)(1), (3) (8 U.S.C. 1182(l)(1), (3)). Although section 702(b)(3) of the CNRA also provides that such regulations shall be promulgated on or before the 180th day after the date of enactment of the CNRA, DHS has interpreted this timeline to only apply to the initial implementing regulations and that it does not prevent DHS from promulgating amendments to the regulations under this section now.

<sup>6</sup> INA sec. 212(l)(3) (8 U.S.C. 1182(l)(3)).

<sup>7</sup> INA sec. 212(l)(3) (8 U.S.C. 1182(l)(3)).

<sup>8</sup> INA sec. 212(l)(6) (8 U.S.C. 1182(l)(6)).

<sup>9</sup> INA sec. 212(l)(3) (8 U.S.C. 1182(l)(3)).

<sup>10</sup> Section 702(a) of the CNRA provides that the Secretary of Homeland Security, in consultation with the Secretary of the Interior, the Secretary of Labor, the Secretary of State, the Attorney General, and the Governor of the CNMI, may delay the transition program effective date for up to 180 days. 122 Stat. at 855 (section 6(a)(3)(A) of Public Law 94–241, as amended (48 U.S.C. 1806(a)(3)(A))).

exempt from the requirements of the APA. 74 FR at 25387.

On March 23, 2011, another amendment to the January 2009 IFR was published as an interim final rule in the **Federal Register** (76 FR 16231), clarifying that individuals holding British National (Overseas) (BN(O)) passports as a result of their connection to the Hong Kong Special Administrative Region (Hong Kong) are eligible for participation in the G–CNMI VWP. Again, DHS noted that like the January 2009 IFR, this 2011 IFR was implementing the G–CNMI VWP and should be considered a foreign affairs function for purposes of section 553(a) of the APA pursuant to section 702(b) of the CNRA and exempt from the requirements of the APA. 76 FR at 16232. Also like the January 2009 IFR, DHS nevertheless provided the opportunity for public comments. 76 FR at 16232.

Executive Order (E.O.) 13936, entitled “The President’s Executive Order on Hong Kong Normalization,” was issued on July 14, 2020 (85 FR 43413). The E.O. reports the President’s determination of U.S. policy with respect to the treatment of Hong Kong under U.S. law, and the President’s order, pursuant to section 202 of the United States–Hong Kong Policy Act of 1992 (HKPA), to suspend the application of section 201(a) of the HKPA to U.S. laws enumerated in the E.O. Section 1 of the E.O. states that “[i]t shall be the policy of the United States to suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law and in the national security, foreign policy, and economic interest of the United States.”<sup>11</sup> Section 2 of the E.O. lists statutes targeted by the E.O. and section 2(b) explicitly refers to INA section 212(l) (8 U.S.C. 1182(l)), which is the statute that authorizes the G–CNMI VWP.<sup>12</sup> Section 3(a) of the E.O. directs federal agencies to “commence all appropriate actions to further the purposes of this order,” including amending any regulations implementing the provisions specified earlier in section 2 of the E.O., and, consistent with applicable law and executive orders, under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), which provides different treatment for Hong Kong as compared to the PRC.<sup>13</sup> The G–CNMI VWP regulations provide different treatment for Hong Kong as compared to the PRC, because under the regulations, travelers with a connection to Hong

Kong may be eligible to participate in the G–CNMI VWP, while nationals of the PRC are not eligible. See 8 CFR 212.1(q)(2)(ii). However, pursuant to section 1 of the E.O., the U.S. Government has determined that it is not in the foreign policy interest of the United States to eliminate Hong Kong from the G–CNMI VWP.

#### 1. Current Paper CBP Form I–736 Process

The current process for the G–CNMI VWP is a paper-based process that requires travelers to fill out paper CBP Form I–736, present the form to a carrier of choice prior to departure and to CBP upon arrival, and then request admittance into Guam or the CNMI. See 8 CFR 212.1(q)(1)(v).<sup>14</sup> CBP Form I–736 collects biographic and other information specified by the Secretary that is necessary to determine the eligibility of the individual to travel to Guam or the CNMI under the G–CNMI VWP, and whether such travel poses a law enforcement or security risk. The information from the paper form is not available to CBP until a traveler arrives at the Port of Entry (POE). CBP uses the information collected on the paper CBP Form I–736 to determine the applicant’s admissibility under the G–CNMI VWP. After entry, CBP collects the forms and then regularly mails batches to a third-party contractor for data entry into the G–CNMI database. The paper forms must be stored in a storage facility for nine years to adhere to CBP data retention policies.

#### 2. Need To Automate the G–CNMI VWP

CBP’s national security strategy follows a layered approach, including the pre-vetting of individuals prior to their travel. This allows the CBP officer to have all of the information from systems checks readily available as part of the officer’s comprehensive admissibility determination. As described above, CBP currently relies on a paper-based process that occurs after the individual arrives in Guam or the CNMI. This means that the vetting of the traveler does not begin until the traveler presents the form on arrival. The absence of pre-arrival vetting due to the lack of automation and submission of a paper CBP Form I–736 limits CBP’s ability to implement an essential part of its national security strategy to pre-vet individuals arriving in Guam and the CNMI. Implementation of an automated process, whereby CBP systems will be

able to automatically cross-check information submitted electronically by travelers against law enforcement databases, will allow CBP to notify carriers whether passengers attempting to travel to Guam or the CNMI without a visa have completed the travel authorization process, and will serve to prevent travel from individuals who may pose a threat to national security or otherwise likely to be found inadmissible upon arrival.

Automating the G–CNMI VWP paper-based processes will not only increase national security, but will also provide operational and programmatic benefits to travelers and CBP. For travelers, automating the Form I–736 will decrease their wait times upon arrival at the port of entry, which could lead to increased overall traveler satisfaction. For CBP, automating the Form I–736 will allow CBP officers to spend more time focusing on a traveler’s purpose and intent, rather than forms processing, data entry, and hard copy storage. The transition to a paperless environment will save CBP time and money. Migrating from the paper CBP Form I–736 to the electronic Form I–736 likewise allows CBP to meet operational requirements such as, but not limited to, performing data capture, data retrieval, data sharing, and data security, because CBP will no longer need to rely on the transcription of paper forms. Lastly, an electronic format allows CBP to provide applicants with email assistance and online self-help.

#### C. Treatment of Travelers From the People’s Republic of China (PRC) to the CNMI

##### 1. Exclusion of PRC From the G–CNMI VWP

The PRC is not among the countries whose nationals are currently eligible for participation in the G–CNMI VWP. Although DHS concluded in the January 2009 IFR that travel by Chinese nationals to the CNMI provides a “significant economic benefit,” as defined in the CNRA, a prerequisite for inclusion in the program, DHS also concluded that political and security concerns weighed against including nationals from the PRC in the G–CNMI VWP.<sup>15</sup> For similar reasons, the Russian Federation (Russia) is also not among the countries whose nationals are currently eligible for participation in the G–CNMI VWP.<sup>16</sup> DHS left open the possibility that nationals from the PRC and Russia could be included in the G–CNMI VWP at a later point if additional

<sup>11</sup> 85 FR 43413, 43414.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> While the current regulatory language does not explicitly require a paper form, the paper-based process detailed here has been the practice since the G–CNMI VWP was implemented.

<sup>15</sup> 74 FR at 2826–27.

<sup>16</sup> *Id.*

security measures were introduced, such as electronic travel authorization to screen and approve potential visitors.<sup>17</sup>

## 2. Parole

Although not included in the G–CNMI VWP, in recognition of the economic significance of visitors from the PRC and Russia, on October 21, 2009, former Secretary of Homeland Security Janet Napolitano announced that, effective November 28, 2009, DHS would favorably consider, on a case-by-case basis, requests for discretionary parole into the CNMI from eligible nationals of the PRC or Russia who are temporary visitors for business or pleasure, pursuant to INA section 212(d)(5) (8 U.S.C. 1182(d)(5)).<sup>18</sup> Effective January 15, 2012, this policy was extended to Russian visitors to Guam.<sup>19</sup>

Although parole is an authorized entry into the United States, it is not an admission to the United States. INA secs. 101(a)(13)(B), 212(d)(5)(A) (8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A)). Parole may be granted to a noncitizen, regardless of the noncitizen's inadmissibility, as a matter of discretion “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” INA sec. 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)).

Under the 2009 and 2012 discretionary parole policies, nationals of Russia were allowed to enter Guam and the CNMI and to travel between Guam and the CNMI, and nationals of the PRC were allowed to enter the CNMI for a period of stay up to 45 days, provided the traveler met certain conditions developed by CBP, in close coordination with DHS.<sup>20</sup> Pursuant to

these policies, nationals of Russia and the PRC seeking entry without a visa: (1) must possess a valid, unexpired machine readable passport; (2) must not have previously violated the terms of any prior travel to the United States; and (3) must present a valid completed CBP Form I–94, Arrival/Departure Record, and CBP Form I–736, Guam–CNMI Visa Waiver Information.<sup>21</sup> Also pursuant to these policies, visitors paroled under this authority could not engage in local employment or labor for hire and this parole authorization did not permit travel to another location within the United States.<sup>22</sup> This meant that nationals of Russia may travel to Guam and the CNMI only and nationals of the PRC may travel to the CNMI only.

## 3. Review of U.S. Parole Policies

On January 25, 2017, former President Trump signed E.O. 13767, *Border Security and Immigration Enforcement Improvements*, 82 FR 8793 (Jan. 30, 2017),<sup>23</sup> which has since been revoked.<sup>24</sup> E.O. 13767 directed the Secretary of Homeland Security to “take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates

urgent humanitarian reasons or a significant public benefit derived from such parole.”

In compliance with E.O. 13767, and prior to its revocation by E.O. 14010, DHS reviewed a broad spectrum of existing parole policies, including the parole policies applicable to Guam and the CNMI. The CNMI requested a 902 Consultation detailed in Section II.C.4. below to address the impact of this review on the CNMI. Subsequently, on September 3, 2019, DHS published a notice in the **Federal Register** announcing that as of October 3, 2019, DHS was rescinding its policy relating to the exercise of its discretionary parole authority for certain nationals of Russia and no longer giving favorable consideration to parole requests simply because the individual was a national of Russia who was seeking entry into Guam or the CNMI solely for a temporary visit for business or pleasure. 84 FR 46029, 46030. However, as noted in the **Federal Register** notice, affected individuals could still apply for parole pursuant to INA section 212(d)(5) (8 U.S.C. 1182(d)(5)) by filing USCIS Form I–131 Application for Travel Document, consistent with the instructions for that form. 84 FR at 46031. The September 2019 **Federal Register** notice did not impact DHS policy relating to the exercise of discretionary parole authority for certain PRC nationals. However, as discussed in Section II.C.4 below, on October 2, 2019, CBP announced that beginning October 3, 2019, PRC nationals traveling to the CNMI for the purpose of a temporary visit for business or pleasure without a visa would be limited to a period of parole not to exceed 14 days.<sup>25</sup> All other conditions for PRC nationals traveling to the CNMI under the 2009 parole policy described in Section II.C.2 above continue to apply.

## 4. 902 Consultations

### a. The Covenant and 902 Consultation Process

The Covenant to Establish the Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant) governs relations between the United States and the CNMI. *See* Public Law 94–241, 90 Stat. 263; 48 U.S.C. 1801 and note. Section 902 of the Covenant provides that the Federal Government of the United States and the Government

<sup>17</sup> 74 FR at 2827.

<sup>18</sup> DHS Notification to Congress, Oct. 21, 2009; *see* CBP Carrier Liaison Program, *Important Update in Entry Requirements Parole for Citizens of the Russian Federation and the People's Republic of China for the CNMI Only*, 2009 CLP Bulletin (Nov. 16, 2009), available at <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/CNMI%20CLP%20Bulletin.pdf> (last visited July 20, 2023); *see also* DHS, *Significant Economic Benefit, Guam–CNMI Visa Waiver Program*, <https://www.dhs.gov/guam-cnmi-visa-waiver-program> (last visited July 20, 2023).

<sup>19</sup> *See* CBP Carrier Liaison Program, *Important Update in U.S. Entry Requirements Parole for Citizens of Russia into Guam*, 2011 CLP Bulletin (Dec. 19, 2011); *see also* National Media Release, CBP, *Russian Citizens Now Eligible to Travel to Guam Visa-Free* (Jan. 26, 2012), <https://www.cbp.gov/newsroom/national-media-release/russian-citizens-now-eligible-travel-guam-visa-free> (last visited July 20, 2023).

<sup>20</sup> *See* CBP Carrier Liaison Program, *Important Update in Entry Requirements Parole for Citizens of the Russian Federation and the People's Republic of China for the CNMI Only*, 2009 CLP Bulletin (Nov. 16, 2009), available at <https://www.justice.gov/sites/default/files/eoir/legacy/>

[2014/08/15/CNMI%20CLP%20Bulletin.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/CNMI%20CLP%20Bulletin.pdf) (last visited July 20, 2023); CBP Carrier Liaison Program, *Important Update in U.S. Entry Requirements Parole for Citizens of Russia into Guam*, 2011 CLP Bulletin (Dec. 19, 2011); CBP, *Carrier Information Guide 10* (2019), available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/2019%20Carrier%20Information%20Guide%20-%20ENGLISH.pdf> (last visited July 20, 2023). *See also* DHS, *Significant Economic Benefit, Guam–CNMI Visa Waiver Program*, <https://www.dhs.gov/guam-cnmi-visa-waiver-program> (last visited July 20, 2023) (detailing requirements for noncitizens to be eligible for the parole provision); National Media Release, CBP, *Russian Citizens Now Eligible to Travel to Guam Visa-Free* (Jan. 26, 2012), <https://www.cbp.gov/newsroom/national-media-release/russian-citizens-now-eligible-travel-guam-visa-free> (last visited July 20, 2023).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Available at <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/> (last visited July 20, 2023).

<sup>24</sup> President Biden revoked E.O. 13767 on February 2, 2021, signing E.O. 14010, *Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, 86 FR 8267 (Feb. 5, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration-throughout-north-and-central-america-and-to-provide-safe-and-orderly-processing/> (last visited July 20, 2023).

<sup>25</sup> *See* CBP, *Carrier Liaison Program, Limit of Parole of Nationals of the PRC into the CNMI* (Oct. 2, 2019), CBP Publication Number 0966–1019, available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Nov/20191002%20PRC%20CNMI%20Parole%20Program.pdf> (last visited July 20, 2023).

of the Northern Mariana Islands “will designate special representatives to meet and consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.” Public Law 94–241, 90 Stat. 263, 276; 48 U.S.C. 1801 note. These intermittent discussions between the United States Federal Government and the CNMI have become known as 902 Consultations.

By letter dated October 19, 2018, CNMI Governor Ralph DLG Torres requested that former President Trump initiate the 902 Consultation process regarding discretionary parole policies of DHS.<sup>26</sup> This letter identified the primary issue as the impact of a possible revocation of the existing parole policy for PRC nationals would have on the CNMI’s access to the Chinese tourist market and how it would imperil the CNMI’s economic survival.<sup>27</sup> On February 26, 2019, former President Trump designated Douglas W. Domenech, U.S. Department of the Interior Assistant Secretary Insular and International Affairs, as the Special Representative for the United States Federal Government for this 902 Consultation.<sup>28</sup> In addition to the Special Representative, the U.S. Federal Government team included other high-level officials from the Department of the Interior and the Department of State, as well as other offices.<sup>29</sup> Governor Torres was designated the Special Representative for the CNMI.<sup>30</sup>

This 902 Consultation process involved two rounds of meetings between the Special Representatives and their teams on February 26, 2019, and on April 2–3, 2019.<sup>31</sup> These meetings involved presentation of position papers, discussion among the teams, panel presentations, and site visits.<sup>32</sup> After the meetings, the Special Representatives and their teams developed mutually agreeable language for the *Report to the President on 902 Consultations Related to the DHS Discretionary Parole Program* (2019 Report).<sup>33</sup>

#### b. Recommendations

As set forth in the 2019 Report, as a result of the 902 Consultation process, both Special Representatives found that the CNMI’s access to the PRC tourist market is of critical importance to the CNMI’s economy and should be facilitated to the greatest degree possible, while at the same time recognizing that national security, public safety, and immigration concerns warrant that certain modifications be made to either the parole system or the existing G–CNMI VWP.<sup>34</sup> With that as a basis, the Special Representatives agreed to four recommendations, provided in the 2019 Report, the first two of which are relevant to this IFR.<sup>35</sup>

The first recommendation was to modify the parole policies with enhanced security provisions.<sup>36</sup> This modification would reduce the period of parole for PRC nationals from a maximum of 45 days to a maximum of 14 days. This modification would also add electronic screening and vetting prior to arrival at the port of entry, allowing for information exchange and cooperation to combat human trafficking and unlawful employment. This modification would be an interim step until the second recommendation regarding the creation of the CNMI EVS–TAP could be implemented. Existing parole policies would remain in place until this modification was enacted, and DHS would work with CNMI officials to ensure a smooth transition.

The second recommendation was to create the CNMI EVS–TAP as a sub-program of the G–CNMI VWP.<sup>37</sup> The Special Representatives noted that the CNRA provides for the addition of a country to the G–CNMI VWP and authorizes the Secretary of Homeland Security to impose special requirements on nationals of that country to allow them to participate in the program, such as installing an electronic automated screening platform for use by PRC nationals entering into the CNMI under the G–CNMI VWP. INA sec. 212(l)(6) (8 U.S.C. 1182(l)(6)). Thus, the Special Representatives recommended that DHS create a restricted travel authorization program under the authorities of the G–CNMI VWP and add the PRC to this sub-program. The sub-program, the CNMI EVS–TAP, would include additional restrictions that do not currently pertain to the rest of the G–CNMI VWP. Under CNMI EVS–TAP, travelers would be

allowed to enter only the CNMI without a visa, and would not be permitted to enter Guam, the mainland, or any other U.S. location. Travelers under the CNMI EVS–TAP would be subject to electronic screening and vetting prior to entry. As discussed in the CNRA, DHS would explore adding bonding requirements. Travel authorization under the CNMI EVS–TAP would be for a maximum of 14 days in lieu of exceptional circumstances.

#### c. Implementation of 902 Consultation Recommendations

As noted above, in accordance with the first part of the first recommendation, as of October 3, 2019, the parole policy for PRC nationals was modified to reduce the maximum period of parole from 45 days to 14 days. In order to meet the second part of the first recommendation (to modify the parole policy to include electronic screening and vetting prior to arrival at the port of entry as an interim step), CBP is first implementing an electronic travel authorization process for the G–CNMI VWP generally. In this rule, CBP is also establishing the CNMI EVS–TAP, a restricted sub-program of the G–CNMI VWP which includes an electronic travel authorization process for travelers from the PRC, under section 702(b)(3) of the CNRA.<sup>38</sup> CBP will implement CNMI EVS–TAP 45 days after CBP publishes notification in the **Federal Register**. This will satisfy the second 902 Consultation recommendation.

### III. Overview of Regulatory Changes

In this rule, promulgated in consultation with the Secretary of the Interior and the Secretary of State, DHS is amending the regulations to establish an electronic travel authorization process for individuals traveling to Guam or the CNMI under the G–CNMI VWP. DHS is also amending the regulations to establish the CNMI EVS–TAP program that will also include an electronic travel authorization process for certain nationals of the PRC traveling to the CNMI. To fully integrate the two automated systems in an efficient and cost-effective manner, DHS will implement the CNMI EVS–TAP program after the system for G–CNMI VWP automation is fully operational. This rule provides the regulatory framework necessary for automation of the G–CNMI VWP and to establish CNMI EVS–TAP. When DHS is ready to fully implement CNMI EVS–TAP, we will provide notification in the **Federal Register**, which will take effect 45 days after publication.

<sup>26</sup> *Report to the President on 902 Consultations Related to the DHS Discretionary Parole Program* (May 15, 2019), p. 3, available at [https://www.doi.gov/sites/doi.gov/files/uploads/final\\_902\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/final_902_report.pdf).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* p. 4.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* p. 9. The 2019 Report is silent on the CNMI’s access to the Russian tourist market.

<sup>35</sup> *Id.* pp. 9–11.

<sup>36</sup> *Id.* pp. 9–10.

<sup>37</sup> *Id.* p. 10.

<sup>38</sup> INA sec. 212(l)(6) (8 U.S.C. 1182(l)(6)).

Various regulatory changes are necessary to mandate that G–CNMI VWP travelers receive electronic travel authorization and to establish the CNMI EVS–TAP. The process established under the current regulations, 8 CFR 212.1(q)(1)(v), requires G–CNMI VWP travelers to submit a paper CBP Form I–736; thus, the regulations need to be amended to require travelers to use an online version to be submitted pre-departure and to receive electronic travel authorization prior to departure. CBP must also add regulations to establish the requirements of the CNMI EVS–TAP.

#### IV. G–CNMI VWP Automation and Electronic Travel Authorization

This IFR requires G–CNMI VWP travelers to obtain electronic travel authorization to travel to Guam or the CNMI prior to embarking on such travel. To implement this requirement, this IFR adds a new paragraph (q)(9) to 8 CFR 212.1 titled “Electronic Travel Authorization” and makes certain revisions to 8 CFR 212.1(q).

##### A. Electronic Travel Authorization

###### 1. Electronic Travel Authorization Requirement and Transition Period

By requiring a G–CNMI VWP electronic travel authorization, CBP will be able to screen travelers seeking to enter Guam or the CNMI under the G–CNMI VWP prior to their arrival in Guam or the CNMI. Individuals intending to travel under the G–CNMI VWP will be able to obtain travel authorization in advance of travel to Guam or the CNMI. DHS notes that an electronic authorization to travel to Guam or the CNMI under the G–CNMI VWP is not a determination that the traveler ultimately is admissible to Guam or the CNMI. That determination is made by a CBP officer only after an applicant for admission is inspected by the CBP officer at a U.S. port of entry. In addition, a G–CNMI VWP electronic travel authorization is not a visa. The grant of a G–CNMI VWP electronic travel authorization is distinct from the visa application process. Travel authorization under the G–CNMI VWP allows a G–CNMI VWP participant to travel to Guam or the CNMI and does not confer on the traveler admissibility to Guam or the CNMI. Requiring a G–CNMI VWP electronic travel authorization allows DHS to identify potential grounds of ineligibility for admission before the G–CNMI VWP traveler embarks on a carrier destined for Guam or the CNMI.

Requiring a G–CNMI VWP electronic travel authorization will reduce the

number of travelers who are determined to be inadmissible to Guam or the CNMI during inspection by a CBP officer at a port of entry, thereby saving, among other things, the cost of return travel to the carrier, inspection time, and delays and inconvenience for the traveler. Requiring a G–CNMI VWP electronic travel authorization also will enable CBP to allocate existing resources more efficiently to screening passengers at U.S. ports of entry, thereby facilitating legitimate travel. Requiring a G–CNMI VWP electronic travel authorization increases the amount of information available to DHS regarding G–CNMI VWP travelers before such travelers arrive at U.S. ports of entry; and, by recommending that travelers submit such information a minimum of 5 days in advance of departure, provides DHS with additional time to screen G–CNMI VWP travelers destined for Guam or the CNMI, thus enhancing security by allowing CBP to conduct pre-vetting and cross-checking information against law enforcement databases. Furthermore, it will allow carriers to know in advance whether the traveler is approved to board the conveyance using existing messaging capabilities between CBP and the carriers.

The G–CNMI VWP electronic travel authorization requirement allows DHS to eliminate the requirement that G–CNMI VWP travelers be in possession of a completed and signed paper CBP Form I–736. Although this rule is effective on September 30, 2024, in this rule CBP is incorporating a 60-day transition period to facilitate travelers adjusting to the new collection method. See new 8 CFR 212.1(q)(9)(i). Prior to September 30, 2024, travelers should continue to use the paper CBP Form I–736 or print out the form as they are doing today. On September 30, 2024, the 60-day transition period will begin. During this transition period, travelers can choose whether to submit the Form I–736 in advance electronically and receive prior electronic travel authorization or to submit the paper CBP Form I–736 upon arrival.

At the end of the transition period, the paper CBP Form I–736 will become obsolete and travelers must input and submit in advance their personal information and respond to the eligibility questions using the new electronic format Form I–736. See new 8 CFR 212.1(q)(9)(i). The travelers’ information will be pre-screened or vetted against law enforcement databases. Based on the results of the pre-screening, the application will be approved or denied. The system will generate a “board” or “no board” status message to the carrier indicating a

denied or approved authorization to board before the flight. The applicant also receives a message with the application status: approved, denied, canceled, or pending. Beginning November 29, 2024, when the 60-day transition period ends, carriers must deny boarding to travelers without an approved electronic travel authorization. See new 8 CFR 212.1(q)(5)(iv). All information will be saved in the newly created G–CNMI VWP database.

###### 2. Obtaining Travel Authorization

This IFR establishes data fields by which G–CNMI VWP travelers must electronically submit to CBP, in advance of travel to Guam or the CNMI, including biographic and other information specified by the Secretary. The information specified by the Secretary is necessary to determine the eligibility of the individual to travel to Guam or the CNMI under the G–CNMI VWP and whether such travel poses a law enforcement or security risk. This is the same information currently required on the paper CBP Form I–736, which G–CNMI VWP travelers must present to a CBP officer at a port of entry. This IFR does not impose any new data collection requirements on air or vessel carriers. For example, this rule does not require air carriers to transmit any G–CNMI VWP electronic travel authorization data elements on behalf of travelers to CBP, nor does it require carriers to submit any additional data.

In determining a traveler’s eligibility for a G–CNMI VWP electronic travel authorization, CBP will assess each application to determine whether the individual is eligible to travel to Guam or the CNMI and whether there exists any law enforcement or security risk in permitting such travel under the G–CNMI VWP. The information submitted by the individual in the travel authorization application will be checked by CBP against all appropriate databases, including, but not limited to, lost and stolen passport databases and appropriate watchlists. Additionally, if a traveler does not provide the information required or provides false information in the travel authorization application or if any evidence exists indicating that an individual is ineligible to travel to Guam or the CNMI under the G–CNMI VWP or that permitting such travel poses a law enforcement or security risk, CBP may deny the application for a travel authorization. The Secretary, acting through CBP, retains discretion to revoke a travel authorization determination at any time and for any reason. If a travel authorization

application is denied, the individual may still seek to obtain a visa to travel to Guam or the CNMI from the appropriate U.S. embassy or consulate. See INA sec. 221(a)(1)(B) (8 U.S.C. 1201(a)(1)(B)).

### 3. Timeline for Submitting Travel Authorization Data

With this IFR after the 60-day transition period, each nonimmigrant visitor wishing to travel to Guam or the CNMI under the G–CNMI VWP must have a travel authorization prior to embarking on a carrier. DHS, however, recommends that G–CNMI VWP travelers obtain travel authorizations prior to the time of reservation or purchase of the ticket, or at least 5 days before departure to Guam or the CNMI, in order to facilitate timely departures.

### 4. Required Travel Authorization Data Elements

G–CNMI VWP electronic travel authorization will collect the same information currently required on the paper CBP Form I–736 that is presented to a CBP officer at a port of entry. This is the information that the Secretary has deemed necessary to evaluate whether an individual is eligible to travel to Guam or the CNMI under the G–CNMI VWP and whether such travel poses a law enforcement or security risk. This information is already collected through the CBP Form I–736, which is presented to CBP when the traveler arrives in Guam or the CNMI. On the CBP Form I–736, travelers must provide biographical data such as name, birth date, and passport information, as well as travel information such as flight information and the address of the traveler while in Guam or the CNMI. Travelers must also answer eligibility questions regarding, for example: communicable diseases, arrests and convictions for certain crimes, and history of visa revocation or deportation. The information provided in the Form I–736 is sufficient for CBP to initially determine if the applicant is eligible to travel under the G–CNMI VWP before the individual commences travel to Guam or the CNMI. Therefore, DHS has decided to utilize the Form I–736 data elements by requiring them to be submitted in advance of travel under the G–CNMI VWP electronic travel authorization.

### 5. Scope of G–CNMI VWP Electronic Travel Authorization

An approved travel authorization only allows an individual to board a conveyance for travel to a U.S. port of entry in Guam or the CNMI and does not restrict, limit, or otherwise affect the

authority of CBP to determine a traveler's admissibility to Guam or the CNMI during inspection at a port of entry.

### 6. Duration

In general, each travel authorization will be valid for a period of no more than two years. An individual may travel to Guam or the CNMI repeatedly within the validity period of the travel authorization using the same travel authorization. Travelers whose G–CNMI VWP electronic travel authorization applications are approved, but whose passports will expire in less than two years, will receive travel authorization that is valid only until the expiration date on the passport.

Pursuant to INA section 212(a)(7)(B)(i)(I) (8 U.S.C. 1182(a)(7)(B)(i)(I)) and implementing regulations at 8 CFR 214.1(a)(3)(i), the passport of an applicant for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay. This means that travelers to the United States, including to Guam or the CNMI, are required to be in possession of passports that are valid for six months beyond the period of their intended stay. Certain foreign governments have entered into agreements with the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport.<sup>39</sup> These agreements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport. Thus, citizens of the countries that have entered into such an agreement are exempt from the “six-month rule” and need only have a passport valid for their intended period of stay. Accordingly, the general rule provided in new 8 CFR

212.1(q)(9)(iv)(A) applies to travelers who are citizens of countries that have entered into such an agreement.<sup>40</sup>

For travelers from countries that have not entered into such an agreement,<sup>41</sup> G–CNMI electronic travel authorizations will be valid for a period of two years, as provided by the general rule. However, travel authorizations for

<sup>39</sup> The list of countries which have entered into such an agreement is available on the Department of State website at [https://fam.state.gov/fam/09FAM/09FAM040309.html#M403\\_9\\_3\\_B\\_2](https://fam.state.gov/fam/09FAM/09FAM040309.html#M403_9_3_B_2) (last visited July 20, 2023).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* At this time, Brunei and Nauru are the two G–CNMI VWP countries that have not entered into such an agreement with the United States.

individuals from countries that have not entered into such an agreement will not be approved beyond the six months prior to the expiration date of the traveler's passport. Travelers from these countries whose passports will expire in six months or less will not receive an approved G–CNMI VWP electronic travel authorization.<sup>42</sup>

The Secretary, in consultation with the Secretary of the Interior and the Secretary of State, may increase or decrease the G–CNMI VWP travel authorization validity period for a designated G–CNMI VWP country or geographic area. See INA sec. 212(l)(3) (8 U.S.C. 1182(l)(3)). Notice of any change to the G–CNMI VWP travel authorization validity periods will be published in the **Federal Register**. In addition, CBP will update the G–CNMI VWP website to reflect any changes to a G–CNMI VWP country or geographic area's specific G–CNMI VWP travel authorization validity period.

### 7. Events Requiring New Travel Authorization

A G–CNMI VWP traveler must obtain a new electronic travel authorization in advance of travel to Guam or the CNMI within the validity period of the traveler's current travel authorization if any of the following occurs:

- (1) The traveler is issued a new passport;
- (2) The traveler's name changes;
- (3) The traveler's gender changes;
- (4) The traveler's country of citizenship changes; or
- (5) The circumstances underlying the traveler's previous responses to any of the G–CNMI VWP electronic travel authorization application questions requiring a “yes” or “no” response (eligibility questions) have changed.

### 8. Fee

At this time, payment of a fee will not be required to obtain a travel authorization. If DHS determines at a later time, however, that collection of a fee is necessary for the efficient administration of the G–CNMI VWP electronic travel authorization requirement, DHS will implement a fee through a separate rulemaking action or such other manner as is consistent with the Administrative Procedure Act and applicable statutory authorities.

### B. Conforming Amendments

Additionally, this IFR makes several changes to 8 CFR 212.1(q) to account for automation of Form I–736 and the

<sup>42</sup> *Id.* See INA sec. 212(a)(7)(B)(i)(I) (8 U.S.C. 1182(a)(7)(B)(i)(I)) and implementing regulations at 8 CFR 214.1(a)(3)(i).



electronic travel authorization requirement in the new paragraph (q)(9). In the list of eligibility requirements in paragraph (q)(1), paragraph (q)(1)(v) is revised to incorporate the 60-day transition period and add the requirement for travelers to have received electronic travel authorization prior to embarking on a carrier pursuant to the new 8 CFR 212.1(q)(9) beginning November 29, 2024. Similarly, in the list of requirements for transportation lines in paragraph (q)(5), paragraph (q)(5)(iv) is revised to incorporate the 60-day transition period and add the requirement that transportation lines transport travelers who have received electronic travel authorization pursuant to the new 8 CFR 212.1(q)(9) beginning November 29, 2024. Also, in paragraph (q)(5) regarding requirements for transportation lines, a cross-reference to 8 CFR 1.4 is added to the end of paragraph (q)(5)(v), requiring transportation lines to transport a traveler in possession of a completed I-94, Arrival-Departure Record (CBP Form I-94). The cross-referenced section 1.4 states that the definition of Form I-94 includes the electronic format and that the terms “completed and signed” “include, but are not limited to, DHS completing its collection of information into its electronic record of admission, or arrival/departure.” See 8 CFR 1.4(b).

### C. Technical Corrections

This IFR also makes several technical corrections to 8 CFR 212.1(q). First, the G-CNMI VWP eligibility requirement for residents of Taiwan to possess a Taiwan National Identity Card and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs is moved from paragraph (q)(1)(xi) to the other list of eligibility requirements for those with a connection to Taiwan in paragraph (q)(2)(ii)(B). This change consolidates all the G-CNMI VWP eligibility requirements for those with a connection to Taiwan to one location. Second, in paragraph (q)(4), the heading “Ineligibility due to admission under the Guam-CNMI Visa Waiver Program” is added for clarification. Third, in paragraph (q)(7), the extraneous paragraph designation between the headings “*Maintenance of status*—” and “*Satisfactory departure*.” is removed so that the heading reads “*Maintenance of status—satisfactory departure*.” Fourth, in paragraphs (q)(7) and (q)(8)(ii)(A), the words “his or her” are replaced with the gender neutral “the alien’s” or “the officer’s” as applicable. Finally, in paragraph (q)(8)(ii)(B), the reference to “paragraph (b)(1)” is replaced with the

correct reference to “paragraph (q)(8)(ii)(A).”

### V. Commonwealth of the Northern Mariana Islands Economic Vitality & Security Travel Authorization Program (CNMI EVS-TAP)

This IFR also creates the CNMI EVS-TAP as a restricted sub-program of the G-CNMI VWP, under the CNRA and pursuant to consultations under Section 902 of the Covenant. As noted above in Section II.B., section 702(b)(3) of the CNRA provides for the addition of countries to the G-CNMI VWP, stating that the Governor of Guam and the Governor of the CNMI may request the Secretary of the Interior and the Secretary of Homeland Security to add a particular country to the list of countries whose nationals may obtain a visa waiver under the G-CNMI VWP, and the Secretary of Homeland Security may grant such request after consultation with the Secretary of the Interior and the Secretary of State, and may promulgate regulations with respect to the inclusion of that country and any special requirements the Secretary of Homeland Security, in the Secretary’s sole discretion, may impose prior to allowing nationals of that country to obtain the visa waiver under the G-CNMI VWP.<sup>43</sup> DHS considers these request and consultation requirements of the CNRA to have been fulfilled by the 902 Consultations process discussed above in Section II.C.4. In the Secretary’s discretion, and in accordance with the applicable recommendation from the 902 Consultations, DHS is promulgating regulations with respect to the inclusion of the PRC in obtaining a visa waiver, imposing the special requirements of the CNMI EVS-TAP, a restricted sub-program of the G-CNMI VWP. The CNMI EVS-TAP will allow certain prescreened nationals of the PRC to travel without a visa to the CNMI only. To establish the CNMI EVS-TAP, a new paragraph (r) is added to 8 CFR 212.1. This rule also makes several conforming amendments to the regulations to account for the CNMI EVS-TAP.

#### A. CNMI EVS-TAP

##### 1. Description

The CNRA authorizes the Secretary to allow a noncitizen to enter Guam or the CNMI as a nonimmigrant visitor for business or pleasure for a period not to exceed 45 days if the Secretary of Homeland Security, after consultation with the Secretaries of State and the Interior, and the Governors of Guam and

the CNMI, determines that: (i) adequate arrival and departure control systems have been developed in Guam and the CNMI, and (ii) such a waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths. INA sec. 212(l)(1) (8 U.S.C. 1182(l)(1)). The requirements for the G-CNMI VWP are set forth in 8 CFR 212.1(q). As detailed above, the CNRA also provides for the addition of countries to the list of those whose nationals may obtain a visa waiver, with any special requirements the Secretary may impose. INA sec. 212(l)(6) (8 U.S.C. 1182(l)(6)). As discussed above in Section II.C.4., the 902 Consultations resulted in the recommendation that the CNMI EVS-TAP be created under the CNRA as a sub-program of the G-CNMI VWP. As set forth in new 8 CFR 212.1(r)(1), the CNMI EVS-TAP is a restricted travel authorization sub-program of the G-CNMI VWP that allows a nonimmigrant visitor who is a national of the PRC to be admitted to the CNMI without a visa in specified circumstances.

The regulations for CNMI EVS-TAP largely mirror the regulations for the G-CNMI VWP, including the new electronic travel authorization requirement provided by this IFR. However, as the CNMI EVS-TAP is a restricted sub-program of the G-CNMI VWP, there are some differences between the regulations for each, consistent with the 902 Consultation Recommendations<sup>44</sup> and the current parole policy.<sup>45</sup> The primary differences are that CNMI EVS-TAP travelers may visit only the CNMI and for a maximum of 14 days; whereas, the G-CNMI VWP travelers may visit both the CNMI and Guam and for a maximum of 45 days. Additionally, the CNMI EVS-TAP regulations are tailored to a discrete group consisting of PRC nationals, while the G-CNMI VWP regulations must provide for a larger and more varied group of the countries and geographic areas whose travelers are eligible for the G-CNMI VWP.

##### 2. Eligibility

Similar to the requirements that those currently seeking admission to Guam or the CNMI under the G-CNMI VWP must meet, as established in new 8 CFR 212.1(r)(2), to be considered eligible for admission into the CNMI under the CNMI EVS-TAP, prior to embarking on a carrier for travel to the CNMI, nonimmigrant visitors must:

- (i) Be a national of the PRC;

<sup>44</sup> As discussed in Section II.C.4 above.

<sup>45</sup> As discussed in Section II.C.2–3 above.

<sup>43</sup> INA sec. 212(l)(6) (8 U.S.C. 1182(l)(6)).



(ii) Be classifiable as a visitor for business or pleasure;

(iii) Be solely entering and staying on the CNMI for a period not to exceed 14 days;

(iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding 14 days from the date of admission to the CNMI. "Round trip ticket" includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;

(v) Receive an electronic travel authorization from CBP pursuant to new paragraph 8 CFR 212.1(r)(9);

(vi) Be in possession of a completed and signed I-94 (see § 1.4), Arrival-Departure Record (CBP Form I-94). The cross referenced § 1.4 states that the definition of I-94 includes the electronic format and that the terms "completed and signed" "include, but are not limited to, DHS completing its collection of information into its electronic record of admission, or arrival/departure." See 8 CFR 1.4(b). While the Form I-94 has been automated and travelers no longer are required to physically possess the form, as CNMI EVS-TAP is a sub-program of the GCNMI VWP, the regulatory requirements should match.

(vii) Be in possession of a valid unexpired ICAO (International Civil Aviation Organization) compliant, machine readable passport issued by the PRC;

(viii) Have not previously violated the terms of any prior admissions or parole;

(ix) Waive any right to review or appeal an immigration officer's determination of admissibility at the port of entry into the CNMI; and

(x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, an application for asylum if permitted under section 208 of the INA. As in the G-CNMI VWP, section 208 of the INA (8 U.S.C. 1158) regarding asylum does not apply to the CNMI during the

transition period ending December 31, 2029.<sup>46</sup>

### 3. Suspension or Discontinuation of Program

This rule, in new 8 CFR 212.1(r)(3), also incorporates the provisions in section 702(b) of the CNRA regarding the suspension of countries from and the factors for discontinuation of the G-CNMI VWP as the provisions regarding the suspension of and the factors for discontinuation of the CNMI EVS-TAP, given that the CNMI EVS-TAP is only available to nationals of the PRC. See INA sec. 212(l)(4)–(5) (8 U.S.C. 1182(l)(4)–(5)). Accordingly, new 8 CFR 212.1(r)(3) first provides that the Secretary may suspend the CNMI EVS-TAP for good cause including, but not limited to, the following circumstances: (A) The admissions of visitors from the PRC have resulted in an unacceptable number of visitors from the PRC remaining unlawfully in the CNMI, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum; or (B) Visitors from the PRC pose a risk to law enforcement or security interests, including the enforcement of immigration laws of the CNMI or the United States.

Second, new 8 CFR 212.1(r)(3) provides that the Secretary, in consultation with the Secretary of the Interior and the Secretary of State, may also discontinue the CNMI EVS-TAP based on the evaluation of all factors the Secretary deems relevant including, but not limited to, electronic travel authorization, procedures for reporting lost and stolen passports, repatriation of noncitizens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems and information exchange.

### 4. Ineligibility Due to Admission Under the CNMI EVS-TAP

Paralleling the G-CNMI VWP, under new 8 CFR 212.1(r)(4), admission under the CNMI EVS-TAP renders a noncitizen ineligible for: adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act or as an immediate relative as

defined in section 201(b) of the Act, to that of a lawful permanent resident; change of nonimmigrant status; or extension of stay.

### 5. Requirements for Transportation Lines

New 8 CFR 212.1(r)(5) specifies the requirements for transportation lines bringing CNMI EVS-TAP travelers to the CNMI. The carrier must be prepared to establish that each individual it transports without the appropriate visa was *prima facie* eligible for the visa waiver, because the carrier is subject to fine pursuant to section 273 of the INA for transporting any noncitizen not in possession of an unexpired visa, as required, unless the requirement is waived. The carrier contract and ticket restrictions parallel the G-CNMI VWP. Thus, a transportation line bringing any traveler to the CNMI pursuant to this section must:

(1) Enter into a contract on CBP Form I-760, made by the Commissioner of U.S. Customs and Border Protection on behalf of the government;

(2) Transport an individual only if the individual is a national of the PRC and is in possession of a valid unexpired ICAO compliant, machine readable passport issued by the PRC;

(3) Transport an individual only if the individual is in possession of a round trip ticket as defined in 8 CFR 212.1(r)(2)(iv) bearing a confirmed departure date not exceeding 14 days from the date of admission to the CNMI, which the carrier will unconditionally honor when presented for return passage. This ticket must be: valid for a period of not less than one year; nonrefundable except in the country in which issued or in the country of the traveler's nationality or residence; and issued by a carrier which has entered into an agreement described in this paragraph; and

(4) Transport an individual only if the individual has received electronic travel authorization from CBP pursuant to 8 CFR 212.1(r)(9).

### 6. Bonding

Part of the second recommendation made in the 902 Consultations regarding the creation of CNMI EVS-TAP is that the United States will explore adding bonding requirements as discussed in the CNRA.<sup>47</sup> Section 702(b) of the CNRA requires that the regulations implementing the G-CNMI VWP, and thus the CNMI EVS-TAP, include any

<sup>46</sup> Note that INA section 208(e) (8 U.S.C. 1158(e)), has not been amended to reflect the extensions of the transition period. See section 6(a)(2), (7) of Public Law 94–241, 48 U.S.C. 1806(a)(2), (7); as amended by section 702(a) of the CRNA, 122 Stat. at 855–6 (ending the transition period December 31, 2014); section 10(1) of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, 128 Stat. 2130, 2134 (Dec. 16, 2014) (extending the transition period through December 31, 2019); and section 3(a)(1)(A) of the Northern Mariana Islands U.S. Workforce Act of 2018, Public Law 115–218, 132 Stat. 1574 (July 24, 2018) (extending the transition period through December 31, 2029).

<sup>47</sup> Report to the President on 902 Consultations Related to the DHS Discretionary Parole Program (May 15, 2019), p. 10, available at [https://www.doi.gov/sites/doi.gov/files/uploads/final\\_902\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/final_902_report.pdf).

bonding requirements for nationals of some or all of those countries who may present an increased risk of overstaying their period of authorized stay or other potential problems, *if different from such requirements otherwise provided by law for nonimmigrant visitors*.<sup>48</sup> Similar to as discussed below in Section V.B. regarding conforming amendments to bonding requirements under the G–CNMI VWP, at this time DHS is not imposing any bonding requirements different from such requirements otherwise provided by law for nonimmigrant visitors for travelers seeking admission into the CNMI under the CNMI EVS–TAP. If DHS determines that additional bonding requirements are necessary, DHS will amend the regulations accordingly and has reserved new 8 CFR 212.1(r)(6) to do so.

#### 7. Maintenance of Status—Satisfactory Departure

This rule includes a provision allowing a traveler admitted to the CNMI under the CNMI EVS–TAP to seek a period of satisfactory departure, similar to the G–CNMI VWP. Under new 8 CFR 212.1(r)(7), this rule provides that if a traveler admitted under the CNMI EVS–TAP is prevented from departing within the period of the authorized stay due to an emergency, an immigration officer having jurisdiction over the place of the traveler's temporary stay may grant satisfactory departure to permit the traveler to delay departing the CNMI for a period not to exceed 15 days. Currently, this means travelers may seek satisfactory departure by contacting any local CBP Port of Entry or Deferred Inspection Site, or the U.S. Citizenship and Immigration Services Contact Center. If the traveler departs within the extended time period, the traveler will be regarded as having departed within the required time period and will not be considered as having overstayed the period of authorized stay.

#### 8. Inadmissibility and Deportability

This rule sets forth the authority of DHS to remove noncitizens and to make determinations as to admissibility and deportability in 8 CFR 212.1(r)(8), like the authority under the G–CNMI VWP. CBP may remove a noncitizen seeking admission under the CNMI EVS–TAP upon a determination that the noncitizen is inadmissible to the CNMI under one or more of the grounds of inadmissibility (other than for lack of visa) listed under section 212 of the INA (8 U.S.C. 1182). This rule also provides

that an immigration officer will refuse admission to and remove a CNMI EVS–TAP applicant who is in possession of and presents fraudulent or counterfeit travel documents. *See* INA sec. 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)). Likewise, DHS may remove a noncitizen admitted under the CNMI EVS–TAP who has violated the noncitizen's status under one or more grounds of deportability as listed under section 237 of the INA (8 U.S.C. 1227). Accordingly, noncitizens who have been determined to be inadmissible or deportable will not be referred to an immigration judge for further inquiry, examination, or hearing. *See* INA sec. 212(l)(2) (8 U.S.C. 1182(l)(2)).

The CNRA provides that, during the transition period, currently extended through December 31, 2029, section 208 of the INA (8 U.S.C. 1158), the section that sets forth the requirements to seek asylum, does not apply to noncitizens in the CNMI.<sup>49</sup> Therefore, prior to January 1, 2030, a noncitizen who is physically present or arriving in the CNMI under the CNMI EVS–TAP may not apply for asylum and an immigration judge will not have jurisdiction over asylum applications filed by a noncitizen physically present or arriving in the CNMI under the CNMI EVS–TAP.<sup>50</sup> Noncitizens physically present or arriving in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA section 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>51</sup>

#### 9. Electronic Travel Authorization

##### a. Electronic Travel Authorization Requirement, Transition Period, and Impact on Parole

This rule requires CNMI EVS–TAP travelers to obtain electronic travel authorization to travel to the CNMI prior to embarking on such travel under 8 CFR 212.1(r)(9). This requirement parallels the new requirement for G–

CNMI VWP travelers to obtain electronic travel authorization discussed in section IV.A. above. As discussed above, by requiring an electronic travel authorization, CBP will be able to screen travelers seeking to enter the CNMI under the CNMI EVS–TAP prior to their arrival in the CNMI. DHS notes that an electronic authorization to travel to the CNMI under the CNMI EVS–TAP is not a determination that the traveler ultimately is admissible to the CNMI. That determination is made by a CBP officer only after an applicant for admission is inspected by the CBP officer at a U.S. port of entry. In addition, a CNMI EVS–TAP electronic travel authorization is not a visa. The grant of a CNMI EVS–TAP electronic travel authorization is distinct from the visa application process. Travel authorization under the CNMI EVS–TAP allows a CNMI EVS–TAP participant to travel to the CNMI, and does not confer on the traveler admissibility to the CNMI. Requiring a CNMI EVS–TAP electronic travel authorization, therefore, allows DHS to identify potential grounds of ineligibility for admission before the CNMI EVS–TAP traveler embarks on a carrier destined for the CNMI.

Requiring a CNMI EVS–TAP electronic travel authorization will reduce the number of travelers who are determined to be inadmissible to the CNMI during inspection by a CBP officer at a port of entry, thereby saving, among other things, the cost of return travel to the carrier, inspection time, and delays and inconvenience for the traveler. Requiring a CNMI EVS–TAP electronic travel authorization also will enable CBP to better allocate existing resources toward screening passengers at U.S. ports of entry, thereby facilitating legitimate travel. Requiring a CNMI EVS–TAP electronic travel authorization increases the amount of information available to DHS regarding CNMI EVS–TAP travelers before such travelers arrive at U.S. ports of entry; and, by recommending that travelers submit such information a minimum of 5 days in advance of departure, provides DHS with additional time to screen CNMI EVS–TAP travelers destined for the CNMI, thus enhancing security by allowing CBP to conduct pre-vetting and cross-checking information against law enforcement databases. Furthermore, it will allow carriers to know in advance whether the traveler is approved to board the conveyance using existing messaging capabilities between CBP and the carriers.

Once CNMI–EVS–TAP is fully implemented and announced in the **Federal Register**, the current parole

<sup>48</sup> *See* section 702(b)(3) of the CNRA, 122 Stat. at 861 (INA sec. 212(l)(3)(B)), as amended (8 U.S.C. 1182(l)(3)(B))) (emphasis added).

<sup>49</sup> *See* section 702(a) of the CRNA, 122 Stat. at 855–6 (section 6(a)(2), (7) of Public Law 94–241, as amended, 48 U.S.C. 1806(a)(2), (7)). *See also* note 46, *supra*, regarding extensions of the transition period.

<sup>50</sup> *Id.*

<sup>51</sup> DHS and the Department of Justice have promulgated various regulations implementing U.S. obligations under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *See, e.g.*, 8 CFR 208.16(c) through (f), 208.17, and 208.18; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999), as corrected by 64 FR 13881 (Mar. 23, 1999).

policy for PRC nationals seeking to enter the CNMI will be discontinued. Until that time, the G–CNMI VWP electronic travel authorization requirement allows DHS to eliminate the requirement that nationals of the PRC complete a paper CBP Form I–736 prior to being paroled into the CNMI. However, as discussed in Section IV.A. above, although this rule is effective on September 30, 2024, CBP is incorporating in the rule a 60-day transition period to facilitate travelers adjusting to the new collection method. *See* new 8 CFR 212.1(q)(9)(i). Prior to September 30, 2024, travelers seeking to be paroled into the CNMI should continue to use the paper CBP Form I–736 or print out as they are doing today. On September 30, 2024, the 60-day transition period will begin. During this transition period travelers can choose whether to submit the Form I–736 in advance electronically and receive electronic travel authorization prior to embarking on a carrier or to submit the paper CBP Form I–736 upon arrival.

At the end of the transition period, the paper CBP Form I–736 will become obsolete and travelers must input and submit in advance their personal information and respond to the eligibility questions using the new electronic format. The travelers' information will be pre-screened or vetted against law enforcement databases. Based on the results of the pre-screening, the application will be approved or denied. The system will generate a “board” or “no board” status message to the carrier indicating a denied or approved authorization to board before the flight. The applicant also receives a message with the application status: approved, denied, canceled, or pending. An approved application is not a grant of advance parole, it is merely a determination of eligibility to board the carrier. Beginning November 29, 2024, when the 60-day transition period ends, carriers must deny boarding to travelers without an approved electronic travel authorization. All information will be saved in the newly created G–CNMI VWP database.

#### b. Obtaining Travel Authorization

This IFR establishes data fields by which CNMI EVS–TAP travelers must electronically submit to CBP, in advance of travel to the CNMI, including biographic and other information specified by the Secretary. The information specified by the Secretary is necessary to determine the eligibility of the individual to travel to the CNMI under the CNMI EVS–TAP, and whether such travel poses a law enforcement or

security risk. This is the same information currently required on the paper CBP Form I–736, which applicants for parole from the PRC must present to a CBP officer at a port of entry, with several additional questions specific to the CNMI EVS–TAP. This IFR does not impose any new data collection requirements on air or vessel carriers. For example, this rule does not require air carriers to transmit any CNMI EVS–TAP electronic travel authorization data elements on behalf of travelers to CBP, nor does it require carriers to submit any additional data.

In determining a traveler's eligibility for a CNMI EVS–TAP electronic travel authorization, CBP will assess each application to determine whether the individual is eligible to travel to the CNMI and whether there exists any law enforcement or security risk in permitting such travel under the CNMI EVS–TAP. The information submitted by the individual in the travel authorization application will be checked by CBP against all appropriate databases, including, but not limited to, lost and stolen passport databases and appropriate watchlists. Additionally, if a traveler does not provide the information required, provides false information in the travel authorization application, or if any evidence exists indicating that an individual is ineligible to travel to the CNMI under the CNMI EVS–TAP or that permitting such travel poses a law enforcement or security risk, CBP may deny the application for a travel authorization. The Secretary, acting through CBP, retains discretion to revoke a travel authorization determination at any time and for any reason, as set forth in new 8 CFR 212.1(r)(9)(vi)(D). If a travel authorization application under the CNMI EVS–TAP is denied, the individual may still seek to obtain a visa to travel to the CNMI from the appropriate U.S. embassy or consulate. *See* INA sec. 221(a)(1)(B) (8 U.S.C. 1201(a)(1)(B)).

#### c. Timeline for Submitting Travel Authorization Data

Once CNMI EVS–TAP is implemented, pursuant to new 8 CFR 212.1(r)(9), each nonimmigrant visitor wishing to travel to the CNMI under the CNMI EVS–TAP must have a travel authorization prior to embarking on a carrier. DHS, however, recommends that CNMI EVS–TAP travelers obtain travel authorizations prior to the time of reservation or purchase of the ticket, or at least 5 days before departure to the CNMI, in order to facilitate timely departures.

#### d. Required Travel Authorization Data Elements

CNMI EVS–TAP electronic travel authorization will collect the same information currently required on the paper CBP Form I–736 that is presented by parolees from the PRC to a CBP officer at a port of entry with several additional questions specific to the CNMI EVS–TAP. This is the information that the Secretary has deemed necessary to evaluate whether an individual is eligible to travel to the CNMI under the CNMI EVS–TAP and whether such travel poses a law enforcement or security risk. This information is already collected through the CBP Form I–736, which is presented to CBP when the applicant for parole arrives in the CNMI. On the CBP Form I–736, travelers must provide biographical data such as name, birth date, and passport information, as well as travel information such as flight information and the address of the traveler in the CNMI. Travelers must also answer eligibility questions regarding, for example: communicable diseases, arrests and convictions for certain crimes, and past history of visa revocation or deportation. In addition to the Form I–736 data elements, in order for CBP to initially determine if the applicant is eligible to travel under the CNMI EVS–TAP before the individual commences travel to the CNMI, the CNMI EVS–TAP questions also include questions regarding the status of the traveler's family and finances, occupation, and previous visits to Guam and/or the CNMI.

#### e. Scope of CNMI EVS–TAP Electronic Travel Authorization

An approved CNMI EVS–TAP electronic travel authorization only allows a noncitizen to board a conveyance for travel to a U.S. port of entry in the CNMI and does not restrict, limit, or otherwise affect the authority of CBP to determine a traveler's admissibility to the CNMI during inspection at a port of entry.

#### f. Duration

Each travel authorization will be valid for a period of no more than one year. A noncitizen may travel to the CNMI repeatedly within the validity period of the travel authorization using the same travel authorization. Pursuant to INA section 212(a)(7)(B)(i)(I) (8 U.S.C. 1182(a)(7)(B)(i)(I)) and implementing regulations at 8 CFR 214.1(a)(3)(i), the passport of an applicant for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay. Travelers

whose CNMI EVS–TAP electronic travel authorization applications are approved, but whose passports will expire in less than one year but greater than six months, will receive travel authorization that is valid only until six months prior to the expiration date on the passport. Travelers whose passports will expire in six months or less will not receive a travel authorization.

The Secretary, in consultation with the Secretary of the Interior and the Secretary of State, may increase or decrease the CNMI EVS–TAP travel authorization validity period otherwise authorized. *See* INA sec. 212(l)(3) (8 U.S.C. 1182(l)(3)). Notice of any change to the CNMI EVS–TAP travel authorization validity period will be published in the **Federal Register**. The CNMI EVS–TAP website will be updated to reflect the travel authorization validity period.

#### g. Events Requiring New Travel Authorization

A CNMI EVS–TAP traveler must obtain a new electronic travel authorization in advance of travel to the CNMI within the validity period of the traveler's current travel authorization if any of the following occurs:

- (1) The traveler is issued a new passport;
- (2) The traveler's name changes;
- (3) The traveler's gender changes;
- (4) The traveler's country of citizenship changes; or
- (5) The circumstances underlying the traveler's previous responses to any of the CNMI EVS–TAP electronic travel authorization application questions requiring a "yes" or "no" response (eligibility questions) have changed.

#### h. Fee

At this time, payment of a fee will not be required to obtain a travel authorization. If DHS determines at a later time, however, that collection of a fee is necessary for the efficient administration of the CNMI EVS–TAP electronic travel authorization requirement, DHS will implement a fee through a separate rulemaking action or such other manner as is consistent with the Administrative Procedure Act and applicable statutory authorities.

#### 10. Severability

To the extent that any portion of the requirements arising from this rule is declared invalid by a court, DHS intends for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect.

#### 11. Implementation Date

The requirements of the new 8 CFR 212.1(r) will take effect 45 days after the publication by the Secretary of notification in the **Federal Register** announcing the implementation of CNMI EVS–TAP. This delay in implementation will allow CBP to first establish automation of the Form I–736 and the G–CNMI VWP, and then integrate CNMI EVS–TAP. Note that this IFR has a delayed effective date until September 30, 2024, then the 60-day transition period begins for the electronic travel authorization requirement for the G–CNMI VWP. It will not be until sometime after 60 days after this IFR is effective that DHS will announce the implementation of CNMI EVS–TAP in the **Federal Register**.

#### B. Conforming Amendments and Revision of CBP Form I–760

This rule makes several conforming amendments to the regulations to account for the CNMI EVS–TAP. This rule makes two changes to 8 CFR 212.1(q) to account for CNMI EVS–TAP and the new 8 CFR 212.1(r). The first change impacts 8 CFR 212.1(q)(6) regarding bonding requirements. Part of the second recommendation made in the 902 Consultations regarding the creation of CNMI EVS–TAP is that the United States will explore adding bonding requirements as discussed in the CNRA.<sup>52</sup> Section 702(b) of the CNRA requires that the regulations implementing the G–CNMI VWP, and thus the CNMI EVS–TAP, include any bonding requirements for nationals of some or all of those countries who may present an increased risk of overstaying their period of authorized stay or other potential problems, *if different from such requirements otherwise provided by law for nonimmigrant visitors*.<sup>53</sup> The general bonding requirements provided by law for nonimmigrant visitors are found in section 214(a)(1) of the INA (8 U.S.C. 1184(a)(1)), which allows the Secretary to prescribe by regulations when the Secretary deems necessary the giving of a bond and the sum and conditions thereof for the admission of a nonimmigrant. Accordingly, 8 CFR 214.1(a)(3)(iii) sets forth who may require a bond from a nonimmigrant, the appropriate form, and the minimum sum. *See also* 8 CFR 103.6 (regarding the procedures for posting, processing,

and cancellation of surety bonds in immigration cases).

DHS has not imposed any bonding requirements different from such requirements otherwise provided by law for nonimmigrant visitors for travelers seeking admission into Guam or the CNMI under the G–CNMI VWP. For clarity, DHS is removing the applicable text regarding bonding requirements from 8 CFR 212.1(q)(6). To date, DHS has not utilized 8 CFR 212.1(q)(6) to require a bond on behalf of any traveler seeking admission under the G–CNMI VWP. Similar to the discussion above in Section V.A.6. regarding bonding requirements under the CNMI EVS–TAP, at this time DHS is not imposing any bonding requirements different from such requirements otherwise provided by law for nonimmigrant visitors for travelers seeking admission into Guam or the CNMI under the G–CNMI VWP. The general bonding requirements for nonimmigrants continue to apply, although they are rarely used. If DHS determines that additional bonding requirements are necessary, DHS will amend the regulations accordingly and has reserved the applicable text of 8 CFR 212.1(q)(6) to do so.

The second change to 8 CFR 212.1(q) made by this rule to account for CNMI EVS–TAP and the new 8 CFR 212.1(r) addresses severability. This rule adds new 8 CFR 212.1(q)(10), which provides that to the extent that any portion of the requirements arising from this rule is declared invalid by a court, DHS intends for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect.

This rule also amends 8 CFR 214.1, regarding ineligibility for extensions of stay, to add a limitation regarding extensions of stay for CNMI EVS–TAP travelers. Currently, 8 CFR 214.1(c)(3)(viii) provides that nonimmigrants who are admitted into the United States as visitors for business or pleasure pursuant to the G–CNMI VWP are ineligible for an extension of stay. This amendment provides that nonimmigrants admitted pursuant to the CNMI EVS–TAP are also ineligible for an extension of stay.

This rule also amends 8 CFR 233.6 to require transportation lines bringing travelers to the CNMI under the CNMI EVS–TAP to enter into an agreement on CBP Form I–760. Currently, transportation lines transporting nonimmigrant visitors under the G–CNMI VWP into Guam or the CNMI from foreign territories must enter into a contract with CBP by executing CBP Form I–760 "Guam–CNMI Visa Waiver

<sup>52</sup> Report to the President on 902 Consultations Related to the DHS Discretionary Parole Program (May 15, 2019), p. 10, available at [https://www.doi.gov/sites/doi.gov/files/uploads/final\\_902\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/final_902_report.pdf).

<sup>53</sup> See section 702(b)(3) of the CNRA, 122 Stat. at 861 (INA sec. 212(l)(3)(B)), as amended (8 U.S.C. 1182 (l)(3)(B))) (emphasis added).

Agreement” (I-760). Additionally, CBP Form I-760 will be revised to reflect the automation of the G-CNMI VWP and the establishment of the CNMI EVS-TAP.

## VI. Statutory and Regulatory Reviews

### A. Administrative Procedure Act

Section 702(b) of CNRA directs that all regulations necessary to implement the G-CNMI VWP shall be considered a foreign affairs function for purposes of section 553(a) of the Administrative Procedure Act (APA). Even without this directive from the CNRA, for the reasons discussed below this rule involves a foreign affairs function of the United States. DHS, after consultation with the Departments of State and Interior, is adopting this rule to advance the President’s foreign policy goals and this rule directly involves relationships between the United States and its noncitizen visitors. Requiring noncitizen visitors to submit their information electronically in advance of travel and receive an electronic travel authorization prior to embarking on a carrier for travel to Guam or the CNMI is an integral part of the administration of the G-CNMI VWP and its sub-program CNMI EVS-TAP, programs that involve an inherently foreign affairs function of the United States. Specifically, the G-CNMI VWP enables eligible citizens or nationals of designated countries and geographic areas to travel to Guam or the CNMI for tourism or business for stays of 45 days or less without first obtaining a visa, provided they meet certain requirements. Similarly, the CNMI EVS-TAP enables eligible nationals of the PRC to travel to the CNMI for tourism or business for stays of 14 days or less without first obtaining a visa, provided they meet certain requirements. Among other things, travelers under the G-CNMI VWP or the CNMI EVS-TAP must have valid electronic travel authorizations. As part of the screening process, CBP reviews available information regarding G-CNMI VWP and CNMI EVS-TAP applicants to determine whether they present a concern to U.S. national security or law enforcement (to include immigration enforcement) interests. Thus, any rulemaking actions undertaken to implement G-CNMI VWP and CNMI EVS-TAP are exempt from APA notice and comment requirements. Accordingly, this IFR is exempt from the notice and comment and 30-day effective date requirements of the APA. Although DHS is not required to provide prior public notice or an opportunity to comment, DHS is

nevertheless providing the opportunity for public comments.

### B. Executive Orders 12866 and 13563

Executive Order 12866, as amended by Executive Order 14094, and Executive Order 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. DHS has reviewed the IFR to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders and has prepared the following economic analysis of the potential impacts of this IFR.

This IFR creates an electronic travel authorization requirement for the current G-CNMI VWP similar to the current travel authorization requirement via the Electronic System for Travel Authorization (ESTA) for the general Visa Waiver Program established by section 217 of the INA (8 U.S.C. 1187) (general VWP).<sup>54</sup> This IFR also creates the CNMI EVS-TAP, a restricted sub-program of the G-CNMI VWP. The IFR will be implemented in two phases, with the second phase occurring once the first phase has been successfully implemented. The first phase involves visitors from G-CNMI VWP countries and geographic areas. Travelers to Guam and the CNMI will be required to fill out an electronic Form I-736, rather than the paper CBP Form I-736, in advance of travel using the G-CNMI VWP electronic travel authorization website.

<sup>54</sup> The travel authorization via ESTA requirement for the general VWP is provided in 8 CFR 217.5. There are several substantive differences between the travel authorization requirements for the general VWP and the G-CNMI VWP: (1) travel authorization via ESTA for the general VWP allows for travel to the entire United States, whereas travel authorization via electronic Form I-736 for the G-CNMI VWP allows for travel only to Guam or the CNMI; (2) travel authorization via ESTA is a requirement for general VWP travelers intending to arrive at land ports of entry in the United States, which is not applicable to the G-CNMI VWP, as Guam and the CNMI are not contiguous with any other country or geographic area; (3) section 217(h)(3)(C)(iv) of the INA (8 U.S.C. 1187(h)(3)(C)(iv)) explicitly excludes travel authorization determinations via ESTA from judicial review, but there is no such explicit provision for G-CNMI VWP travel authorization determinations; and (4) there are fees for applying for travel authorization via ESTA (see 8 CFR 217.5(h)), while there are not currently fees for applying for travel authorization for G-CNMI VWP travelers.

The IFR requires G-CNMI VWP travelers to receive a positive determination of travel authorization from CBP to board a plane to Guam or the CNMI. The first phase also involves visitors from the PRC seeking parole. PRC travelers to the CNMI seeking parole will also be required to fill out an electronic Form I-736, rather than the paper CBP Form I-736, in advance of travel using the G-CNMI VWP electronic travel authorization website and receive a positive determination of travel authorization from CBP to board a plane to the CNMI. The second phase involves travelers from the PRC traveling to the CNMI only (not including Guam). Once CNMI EVS-TAP is implemented, the current parole policy will be discontinued, and PRC travelers could be eligible to travel to the CNMI for a maximum stay of 14 days without obtaining a visa prior to travel. Similar to the first phase of this IFR, under CNMI EVS-TAP, PRC travelers will be required to submit an electronic Form I-736, along with responses to an additional set of vetting questions, in order to receive travel authorization from CBP.

After careful review and a detailed analysis of the actions contained within this rulemaking, CBP has concluded that this IFR will result in benefits justifying the costs. For the 5-year period analyzed, the present value (PV) cost of the rulemaking is estimated at \$7,018,942 (PV, discounted at 7-percent), which includes associated information technology (IT) costs with the automation of Form I-736, as well as developing the public facing CNMI EVS-TAP website. The present value benefits are \$11,956,620 (PV, 7-percent), which results from improved processing times at Federal Inspection Services (FIS), a reduction in costs to both CBP and carriers associated with individuals found to be inadmissible at Guam-CNMI POEs, and savings to CBP from eliminating manual data entry and storage of the current paper CBP Form I-736. The net present value (NPV, 7-percent) is calculated at \$4,937,678.

### Background

#### Current Process

Under the current process, travelers from G-CNMI VWP participating countries and geographic areas can travel for business or pleasure purposes to Guam or the CNMI without obtaining a visa for a period not to exceed 45 days. Upon arrival, travelers provide CBP officers their paper CBP Form I-736. Travelers can access CBP Form I-736 by visiting CBP’s website. The traveler can choose to fill out the form

electronically, print it, and provide it to the CBP officer, or the traveler can print and fill out by hand as well. Carriers also provide a paper version of CBP Form I-736 to passengers who need it prior to arrival in Guam or the CNMI. Form I-736 has a set of vetting questions that the CBP officer reviews at the FIS and uses the information to determine admissibility to Guam or the CNMI. Travelers arriving in the CNMI from the PRC must present themselves to a CBP officer with the CBP Form I-736 filled out and then generally are paroled into the CNMI for a period not to exceed 14 days. PRC nationals are required to obtain a visa to enter Guam.

#### Process: Phase I and Phase II

Under this IFR, CBP is replacing the current process with a new process that adapts currently available technology. Under this IFR, the traveler information contained in Form I-736 will be submitted by travelers in advance, prior to boarding a carrier, to CBP and DHS. Travelers from G-CNMI VWP countries and geographic areas must receive from CBP a determination of travel eligibility prior to embarking on a carrier for travel to either Guam or the CNMI. Similarly, PRC nationals must also receive a determination of travel eligibility prior to boarding a carrier destined to the CNMI. PRC nationals will still be required to obtain a visa to enter Guam. CBP is implementing this rule in two phases.

In particular, this IFR involves the collection of information provided on Form I-736 from travelers arriving in either Guam or the CNMI from current G-CNMI VWP participating countries and geographic areas. This rule changes the mechanism by which traveler information is processed.<sup>55</sup> Under this IFR, travelers will instead respond and submit their personal and travel information responses to CBP and DHS in advance via an electronic version of Form I-736 that will be available on the DHS-CBP website. Under CNMI EVS-TAP in Phase II, the Form I-736 for PRC nationals will have an additional set of pre-vetting questions than those traveling under the G-CNMI VWP to make a determination of travel eligibility. These changes allow DHS and CBP to perform more effective vetting of travelers entering Guam and the CNMI.

Under this IFR, travelers from all countries and geographic areas that are part of the G-CNMI VWP must begin

using the new automated electronic Form I-736, and use of the current paper CBP Form I-736 will be discontinued. This regulatory impact analysis studies the economic impact of automating Form I-736, and the creation of the CNMI EVS-TAP. The implementation of CNMI EVS-TAP will occur once the automation of the electronic Form I-736 is complete.

#### Phase I

The first phase of this rule affects travelers from G-CNMI VWP participating countries and geographic areas traveling to Guam or the CNMI, and PRC nationals seeking parole traveling to the CNMI, for business or pleasure purposes. These travelers will be required to access the electronic version of Form I-736, provide the required information, and receive an electronic travel authorization prior to boarding a carrier to Guam or the CNMI. DHS and CBP recommend that travelers obtain travel authorizations prior to the time of reservation or purchase of the ticket, or at least five days before departure to Guam or the CNMI, in order to facilitate timely departures. The recommended five days will provide DHS and CBP time to conduct the necessary pre-vetting investigation process prior to the traveler's departure. The traveler's information is reviewed against various U.S. and international law enforcement agency databases to ensure travel eligibility to the United States. Once the vetting is complete, CBP will provide the traveler with a determination of travel eligibility. This process is similar to the ESTA process for travel under the general VWP.

Soon after travelers input their information into the electronic Form I-736, travelers, in most cases, will receive a positive determination of travel eligibility, that is, an electronic travel authorization. An electronic travel authorization is required to travel to Guam or the CNMI under the G-CNMI VWP, but is not a determination that the traveler ultimately is admissible to Guam or the CNMI. A determination of admissibility to Guam or the CNMI will still be made by a CBP officer at the face-to-face interview at an FIS facility area. Under the rule, CBP will have access to the traveler's electronic Form I-736 in advance and prior to arrival at Guam or the CNMI. Having the traveler's personal and travel information in advance will help CBP identify potential grounds of ineligibility for admission before the G-CNMI VWP traveler embarks on a carrier destined for Guam or the CNMI. The process will also help travelers in shortening their time at inspection, as

well as decreasing the number of travelers turned away at the port of entry because of inadmissibility. Another anticipated outcome of this IFR is that carriers are expected to experience a decrease in costs from transporting individuals who are deemed to be inadmissible to the United States. These expected outcomes are discussed in further detail below, under "Benefits of the Rule."

#### Phase II

The second phase of this rulemaking will be implemented once the automation of Form I-736 has been successfully completed. The timeframe allows for the implementation, testing, and operations of Phase I to be completed successfully before implementing Phase II.

Phase II involves the development of a sub-program to the G-CNMI VWP, known as CNMI EVS-TAP. CNMI EVS-TAP will allow PRC nationals to enter the CNMI (but not Guam) for a maximum of 14 days without requiring either a visa to the United States or receiving a grant of discretionary parole. Under this IFR, and similar to the requirements for G-CNMI VWP travelers and PRC nationals seeking parole traveling to the CNMI in Phase I, PRC nationals seeking to travel to the CNMI under the CNMI EVS-TAP will have to access the electronic Form I-736, though now with additional questions specific to the CNMI-EVS-TAP, provide the required traveler information, and receive an electronic travel authorization prior to boarding a carrier to the CNMI. The required determination of travel eligibility will be provided by the CNMI EVS-TAP system once the traveler provides the requested personal and travel information and the traveler is vetted as described above in Phase I. The CNMI EVS-TAP system builds on the G-CNMI VWP system and is thus similar to the current ESTA, a program used in the general VWP, as described above, and is also similar to the Electronic Visa Update System (EVUS), a program used by certain PRC nationals to update biographic and other information to maintain visa validity prior to travel to the United States.<sup>56</sup> CNMI EVS-TAP will provide a channel through which personal and travel information is collected by CBP for security vetting purposes during the prescreening investigation process. Depending on the outcome of the investigation, a travel

<sup>55</sup> Note that this rule does not change the length of admission and remains the same at 45 days for travelers from G-CNMI VWP participating countries.

<sup>56</sup> See 8 CFR part 215, subpart B. Pursuant to 8 CFR 215.22, DHS identified the PRC as an EVUS country in a **Federal Register** notice published on October 20, 2016. 81 FR 72600.

authorization will be provided to the individual, who must receive it in advance of travel to the CNMI.

Under the current process, when an eligible PRC passport holder arrives at the CNMI without a visa, the traveler typically receives discretionary parole from the Port Director to enter the CNMI. Under Phase I of this rulemaking, PRC nationals that intend to seek parole will have to fill out the electronic Form I-736 prior to boarding a carrier, and CBP will make a determination of travel eligibility. Under Phase II of this rulemaking, once CNMI EVS-TAP is implemented, the electronic Form I-736 for PRC nationals seeking to travel under the CNMI EVS-TAP will have an additional set of pre-vetting questions than those traveling under the G-CNMI VWP to make a determination of travel eligibility. As such, Phase II of this rulemaking involves transitioning PRC nationals from the current discretionary parole policy, and instead processing them for admission under the CNMI EVS-TAP similar to those under the G-CNMI VWP, but with a shorter admission period.

#### Economic Impact of the Rule

CBP anticipates that this rule will have positive net benefits, meaning that economic benefits justify the economic costs. As more fully discussed below, the net economic benefit is expected to be \$6,866,537, undiscounted over a five-year period of analysis.

CBP has identified the following economic costs of this rule: (1) development of the required software to automate electronic Form I-736 to process passenger information and provide the determination of travel eligibility and required electronic travel authorizations; (2) development of the required electronic travel authorization system specific to CNMI EVS-TAP to process and update PRC-related traveler information; (3) maintenance costs associated with continuous use of the

software, including occasional software updates for both G-CNMI VWP participating travelers and PRC nationals (initially those seeking parole, and then CNMI-EVS TAP participants); (4) increased time burden of two minutes for G-CNMI VWP participants to access the CBP-DHS website; and (5) increased time burden of two minutes for CNMI EVS-TAP users to access the CBP-DHS website, and an additional five minutes to answer an additional set of vetting questions, for a total additional time burden of seven minutes, per response. CBP already has a similar digital database program in place, but will need to make modifications for the implementation of program associated with this rule.

CBP has identified the following benefits from the rule: (1) decrease in administrative costs to CBP from manually entering the information contained in the paper CBP Form I-736 into a database, and subsequently storing the paper files in a storage facility; (2) decrease in the number of individuals found to be inadmissible to the United States at the POE which leads to a decrease in airline costs for transporting individuals who are found to be inadmissible to the United States; and (3) an increase in national security from a more effective vetting process of individuals seeking to harm the United States.

#### Baseline

The baseline used in this analysis is the current regulatory status quo, which includes the current regulations for travelers arriving to Guam and the CNMI under the current G-CNMI VWP. Against this baseline, we consider the regulatory changes provided by this rulemaking: the automation of Form I-736 for individuals traveling from participating G-CNMI VWP countries and geographic areas and the development of CNMI EVS-TAP for PRC nationals entering the CNMI. We

use a five-year period of analysis, from 2022–2026.

#### Population Affected by Rule

CBP has historical information on yearly arrivals to both Guam and the CNMI from the participating countries and geographic areas. CBP uses this information to forecast future travel patterns from participating countries and geographic areas to anticipate the potential economic impact of the rule. CBP has information from fiscal years 2015 through 2020. However, in this analysis, CBP uses fiscal years 2015 through 2019 to provide arrival forecasts for future years. CBP does not use fiscal year 2020 because of the travel uncertainty associated with the COVID-19 global pandemic in 2020. Due to the uncertainty, this analysis provides the economic impact of the rule as if travel, the economy, and international borders were restored to patterns similar to those before the COVID-19 pandemic.

Table 1 shows the number of arrivals to both Guam and the CNMI for fiscal years 2015 to 2019 from the 12 participating G-CNMI VWP countries and geographic areas. On average, there are 1.4 million visitors per year to Guam and the CNMI. From FY 2015 to FY 2016, the majority of arrivals are passport holders from Japan, consisting of more than 50-percent for FY 2015 and 50-percent for FY 2016. Between FY 2017 to FY 2020, the majority of arrivals to the islands are passport holders from South Korea. Arrivals to Guam and the CNMI from all other G-CNMI VWP participating countries and geographic areas was less than five-percent for any given year. Travelers from the PRC are not eligible for the G-CNMI VWP, but may be paroled into the CNMI. Table 2 shows the historical data on arrivals to the CNMI only from PRC nationals seeking to be paroled between FY 2015 to FY 2019. Arrivals from the PRC steadily increased from FY 2015 to FY 2019.

TABLE 1—G-CNMI VWP ARRIVALS TO GUAM AND CNMI <sup>57</sup>

Country or geographic area	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	Total
Australia .....	698	539	440	378	369	2,424
Brunei .....	2	0	1	6	1	10
Hong Kong .....	352	970	2,344	2,699	2,479	8,844
Japan .....	707,421	621,534	471,393	386,033	456,321	2,642,702
Malaysia .....	208	235	567	426	495	1,931
Nauru .....	12	9	7	28	22	78
New Zealand .....	137	159	139	133	110	678
Papua New Guinea .....	205	275	73	60	55	668
South Korea .....	489,519	581,744	715,564	762,479	697,602	3,243,908
Singapore .....	151	173	142	153	127	746

<sup>57</sup> Source: BorderStat, ATS-P, accessed Jun. 29, 2022. Inbound arrivals to Guam and the CNMI all modes.



TABLE 1—G—CNMI VWP ARRIVALS TO GUAM AND CNMI<sup>57</sup>—Continued

Country or geographic area	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	Total
Taiwan .....	35,144	33,820	29,590	20,182	20,433	139,169
United Kingdom .....	689	674	945	565	534	3,407
Total .....	1,234,538	1,240,132	1,218,205	1,173,142	1,178,548	6,044,565

TABLE 2—PRC ARRIVALS AT THE CNMI SEEKING PAROLE

Arrivals to the CNMI	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	Total
PRC arrivals at the CNMI .....	108,952	136,911	184,378	213,827	164,564	808,632

## Future Arrivals to Guam and CNMI

Table 3 presents future forecasts of travel to Guam and the CNMI, and is

used to compare the effect of the regulation. Using the data presented in Table 1, the number of arrivals to Guam and the CNMI grew at a compound

annual growth rate of – 1.15 percent between fiscal years 2015 and 2019. CBP uses this rate to forecast future travel to the islands.<sup>58</sup>

TABLE 3—G—CNMI VWP EXPECTED ARRIVALS TO GUAM AND CNMI<sup>59</sup>

Country or geographic area	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Australia .....	365	361	357	353	349
Brunei .....	1	1	1	1	1
Hong Kong .....	2,451	2,423	2,395	2,367	2,340
Japan .....	451,074	445,886	440,759	435,690	430,680
Malaysia .....	490	484	479	473	468
Nauru .....	22	22	22	22	21
New Zealand .....	109	108	107	106	104
Papua New Guinea .....	55	54	54	53	52
South Korea .....	689,580	681,650	673,811	666,062	658,402
Singapore .....	126	125	123	122	120
Taiwan .....	20,199	19,966	19,737	19,510	19,285
United Kingdom .....	528	522	516	510	504
Total .....	1,165,000	1,151,602	1,138,361	1,125,269	1,112,326

Economic Costs of Rule<sup>60</sup>

CBP has identified five relatively major potential sources of costs from the rule:<sup>61</sup> (1) automation of electronic Form I-736; (2) development of CNMI EVS-TAP software; (3) a one-time fixed cost and continued maintenance of the automated Form I-736 and CNMI EVS-TAP; (4) increased time burden of two minutes for G—CNMI VWP participants to access the CBP-DHS website; and (5) increased time burden of two minutes for CNMI EVS-TAP users to access the CBP-DHS website, and an additional five minutes to answer an additional set of vetting questions, for a total

additional time burden of seven minutes, per response. In addition, CBP has determined that the expanded transmission of traveler information between the carrier and CBP will have no additional cost. The transmitted information will contain the traveler's background and travel information, and is similar to that in the current ESTA and EVUS programs. This is not expected to increase costs because carriers already have the capabilities to transmit this information and receive information from CBP regarding a passenger's boarding status. The automated Form I-736 information and

electronic travel authorization status will be another component in determining a passenger's boarding status that will be implemented in the existing messaging capabilities between CBP and the carriers.

## CBP Information Technology Costs

CBP currently has a program that provides travelers with a determination of travel eligibility to the United States: ESTA, which is used to authorize travel in accordance with the general VWP. A similar electronic travel authorization system will need to be developed for the G—CNMI VWP. As previously

<sup>58</sup> CBP does not expect a significant change in travel to Guam or the CNMI as a result of this IFR.

<sup>59</sup> DHS is aware that the outbreak of COVID-19 will likely reduce the number of trips/arrivals in the short run. Consequently, using historical growth rates from FY 2015 to FY 2019 to estimate FY 2022 to FY 2026 trips/arrivals will not reflect any impacts from the COVID-19 pandemic. It is not clear what level of reductions the pandemic will have on travel to Guam and the CNMI, or how DHS would estimate such an impact with any precision given available data. Therefore, the projections in Table 3 could be overestimates, especially for the year 2022.

<sup>60</sup> See OMB Circular A-4. Please note this analysis is performed from a global perspective, and includes foreign individuals who travel to the United States. Notice that most of the costs of the rule (except for CBP costs) will be incurred by foreign travelers that are not U.S. citizens or permanent residents.

<sup>61</sup> CBP has also considered the following costs: It may be the case that travel agents incur costs to assist their clients in complying with this IFR; however, CBP anticipates that this additional cost to travel agents would be passed on to their clients and it would not be greater than the cost that would be incurred if the client filed the data themselves.

In the case that a travel authorization is denied, travelers have the ability to obtain a visa, which would have additional costs. However, CBP does not expect many individuals who are denied a travel authorization to be able to successfully obtain a visa, so we do not include those costs in this analysis. Further, those denied travel authorizations would be likely to be denied admission by the CBP officer under the baseline, in which case they would have the option to seek the visa under the baseline as well. CBP therefore does not believe there are meaningful visa costs resulting from this rule.

mentioned, current practice requires travelers, without an approved ESTA, from a G–CNMI VWP participating country or geographic area or from the PRC seeking parole into the CNMI, to present a completed and signed paper CBP Form I–736. Travelers may fill out the digital format of CBP Form I–736, print and sign the document; print the CBP Form I–736, fill it out and sign it; or fill out and sign a provided paper CBP Form I–736. Automation of the electronic Form I–736 will require a transformation in the information technology currently used for this form. Under this IFR, a traveler will input the Form I–736 information and submit it to CBP electronically.<sup>62</sup> CBP will then use this information to provide a determination of travel eligibility. Similarly, once CNMI EVS–TAP is implemented, PRC nationals—along with additional specifications and requirements—will electronically provide the Form I–736 information along with answers to additional vetting questions, to receive a determination of travel eligibility. Although a similar program such as ESTA already exists within CBP, the automation of the Form I–736 is expected to be a cost to CBP and the U.S. Federal Government.

Although CBP already has a website and software programs that will be nearly identical to what is currently being implemented in this rulemaking, the development of software and program website to implement the automation of Form I–736 (Phase I) and the development of CNMI EVS–TAP (Phase II) are included and quantified in this analysis. Since the software and website will be similar to that currently used in EVUS and ESTA, the cost to CBP for developing these components is expected to be less than the original costs to develop the EVUS and ESTA programs. Because a portion of the CNMI EVS–TAP includes automation of Form I–736, the development of both the Form I–736 automation for Phase I and the additional questions and separate tab for CNMI EVS–TAP for Phase II will be interrelated and the cost is not broken down between the two phases. The website components include: (1) creation of a public facing website(s) for travelers to submit the required information, including biographical data and eligibility questions; (2) creation of at least one internal website for CBP officers to be able to view and modify an application; (3) creation of a database to store the application(s) with the ability for other

applications to view or modify (approve or deny) those applications; (4) a process for accepting the application, verifying email address, auditing, adjudicating, screening and emailing the application and emailing the applicant with notification of a decision, along with the ability for the applicant to return and view the status of the application; and (5) developing and enhancing interconnectivity between CBP information systems to query and/or validate applicant information.

CBP currently has two programs (ESTA and EVUS) that have identical components to the ones just described, including external and internal website, a database to store applications, a process for accepting, screening, and emailing notifications. In 2008, DHS and CBP published an IFR, which included the implementation of the Electronic System for Travel Authorization, also known as ESTA.<sup>63</sup> ESTA provides an advance determination of travel authorization to citizens of 40 countries in the general VWP. Many of the functional components of the G–CNMI VWP, Automation of Form I–736, will be identical to the current ESTA program. CBP does not anticipate needing to develop a program in terms of new information technology for the G–CNMI VWP, and instead is duplicating components of the ESTA program and tailoring it to the G–CNMI VWP. The IT costs of developing the program for the G–CNMI VWP are presented in Table 4, and include both program development and annual operations and maintenance costs.

Under this IFR, the G–CNMI VWP electronic travel authorization requirement will improve the current processing of travelers at both Primary and Secondary inspections, as well as improve the determination of a traveler's admissibility to Guam or the CNMI along with the verification of information. The verification occurs with the already existing Advance Passenger Information System (APIS), Traveler Primary Arrival Client (TPAC), and Lookout Record Data and Screening Services (LRDS). Because this verification of traveler information is done automatically by computers, and CBP and carriers will continue to use existing messaging capabilities, expansion of the use of this existing infrastructure for vetting and communicating “board” or “no board”

messages to carriers will not result in an increase in costs to CBP or carriers.

Under this IFR, CBP and DHS are establishing a sub-program to the G–CNMI VWP, known as CNMI EVS–TAP. The purpose of the sub-program will allow PRC nationals to be admitted to the CNMI without a visa for nonimmigrant travel. Under the current parole process, PRC nationals have been allowed to travel to the CNMI for a period not to exceed 14 days. Under CNMI EVS–TAP, PRC nationals will continue to be allowed travel to the CNMI for business or pleasure purposes for a period of 14 days.<sup>64</sup> Assuming all requirements are met, PRC nationals will receive a determination of travel eligibility. Although the IT is similar to a current program that already exists—EVUS—the development of CNMI EVS–TAP is expected to be a cost to CBP and the U.S. Federal Government.

Since CNMI EVS–TAP will include the automation of Form I–736, all of the components to automate Form I–736 are already included within the broader G–CNMI VWP. PRC nationals traveling to the CNMI under CNMI EVS–TAP, however, will have to answer and submit an additional set of screening questions to CBP than those traveling from participating G–CNMI VWP countries and geographic areas. CNMI EVS–TAP will be specific for PRC nationals traveling to the CNMI only, and will replace the current parole process. Under this IFR, PRC nationals will be able to receive a determination of travel eligibility to the CNMI without the need to obtain a visa. Note that PRC nationals will still have the option of applying and obtaining a visa to visit the United States. PRC nationals with an approved visa must enroll in EVUS and provide or update personal and travel information in order to receive a determination of travel eligibility. In a sense, CNMI EVS–TAP will be a smaller scaled version of EVUS, and CNMI EVS–TAP will have similar functional components in terms of information technology requirements as EVUS. CBP anticipates maintenance costs associated with the automated Form I–736, as well as the CNMI EVS–TAP program for PRC nationals.

Table 4 summarizes the IT costs associated with the development and implementation of Phase I and Phase II of this rulemaking regarding G–CNMI VWP Automation and CNMI EVS–TAP (the Guam–CNMI program). Program costs are divided into two categories, with the first being development of the software and the DHS–CBP website for

<sup>62</sup> Please note that this process would also allow travelers to print their Form I–736 for their own records.

<sup>63</sup> See *Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program*, 73 FR 32440 (June 9, 2008); see also 8 CFR 217.5.

<sup>64</sup> Note: please refer to the regulatory text for specifications and additional requirements.

both phases incurred in the first year, and the second as operation and maintenance costs for the subsequent four years. The program's total development is estimated at \$3,169,486

incurred in the first year, with operations and maintenance starting at \$646,575 undiscounted in the second year and rising to \$686,151 undiscounted in the program's fifth

year. The program's total implementation cost is estimated at \$5,834,416 undiscounted over the next five-year period.

TABLE 4—GUAM-CNMI PROGRAM IMPLEMENTATION COSTS  
[Phase I and II]

Cost category	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Development .....	\$3,169,486	.....	.....	.....	.....	\$3,169,486
Operations and Maintenance .....	.....	646,575	659,507	672,697	686,151	2,664,930
Total .....	3,169,486	646,575	696,507	672,697	686,151	5,834,416

In addition, CBP has identified that the changes in this rule will result in a net increase in traveler time. The increased traveler time will result in a cost increase. The following sections explain the process for Phase I for each group of travelers and Phase II in further detail.

#### Increased Traveler Times Associated With the Automation of Form I-736 for G-CNMI VWP Travelers

In order to provide an estimate of the net change in traveler times as a result of this rule (measured as the difference in minutes between the current process and the new process), it is important to understand the current inspection and admission process in Guam and the CNMI. In general, the traveler disembarks from the aircraft, enters the FIS and joins the queue. If it is the case that the traveler has neither a current ESTA, nor a valid EVUS authorization, then the traveler approaches the CBP officer and presents a valid passport and a completed and signed CBP Form I-736. If the traveler has all documents in order, then the officer compares the passport to the person and reviews CBP Form I-736. The officer then scans the passport in the TPAC and reviews any lookouts that may appear in the system. The officer questions the traveler as to

the purpose and length of stay and other relevant questions. The officer either admits the traveler, refers the traveler for secondary inspection, or grants parole in the case for PRC nationals to the CNMI. Under this IFR, with the automation of Form I-736 for G-CNMI VWP countries and geographic areas in Phase I and with the implementation of CNMI EVS-TAP for PRC nationals in Phase II, both programs will result in a net increased traveler times.

Table 5 describes the three varying scenarios that can occur under the current process when a traveler from a participating G-CNMI VWP country arrives at an FIS at either Guam or the CNMI. The left-hand column, labeled (a), describes the scenario with the least amount of traveler time and represents a traveler with an approved ESTA. The traveler time in this first scenario is estimated to take approximately two minutes per traveler. The middle column, labeled (b), describes the scenario when the traveler does not have an approved ESTA, but has in hand the required current paper CBP Form I-736 completed and signed. The traveler time in this second column is approximately the same as that in the first column, however, there is a greater chance that the traveler may be found to be inadmissible. This rule will attempt

to lower the likelihood of a traveler being found inadmissible for three reasons: (1) the traveler's information will be collected beforehand by CBP and DHS; (2) the collected information will have gone through a vetting process before the traveler boards the carrier; and (3) the CBP officer will have the traveler's information in digital format for a few seconds beforehand to make an assessment on admissibility with greater confidence. The right-hand column, labeled (c), is the most time consuming scenario and describes the case in which a traveler arrives at FIS without an approved ESTA, and without CBP Form I-736. It is the number of occurrences in column (c) that this rule will attempt to eliminate, as the traveler time under this third scenario can take up to an estimated seven minutes per traveler. Under this IFR, the automation of Form I-736 will result in most travelers following a scenario similar to that described in the column (a). Note that none of these scenarios includes the time it takes to complete the Form I-736 as that time burden is borne by the traveler in all scenarios in both the baseline and under the rule. The next two subsections describe both the current and proposed processes in more detail.

TABLE 5—CURRENT PROCESS FOR GENERAL VWP AND G-CNMI VWP PARTICIPANTS TRAVELING TO GUAM OR THE CNMI

[Traveler time is in parentheses]

Traveler from general VWP participating country with current (approved) ESTA enrollment (a)	Traveler from G-CNMI VWP participating country without an approved ESTA, with CBP Form I-736 completed and signed (b)	Traveler from G-CNMI VWP participating country without an approved ESTA, without CBP Form I-736 (c)
Traveler arrives at the FIS area and presents travel documents to the CBP officer. CBP officer inspects travel documents to include passport and reviews for compliance. Traveler's information is stored in databases (approx. 1 min).	Traveler arrives at the FIS area and presents travel documents to the CBP officer. If traveler is in possession and compliance with all required travel documents, then, the CBP officer compares the passport to the person and reviews CBP Form I-736 (approx. 1 min).	Traveler arrives at the FIS area and presents travel documents to the CBP officer. The traveler is returned to the airline agent stationed in the primary queue area who is actively checking the passengers' forms before the passengers get to primary (approx. 5 min).

TABLE 5—CURRENT PROCESS FOR GENERAL VWP AND G—CNMI VWP PARTICIPANTS TRAVELING TO GUAM OR THE CNMI—Continued

[Traveler time is in parentheses]

Traveler from general VWP participating country with current (approved) ESTA enrollment (a)	Traveler from G—CNMI VWP participating country without an approved ESTA, with CBP Form I-736 completed and signed (b)	Traveler from G—CNMI VWP participating country without an approved ESTA, without CBP Form I-736 (c)
<p>CBP officer interviews the traveler as to the purpose and length of intended stay and other relevant questions (approx. 1 min).</p> <p>CBP officer either refers the person to secondary, or grants admission to Guam or the CNMI.</p> <p>If traveler is admissible, then, the traveler proceeds to local CNMI Customs Service for processing.</p>	<p>CBP officer interviews the traveler as to the purpose and length of intended stay and other relevant questions (approx. 1 min).</p> <p>CBP officer either refers the person to secondary, or grants admission to Guam or the CNMI.</p> <p>If traveler is admissible, then, the traveler proceeds to local CNMI Customs Service for processing.</p>	<p>Once traveler's documents are completed and in compliance, then, the CBP officer compares the passport to the person and reviews CBP Form I-736 (approx. 1 min).</p> <p>CBP officer interviews the traveler as to the purpose and length of intended stay and other relevant questions (approx. 1 min).</p> <p>CBP officer determines traveler's admissibility into Guam or the CNMI.</p> <p>If traveler is admissible, then, the traveler proceeds to local CNMI Customs Service for processing.</p>
Total time: 2 min .....	Total time: 2 min .....	Total time: 7 min.

#### Baseline Process for G—CNMI VWP Travelers Visiting Either Guam or the CNMI

A CBP Form I-736 is required for travel to Guam and the CNMI except in three circumstances. CBP Form I-736 is not required if a traveler holds a valid visa for travel to the United States. The processing time for these travelers is estimated to be approximately two minutes, which is the time it takes for the CBP officer to inspect the travel documents and ask questions to the traveler regarding the purpose and length of intended stay as well as other relevant questions. If a traveler is a citizen of Australia, Brunei, Japan, New Zealand, South Korea, Singapore, Taiwan, or the United Kingdom<sup>65</sup> and has a current ESTA enrollment, then CBP Form I-736 is also not required and the respective processing time upon arrival resembles that detailed in column (a) of Table 5. If a traveler from the PRC holds a valid visa for travel to the United States and has a valid EVUS enrollment, then CBP Form I-736 is also not required.

Citizens or nationals from one of the twelve countries or geographic areas participating in the G—CNMI VWP (Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, South Korea, Singapore,

Taiwan and the United Kingdom) who travel to Guam or CNMI without a current ESTA enrollment are required, with a few exceptions, to present a signed paper copy of CBP Form I-736 upon arrival. Their processing time can vary depending on whether or not the traveler has a completed and signed CBP Form I-736. If the traveler arrives without an approved ESTA, but has a completed, printed and signed CBP Form I-736, the CBP officer then reviews the information presented in CBP Form I-736, along with relevant travel and related questions, and makes a determination of admissibility to the United States. The processing time corresponding to column (b) in Table 5 is also estimated at two minutes.

If, on the other hand, the traveler from a G—CNMI VWP participating country does not have a completed, printed and signed CBP Form I-736, then the CBP officer refers the traveler to an airline agent to complete and sign CBP Form I-736. CBP estimates that the need to go to an airline agent adds five minutes to the traveler's time, not including the time it actually takes to complete the CBP Form I-736. It generally takes 19 minutes to complete CBP Form I-736, but this time is borne whether the traveler arrives at the airport with a completed form or not; all that varies is when the traveler fills out the form. The CBP officer then reviews the information contained within the form

and asks relevant travel and related questions regarding the traveler's purpose and length of stay at the inspection interview and makes a determination of admissibility. CBP estimates that the third process described in column (c) in Table 5 takes seven minutes from beginning to end, not including the time it takes to complete the CBP Form I-736.

#### New Process for G—CNMI VWP Travelers When Visiting Either Guam or the CNMI

CBP intends to improve the arrival process by automating Form I-736 whereby the traveler does not need to print and sign a paper CBP Form I-736. Instead, CBP will automate Form I-736 by having travelers fill out the form in advance, answer the required personal and travel questions and update their information prior to their travel. CBP will then use this information to review against national and international law enforcement databases to prescreen travelers, which will improve the current vetting process, and as a result receive a determination of travel eligibility. In essence, as a result of this rule, the processes represented in columns (b) and (c) of Table 5 will be eliminated, and all travelers from G—CNMI VWP will follow a process that resembles column (a) in Table 5. The process will be similar to the current ESTA process.

<sup>65</sup> These countries are part of both the general Visa Waiver Program and G—CNMI VWP.

In order to quantify the economic benefits (or cost) resulting from this rule's change in traveler times, a value of time is needed. The U.S. Department of Transportation (USDOT)<sup>66</sup> provides estimates on the value of travel time. Since travelers from all of the countries and geographic areas selected by the U.S. Government to participate in the G–CNMI VWP, and PRC nationals granted discretionary parole into the CNMI, are typically higher income individuals,<sup>67</sup> they are thus more likely to have values of time similar to the USDOT's value of travel time savings estimates. Accordingly, CBP believes that this value of travel time savings reported in USDOT's memorandum is an accurate representation of the value of time savings that travelers from G–CNMI VWP participating countries and geographic areas also place on travel time and CBP uses \$53.24 as the estimated hourly value of travel time for affected travelers.

#### Net Change in Traveler Time With Automated Form I–736

The net change in traveler times depends on the travelers' baseline behavior. Some will see an increase in time burden and others will see a decrease. On net, the overall population will not see a change in the traveler time as a result of this rule and the automation of Form I–736. As previously mentioned, the processes described in columns (b) and (c) of Table 5 are expected to be eliminated. Using travel projections from Table 3, CBP can estimate the net change in traveler time associated with the automation of Form I–736. From fiscal years 2015 to 2019, a total of approximately six million travelers from G–CNMI VWP participating countries and geographic areas arrived in Guam and the CNMI requiring a paper CBP Form I–736. CBP subject matter experts estimate that approximately 60 percent of the six million G–CNMI–VWP

travelers<sup>68</sup> arrived with a completed CBP Form I–736 (column (b)) and 40 percent arrived without one and needed to complete and sign upon arrival (column (c)).

The total estimated processing time for a traveler that falls under column (b) of Table 5 currently is estimated at two minutes. Under this IFR, travelers will now be required to access and submit their personal and travel information into the automated version of Form I–736. CBP estimates that this new process will burden travelers by an additional two minutes, which represents the time it takes to set up an account on the new website and log in to access the automated Form I–736. Thus, the difference in time between column (b) and the new proposed process is expected to be approximately an additional two minutes. The increased time burden and monetized time costs for travelers that arrive with a completed I–736 (column (b)) are presented in Table 6.

TABLE 6—NET CHANGE IN TRAVELER TIME FROM AUTOMATION OF FORM I–736, COLUMN (B)

Time burden	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Number of travelers .....	699,000	690,962	683,016	675,162	667,395	3,415,535
Additional time burden (min) .....	2	2	2	2	2	.....
Burden hours .....	23,300	23,032	22,767	22,505	22,247	113,851
Monetized Time Cost .....	\$1,240,492	\$1,226,224	\$1,212,115	\$1,198,166	\$1,184,430	\$6,061,427

The current processing time associated with column (c) of Table 5 is seven minutes. Travelers will now have to follow the two-minute process described in column (a), but will also

bear the additional two-minute time burden to set up a new account and logging into the website. On net, these travelers will experience a three-minute time savings as a result of this rule. The

estimated time savings benefits from reduced processing at the G–CNMI FIS associated with column (c) of Table 5 are presented in Table 7.

TABLE 7—NET CHANGE IN TRAVELER TIME FROM AUTOMATION OF FORM I–736, COLUMN (C)

Time reduction	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Number of travelers .....	466,000	460,640	455,345	450,107	444,931	2,277,023
Time reduction (minutes) .....	3	3	3	3	3	.....
No. of hours reduced .....	23,300	23,032	22,767	22,505	22,247	113,851
Monetized Time Benefit .....	\$1,240,492	\$1,226,224	\$1,212,115	\$1,198,166	\$1,184,430	\$6,061,427

After applying this value for travel time using the all-purpose travel category, CBP estimates that the 2-

minute increase for 60 percent of travelers (column b) and 3-minute decrease for 40 percent of travelers

(column c) results in a net undiscounted economic benefit resulting from automation of Form I–736 is \$0 over the

<sup>66</sup> For the monetized time costs used in this analysis to calculate the time burden imposed on travelers for the increased time burden to fill out the automated Form I–736, CBP uses the U.S. Department of Transportation's (USDOT) hourly time value of \$47.10 for all-purpose, intercity air travelers. The 2015 hourly figure is then multiplied with a GDP deflator multiplier of 1.1304 to reflect a 2021 dollars wage rate of \$53.24. The opportunity cost associated with column (b) of Table 5 was estimated by multiplying the hourly Value of Travel Time Savings (VVTSS) figure with the change in minutes it takes to complete the automated Form I–736. Similarly, the opportunity cost associated with column (c) of Table 5 was estimated by

multiplying the VVTSS figure with the change in minutes it takes to complete the automated Form I–36. Source: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update)*. "Table 4 (Revision 2-corrected): Recommended Hourly Values of Travel Time Savings for All-Purpose, Intercity Air and High-Speed Rail Travel." April 29, 2015. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>. Accessed Sept. 28, 2020.

<sup>67</sup> See Economic Analysis for the Interim Final Rule: Implementation of the Guam–CNMI Visa Waiver Program (Oct. 31, 2008), pp. 3–13 (CNMI) and 4–5 (Guam), available at <https://www.regulations.gov/document/USCBP-2009-0001-0002>.

<sup>68</sup> Some travelers are likely to be repeat travelers, which may affect estimated costs and benefits presented in this analysis, but CBP data on repeat travelers in this situation are not readily available. To the extent that some travel more than once in a two-year period, the costs and savings associated with the one-time process of completing the automated Form I–736 will be lower.

next five-year period. The resulting net change in traveler time associated with Phase I, which corresponds to the

summation of Table 6 and Table 7, is presented in Table 8.

TABLE 8—TOTAL NET CHANGE IN TRAVELER TIME OF PHASE I FROM THE AUTOMATION OF FORM I-736

Economic cost	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Monetized time cost .....	\$1,240,492	\$1,226,224	\$1,212,115	\$1,98,116	\$1,184,430	\$6,061,427
Monetized time benefit .....	1,240,492	1,226,224	1,212,115	1,98,116	1,184,430	6,061,427
Total time cost (undiscounted) .....	0	0	0	0	0	0

#### Increased Traveler Time Associated With the Automation of Form I-736 for PRC Nationals and Increased Traveler Time Associated With the Implementation of CNMI EVS-TAP

The automation of Form I-736 for PRC nationals seeking parole in Phase I and CNMI EVS-TAP in Phase II applies to when they arrive at an FIS at the CNMI only. PRC nationals still must obtain a visa to enter Guam, and this rule does not change applicable visa requirements for travel to Guam. In order to estimate the expected net change in processing time at inspection with the proposed processes under this rule, it is important to understand the current process. The difference in processing times between the current process and the new processes is the net change in traveler time, with the net change in processing time (measured as the difference in minutes between the current process and the new process), and the economic cost measured as the value of time associated with the increase in processing time.

Table 9 explains the three varying scenarios that can result under the current process when travelers from the PRC arrive at the CNMI. The left-hand column, labeled (d), describes the scenario with the least amount of processing time and coincides with a visa traveler having a valid (approved) EVUS enrollment. The middle column, labeled (e), describes the scenario where the traveler arrives without a visa, but has in hand the required current paper version of CBP Form I-736 completed and signed, and seeks parole. The processing time in column (e) takes approximately five minutes, and takes about three minutes longer to process than in column (d). There is also a higher chance that the traveler is found to be inadmissible to the CNMI or denied parole as there has been no pre-arrival vetting in this scenario. This rule will attempt to lower the likelihood of a traveler being found inadmissible or denied parole for three reasons: (1) the traveler's information will have been collected beforehand by CBP and DHS;

(2) the collected information will have gone through a vetting process before the traveler boards; and (3) the CBP officer will have the traveler's information in digital format a few seconds beforehand to make an assessment on admissibility with greater confidence. The right-hand column, labeled (f), is the most time consuming scenario and describes the case in which a traveler arrives at an FIS without a visa, and without CBP Form I-736. The processing time under column (f) is estimated to take up to nine minutes per traveler. It is the number of occurrences in columns (e) and (f) that this rule will attempt to eliminate. Under this IFR, the implementation of CNMI EVS-TAP will result in most travelers following a scenario similar to that described in column (d). The automation of Form I-736 will be included within the implementation of CNMI EVS-TAP. The next two subsections describe both the current and the proposed processes in more detail.

TABLE 9—CURRENT PROCESS FOR PRC NATIONALS TRAVELING TO THE CNMI

[Traveler time is in parentheses]

Traveler with PRC passport, valid visa, and valid (approved) EVUS enrollment (d)	Traveler with PRC passport, without visa (seeks parole), with CBP Form I-736 completed and signed (e)	Traveler with PRC passport, without visa (seeks parole), without CBP Form I-736 (f)
PRC national arrives at the FIS area and presents travel documents to the CBP officer. CBP officer inspects travel documents and reviews personal and travel information stored in databases (approx. 1 min).	PRC national arrives at the FIS area and presents travel documents to the CBP officer. If traveler has all documents in order, then the officer compares the passport to the person and reviews CBP Form I-736 (approx. 1 min).	PRC national arrives at the FIS area and presents travel documents to the CBP officer. The traveler is returned to the airline agent stationed in the primary queue area who is actively checking the passengers' forms before the passengers get to primary (approx. 5 min).
CBP officer interviews the traveler as to the purpose and length of intended stay and other relevant questions (approx. 1 min).	CBP officer interviews the traveler as to the purpose and length of intended stay and other relevant questions (approx. 2 min).	Once the traveler's documents are completed and found to be in compliance, then, the CBP officer compares the passport to the person and reviews CBP Form I-736 (approx. 1 min).
CBP officer either refers the person to secondary, or grants admission to Guam or the CNMI.	CBP officer either refers the person to secondary, or authorizes parole into the CNMI.	CBP officer interviews the traveler as to the purpose and length of intended stay and other relevant questions (approx. 2 min).
If traveler is admissible, then, the traveler proceeds to local CNMI Customs Service for processing.	If a parole determination is made, the CBP officer stamps the passport with the CBP parole stamp and annotates the parole expiration date (approx. 2 min).	CBP officer either refers the person to secondary, or authorizes parole into the CNMI.

TABLE 9—CURRENT PROCESS FOR PRC NATIONALS TRAVELING TO THE CNMI—Continued

[Traveler time is in parentheses]

Traveler with PRC passport, valid visa, and valid (approved) EVUS enrollment (d)	Traveler with PRC passport, without visa (seeks parole), with CBP Form I-736 completed and signed (e)	Traveler with PRC passport, without visa (seeks parole), without CBP Form I-736 (f)
	Traveler then proceeds to local CNMI Customs Service for processing.	If the determination to grant discretionary parole is made, the CBP officer stamps the passport with the CBP parole stamp and annotates the parole expiration date (approx. 2 min). Traveler then proceeds to local CNMI Customs Service for processing.
Total time: 2 min .....	Total time: 5 min .....	Total time: 9 min.

#### Baseline Process for PRC Nationals When Visiting the CNMI

PRC nationals are required to obtain a visa prior to travel to visit Guam or the CNMI, or seek parole into the CNMI only. Individuals who are issued a visa by the applicable embassy or consulate containing maximum validity (10-year) B1/B2, B1, and B2 visas, are required to enroll in EVUS. These travelers may use their valid visa and EVUS enrollment and follow the process outlined in the column (d) of Table 9. CBP estimates that the total processing time for EVUS enrollees is approximately two minutes—similar to that of travelers with an approved ESTA.

PRC nationals who do not have a valid applicable visa and EVUS enrollment are required to complete CBP Form I-736 in order to be granted parole and allowed to enter into the CNMI only without having obtained a visa. Depending on whether the traveler has a completed and signed CBP Form I-736, the processing times can vary following the processes summarized in columns (e) and (f) of Table 9. The maximum length of parole into the CNMI for PRC nationals is currently set at 14 days. Under the current process, the paper CBP Form I-736s are collected, scanned, and stored by CBP.

#### Process for PRC Nationals Under Phase I

During Phase I, PRC nationals will submit Form I-736 in advance electronically instead of on paper and must receive electronic travel authorization prior to embarking on a carrier in order to seek parole into the CNMI until Phase II is implemented. The automation of Form I-736 for PRC nationals is included in the CNMI EVS-TAP discussion below.

#### Process for PRC Nationals Under Phase II: CNMI EVS-TAP

This rule introduces CNMI EVS-TAP, and once CNMI EVS-TAP is

implemented, this rule eliminates the current parole process. CNMI EVS-TAP will require PRC nationals to obtain an electronic travel authorization in advance of travel to the CNMI for a period of stay up to 14 days. Since CNMI EVS-TAP will be a sub-program of the G-CNMI VWP, the automation of Form I-736 will already be included within CNMI EVS-TAP. CNMI EVS-TAP users, which includes PRC nationals, will have a tab with an additional set of questions used for screening and vetting purposes. Under CNMI EVS-TAP, PRC nationals arriving at the CNMI will follow a process identical to column (d) in Table 9, without requiring a visa and instead arrive with a positive determination of travel authorization. The CNMI EVS-TAP process will make more efficient use of time for the traveler, while also reducing CBP resources associated with the parole process, and reduce the number of travelers turned away after being denied parole into the CNMI by a CBP officer at the port of entry.

With the use of CNMI EVS-TAP, PRC nationals will instead fill out the required personal and travel information in advance of travelling, and CBP will have the information contained in Form I-736, as well as responses to the additional CNMI EVS-TAP questions, for review, screening and vetting purposes prior to arriving in the CNMI. At the inspection interview with a CBP officer, the CBP officer will make a sounder assessment regarding admissibility to the CNMI with the information stored in the CNMI EVS-TAP database. Having personal and travel information in advance also improves national security. A second result of this rule is that PRC nationals who have not obtained a visa and valid EVUS enrollment will experience processing times closer to that of EVUS.

#### Net Change in Traveler Time With CNMI EVS-TAP and Automated Form I-736

CNMI EVS-TAP will result in an increase in processing time for travelers. With the implementation of CNMI EVS-TAP, the time associated with columns (e) and (f) of Table 9 are essentially eliminated and instead travelers will go through the process described in column (d), and will also answer the additional vetting questions. Using the travel projections from Table 3, CBP can estimate the total increase in traveler time associated with the implementation of CNMI EVS-TAP. From fiscal years 2015 to 2019, CBP primary officers in the CNMI encountered approximately 808,632 paroled travelers with paper CBP Form I-736 to the CNMI. Historical data for PRC arrivals at the CNMI seeking parole from FY 2015 to FY 2019 are provided in Table 10. Using the data presented in Table 10, the number of arrivals to the CNMI grew at a compound annual growth rate of 10.86 percent between fiscal years 2015 and 2019. Using the expected number of future arrivals to the CNMI yields a total of 1,133,016 paper CBP Form I-736<sup>69</sup> that will be avoided over the next five-year period that will no longer be received and processed by CBP at primary inspection stations as a result of this rule.

<sup>69</sup>CBP estimates future (PRC nationals) arrivals to the CNMI by multiplying the arrival total for FY 2019 (PRC nationals) with (1 + growth rate of 10.86%) to obtain a forecasted amount for FY 2022  $164,564 * (1 + (0.1086)) = 182,436$ , similarly for FY 2023 is  $164,564 * (1 + (0.1086)^2) = 202,249$ , FY 2024  $164,564 * (1 + (0.1086)^3) = 224,213$ , FY 2025  $164,564 * (1 + (0.1086)^4) = 248,562$ , FY 2026  $164,564 * (1 + (0.1086)^5) = 275,556$ . Total for future years (prediction):  $182,436$  (FY22) +  $202,249$  (FY23) +  $224,213$  (FY24) +  $248,562$  (FY 25) +  $275,556$  (FY26) = 1,133,016.



TABLE 10—PRC ARRIVALS AT THE CNMI SEEKING PAROLE

Arrivals to the CNMI	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	Total
PRC arrivals at the CNMI .....	108,952	136,911	184,378	213,827	164,564	808,632

The total estimated processing time for a traveler that falls under column (d) of Table 9 is estimated at two minutes, and serves as the baseline representing the amount it takes to process PRC nationals who hold a valid visa and are traveling under the current EVUS program. Under this IFR, once CNMI EVS-TAP is implemented, PRC nationals seeking to enter the CNMI without first obtaining a visa will be required to access and submit their personal and travel information into the CNMI EVS-TAP website. The automation of Form I-736 will already be included into CNMI EVS-TAP. CBP estimates that this new process will burden travelers by an additional two minutes, which represents the time it takes to set up an account on the new website and log in to access CNMI EVS-TAP. In addition, these travelers will also be prompted to answer an additional set of security vetting questions prior to receiving travel

authorization. CBP estimates that it will take five minutes to answer these vetting questions.

A traveler who currently arrives with a completed and signed CBP Form I-736, has a baseline time burden of five minutes, as shown in column (e). Under this IFR, these travelers will now follow a process that resembles that in column (d), but with an additional two-minute time burden to capture the added time associated with logging into the CNMI EVS-TAP website, and an additional five minutes to answer the new set of vetting questions. These travelers will now have a total opportunity cost of nine minutes, an increase of four minutes when compared to their baseline.

In order to monetize the time burden on travelers from the PRC under CNMI EVS-TAP, CBP used the historical information on PRC arrivals at the CNMI seeking parole from Table 10 to estimate the forecast for future arrivals to the

CNMI. Using the same compound growth rate of 10.86 percent, future travel to the CNMI using CNMI EVS-TAP is presented in the first line in Table 10. CBP then used the same subject matter expert rate of 60-percent to estimate for the number of PRC travelers without a visa seeking parole that would have CBP Form I-736 completed and signed (*i.e.*, travelers under column (e) in Table 9). The number of travelers is presented in the third row of Table 11. Each traveler is then subject to a net four-minute increase in travel time when compared to the baseline from the additional vetting questions for PRC nationals. The total time burden, in hours, for all PRC travelers is presented in the fifth row in Table 11. Using the USDOT's value of travel time cost, CBP obtained a monetized estimate of the time burden to PRC travelers. The resulting increased time burden and monetized costs are presented in Table 11.

TABLE 11—NET CHANGE IN TRAVELER TIME FROM DEVELOPING CNMI EVS-TAP, COLUMN (e) <sup>70</sup>

Time burden	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Estimated (PRC nationals) arriving at the CNMI (forecast) .....	182,436	202,249	224,213	248,562	275,556	1,133,016
	0.60	0.60	0.60	0.60	0.60	.....
PRC Travelers in column (e), Table 8 .....	109,462	121,349	134,528	149,137	165,334	679,810
Additional time burden (minutes) .....	4	4	4	4	4	.....
No. of hours (rounded) .....	7,297	8,090	8,969	9,942	11,022	45,321
Monetized Time Cost .....	\$388,517	\$430,708	\$477,485	\$529,337	\$586,826	\$2,412,873

On the other hand, a traveler who arrives without an EVUS enrollment, a valid visa, and a completed CBP Form I-736, has a baseline time burden of nine minutes, as shown in column (f). Under this IFR, these travelers will now follow a process that resembles that in column (d), but with an additional two-

minute time burden to capture the added time associated with accessing the CNMI EVS-TAP website, and an additional five minutes to answer the new set of vetting questions. These travelers will now have a total opportunity cost of nine minutes, which is no net change when compared to

their baseline. These travelers will incur the same time burden as under the baseline, but will be undergoing a different process. The resulting difference in traveler time when compared to the baseline for these individuals is presented in Table 12.

TABLE 12—NET CHANGE IN TRAVELER TIME FROM DEVELOPING CNMI EVS-TAP, COLUMN (f)

Time reduction	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Number of travelers .....	72,974	80,900	89,685	99,425	110,222	453,206
Time reduction (minutes) .....	0	0	0	0	0	.....
No. of hours reduced .....	0	0	0	0	0	0
Monetized Time Benefit .....	\$0	\$0	\$0	\$0	\$0	\$0

<sup>70</sup>CBP estimates future (PRC nationals) arrivals to the CNMI, column (e), as follows: FY 2022: 164,564 \* (1+(0.1086))<sup>1</sup> \* 0.60 = 109,462; FY 2023: 164,564

\* (1+(0.1086))<sup>2</sup> \* 0.60 = 121,349; FY 2024: 164,564 \* (1+(0.1086))<sup>3</sup> \* 0.60 = 134,528; FY 2025: 164,564

\* (1+(0.1086))<sup>4</sup> \* 0.60 = 149,137; FY 2026: 164,564 \* (1+(0.1086))<sup>5</sup> \* 0.60 = 165,334.

The resulting increase in CNMI EVS–TAP traveler times as a result of this rule is presented Table 13. Note that the

increase in traveler time results from the increased time it takes to access the CNMI EVS–TAP website and the

additional time it takes for travelers to answer the new set of vetting questions when compared to the baseline.

TABLE 13—TOTAL NET CHANGE IN TRAVELER TIME OF PHASE II FROM DEVELOPING CNMI EVS–TAP

Economic cost	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Monetized time cost .....	\$388,517	\$430,708	\$477,485	\$529,337	\$586,826	\$2,412,873
Monetized time benefit .....	0	0	0	0	0	0
Time cost (undiscounted) .....	388,517	430,708	477,485	529,337	586,826	2,412,873

Similar to the automation of Form I–736, CBP can quantify the economic cost associated with increased traveler times from this IFR using an estimate of the value of time. The U.S. Department of Transportation (USDOT) provides estimates on the value of travel time. CBP and DHS believe this value of travel time savings reported in this memorandum is an accurate representation of the value of time savings that arriving business and pleasure travelers from the PRC place on

time. Applying this value for travel time, CBP estimates that the undiscounted monetized time cost of CNMI EVS–TAP to travelers is \$2,412,873 over the next five-year period. Table 14 presents the total cost of automating Form I–736 as well as CNMI EVS–TAP over the five-year period of analysis. The administrative costs include program development as well as operations and maintenance to be incurred by CBP. The table also presents

the monetized time cost resulting from the change in which traveler information is processed under the new program. Note that there is a benefit from improved processing time, as well as an increase in the response times resulting from the added questionnaire components to be included in CNMI EVS–TAP. The net result is an increase in time costs from the implementation of both Phase I and Phase II.

TABLE 14—TOTAL COSTS PHASE I AND PHASE II (UNDISCOUNTED) OF THE RULE (2022–2026)

Total costs	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Phase I time cost .....	\$0	\$0	\$0	\$0	\$0	\$0
Phase II time cost .....	388,517	430,708	477,485	529,337	586,826	2,412,873
Program development .....	3,169,486	0	0	0	0	3,169,486
Operations and maintenance .....	0	646,575	659,507	672,697	686,151	2,664,930
Total Costs .....	3,558,003	1,077,283	1,136,992	1,202,034	1,272,977	8,247,289

CBP is removing a bond provision that is specific to the G–CNMI VWP. Since 2009, CBP has not used the bond provision and even if this regulatory change did not take place CBP would not expect to use it in the near future. As such, the removal of the bond provision from the G–CNMI VWP is expected to not increase or decrease economic costs. CBP continues to have available the general bond provisions for nonimmigrant travelers and can apply this to travelers to Guam and CNMI as needed. Once again, although CBP has the authority to impose a bond on a nonimmigrant traveler, CBP has not used or imposed a bond requirement on any traveler to Guam and CNMI in the past and does not anticipate using the bond provisions in the near future. As such, CBP does not expect any increase

or decrease in the economic costs as a result of the general bond provisions in the near future.

Benefits of the Rule

CBP has identified four major benefits as a result of this IFR. These include: (1) a reduction in administrative costs to CBP associated with the automation of Form I–736, (2) a reduction in the number of inadmissibility cases, which reduces costs to both the government and air carriers, (3) an improvement to national security by obtaining traveler information prior to arrival, and (4) a likely increase in travel from PRC nationals who would benefit from the joint automation of Form I–736 and implementation of CNMI EVS–TAP. The first two benefits mentioned have been quantified, whereas the latter two are discussed qualitatively.

Administrative Cost-Savings to CBP Associated With the Automation of Form I–736

Under this IFR, CBP will no longer have to receive, scan and store the paper CBP Form I–736. CBP has estimated that the cost-savings from automating Form I–736 is approximately \$0.63 per form, based on historical contract costs for managing the paper form. Using the number of estimated future G–CNMI–VWP arrivals to Guam and the CNMI of 5,692,558 travelers over the five-year period of analysis, CBP estimates that total cost-savings from automating Form I–736 for G–CNMI VWP travelers is approximately \$3,586,314. Table 15 provides detail on the calculated cost-savings estimate to CBP.

TABLE 15—COST-SAVINGS TO CBP FROM AUTOMATING FORM I–736 FOR G–CNMI VWP TRAVELERS

Form I–736	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
G–CNMI VWP travelers (only) .....	1,165,000	1,151,602	1,138,361	1,125,269	1,112,326	5,692,558
Per form CBP cost .....	\$0.63	\$0.63	\$0.63	\$0.63	\$0.63	.....

TABLE 15—COST-SAVINGS TO CBP FROM AUTOMATING FORM I-736 FOR G-CNMI VWP TRAVELERS—Continued

Form I-736	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Total .....	733,950	725,509	717,167	708,919	700,765	3,586,310

Similarly, under this IFR, CBP will no longer receive, scan and store the paper CBP Form I-736 from PRC nationals seeking parole into the CNMI. Aside from the additional vetting questions for PRC nationals under CNMI EVS-TAP, the Form I-736 that PRC nationals must complete is identical to the Form I-736

travelers from G-CNMI VWP participating countries must also complete. CBP has estimated that the cost-savings from no longer having to scan and store paper versions of the CBP Form I-736 for PRC nationals seeking parole is also \$0.63 per form. Using the number of estimated future arrivals to

the CNMI of 1,113,016 of PRC nationals under CNMI EVS-TAP, CBP estimates that the total cost-savings to CBP from automating Form I-736 for PRC travelers is \$713,803. Table 16 provides details on the calculated cost-saving estimate to CBP with regards to PRC nationals under EVS-TAP.

TABLE 16—COST-SAVINGS TO CBP FROM AUTOMATING FORM I-736 FOR PRC TRAVELERS

Form I-736	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
PRC Travelers (only) .....	182,436	202,249	224,213	248,562	275,556	1,133,016
Per form CBP cost .....	\$0.63	\$0.63	\$0.63	\$0.63	\$0.63	.....
Total .....	114,935	127,417	141,254	156,594	173,600	713,800

As a result, CBP estimates that the total cost-savings to CBP from

automating Form I-736 is \$4,300,117. Table 17 provides detailed calculations

for both groups of travelers for this estimate.

TABLE 17—COST-SAVINGS TO CBP FROM AUTOMATING FORM I-736

Form I-736	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
G-CNMI VWP travelers .....	\$733,950	\$725,509	\$717,167	\$708,919	\$700,765	\$3,586,310
PRC travelers .....	114,935	127,417	141,254	156,594	173,600	713,800
Total .....	848,885	852,926	858,421	865,513	874,365	4,300,110

#### Benefit From Reduced Inadmissibility Cases

Under this IFR, CBP will be able to make a determination of travel eligibility of travelers from G-CNMI VWP countries and geographic areas, and the PRC, by assessing data in advance of travel, including an analysis of whether such travel poses a law enforcement or security risk. The rule accomplishes both goals of promoting border security and legitimate travel to the United States. By modernizing the G-CNMI VWP the automated Form I-736 is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at the U.S. ports of entry.

In addition, each year a small percentage of travelers to the United States are deemed inadmissible for a variety of reasons, including obvious health problems, overstays from previous visits, criminal activity, etc. These noncitizens may be returned to

their country of origin at the commercial carrier's expense, and the carrier may be fined for transporting a noncitizen not in possession of proper documentation. One of the purposes of this rule is to prevent ineligible entrants from arriving in the United States. Currently, travelers answer questions concerning admissibility and present this information to the CBP officer. Based on the answers to these questions, other information available, and personal judgement, the CBP officer makes the determination to admit the person to the United States, or refer the traveler to secondary inspection for further processing. Under this IFR, CBP and DHS will have travelers' personal and travel information to conduct pre-vetting of individuals prior to arrival in the United States at either Guam or the CNMI. As such, the number of travelers that will be sent to secondary inspection, as well as the associated costs to CBP and carriers, is expected to decrease.

In particular, automation of Form I-736 will allow for advance screening of G-CNMI VWP travelers against databases for lost and stolen passports,

visa revocations, and terrorists. Based on CBP data, the current rate of travelers determined to be inadmissible on an annual basis has been calculated in Table 18 for each G-CNMI VWP participating country. As a result of this rule, CBP anticipates this rate of inadmissibility to be reduced even further, since arrivals will have gone through the pre-vetting process and been given a positive determination of travel eligibility prior to disembarking to the United States.<sup>71</sup>

<sup>71</sup> CBP uses inadmissibility rates to estimate the number of inadmissibility determinations that might be reduced by this rule's imposition of a travel eligibility determination; however, a positive determination of travel eligibility provided under this IFR permitting an individual to travel to the United States does not guarantee admissibility. As such, even with a positive determination of travel eligibility, certain travelers are found inadmissible upon arrival into the United States. An important element to determine eligibility to enter the United States is at the inspection interview between the CBP officer and the potential entrant. Accordingly, these estimates may overstate the actual reduction in inadmissibility cases. Carriers are still responsible for returning passengers to their last foreign point of departure at the carriers' expense if travelers cannot overcome the eligibility judgement of the CBP officer during secondary processing, even once this rule is in effect.

When inadmissible travelers are brought to the United States, they are referred to secondary inspection where a CBP or other law enforcement officer questions them and processes them for return to their country of origin. CBP estimates that it costs \$136<sup>72</sup> per individual for questioning and processing. CBP applies the

inadmissibility rate of each G–CNMI VWP participating country to the anticipated forecasted number of arrivals for fiscal years 2022 to 2025 to obtain an estimate of future inadmissibility cases that will be avoided as a result of this rule. The rate is applied by country of origin to travelers from current G–CNMI VWP

participating countries and geographic areas to obtain an estimate of the number of reduced inadmissibility cases in Phase I. Table 18 presents the number of inadmissibility cases, and Table 19 presents the associated costs to CBP that will be reduced as a result of this rule.

TABLE 18—G–CNMI VWP PARTICIPATING COUNTRIES—INADMISSIBLE RATE AND FORECAST

Country or geographic area	Inadmissible rate (pct.)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Australia .....	1.1625	5	5	5	5	5	25
Brunei .....	0.0000	0	0	0	0	0	0
Hong Kong .....	0.2904	8	8	7	7	7	37
Japan .....	0.0127	58	57	57	56	55	283
Malaysia .....	1.0563	6	6	6	5	5	28
Nauru .....	0.0000	0	0	0	0	0	0
New Zealand .....	2.1341	3	3	3	3	3	15
Papua New Guinea .....	0.5339	1	1	1	1	1	5
South Korea .....	0.0228	157	156	154	152	150	769
Singapore .....	1.8471	3	3	3	3	3	15
Taiwan .....	0.4322	88	87	86	85	84	430
United Kingdom .....	0.8349	5	5	5	5	5	25
Total .....		334	331	327	322	318	1,632

TABLE 19—SAVINGS TO CBP FROM REDUCED INADMISSIBILITY CASES, PHASE I

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Inadmissibility cases (forecast) .....	334	331	327	322	318	1,632
Per traveler CBP cost .....	\$136	\$136	\$136	\$136	\$136	\$136
Total Reduced Cost to CBP (undiscounted) .....	45,424	45,016	44,472	43,792	43,248	221,952

When travelers are deemed inadmissible, the carrier is required to transport them back to their country-of-origin. CBP estimates that this costs

carriers \$1,880<sup>73</sup> per individual, which includes the airfare and any lodging and meal expenses incurred while the individual is awaiting transportation out

of the United States. The resulting savings to carriers from reduced inadmissibility cases as a result of this rule is presented in Table 20.

TABLE 20—SAVINGS TO CARRIERS FROM REDUCED INADMISSIBILITY CASES, PHASE I

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Inadmissibility cases (forecast) .....	334	331	327	322	318	1,632
Per traveler carrier cost .....	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880
Total Reduced Costs to Carriers (undiscounted) .....	627,920	622,280	614,760	605,360	597,840	3,068,160

Based on this information, CBP estimates the benefits to the agency associated with Phase I (automation of Form I–736) for avoided inadmissibility cases will total \$221,952 undiscounted

over the five-year period of analysis. The benefit to carriers is expected to total \$3,068,160. The total benefit associated with Phase I over the five-year period of analysis is estimated at

\$3,290,112 undiscounted. Table 21 presents the savings to both CBP and carriers as a result of implementing Phase I.

TABLE 21—TOTAL BENEFITS OF PHASE I FROM REDUCED INADMISSIBILITY CASES

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Savings to CBP .....	\$45,424	\$45,016	\$44,472	\$43,792	\$43,248	\$221,952
Savings to carriers .....	627,920	622,280	614,760	605,360	597,840	3,068,160

<sup>72</sup> CBP estimates that each inadmissible noncitizen requires two additional hours of inspection and processing time, at a cost of \$136 per arrival based on the \$67.92 fully loaded hourly wage rate for CBP officers. *Paperwork Reduction Act Information Collection Cost Estimates for July 2022 to July 2023*.

<sup>73</sup> CBP has previously estimated this cost to carriers for ESTA, a program that is similar to that being proposed in this rule. See CBP, Regulatory Assessment for the Final Rule: Electronic System for Travel Authorization (ESTA) (2015), available at <https://www.regulations.gov/document/USCBP-2008-0003-0028> (last visited July 20, 2023). In the

ESTA Regulatory Assessment, the estimated cost to carriers to process a passenger who is deemed inadmissible is \$1,500. *Id.* at 4–2. CBP adjusted this amount using the GDP deflator to reflect this figure in 2021 U.S. dollars using the corresponding multiplier amount of 1.2533 (1.2533 × \$1,500 = \$1,880).

TABLE 21—TOTAL BENEFITS OF PHASE I FROM REDUCED INADMISSIBILITY CASES—Continued

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Phase I Total (undiscounted) .....	673,344	667,296	659,232	649,152	641,088	3,290,112

Similarly, CBP then uses the same rate and applies the rate to future forecasted arrivals from the PRC to obtain an estimate of future inadmissibility cases under Phase II. Once again, CBP estimates that it costs

\$136 per individual for questioning and processing. CBP uses the 0.3108-percent rate and applies this rate to the anticipated forecasted number of arrivals for fiscal years 2022 to 2026 to obtain an estimate of future

inadmissibility cases that will be avoided as a result of this rule. The results are presented in Table 22 and the savings to CBP associated from a reduction in inadmissibility cases is presented in Table 23.

TABLE 22—PRC ONLY—INADMISSIBLE RATE AND FORECAST

Country or geographic area	Inadmissible rate (pct.)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
China .....	0.3108	568	629	697	773	857	3,524
Total .....		568	629	697	773	857	3,524

TABLE 23—SAVINGS TO CBP FROM REDUCED INADMISSIBILITY CASES, PHASE II

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Inadmissibility cases (forecast) .....	568	629	697	773	857	3,524
Per traveler CBP cost .....	\$136	\$136	\$136	\$136	\$136	\$136
Total Reduced Cost to CBP (undiscounted) .....	77,248	85,544	94,792	105,128	116,552	479,264

Once again, CBP estimates that returning ineligible travelers to their country-of-origin costs carriers \$1,880 per individual, which includes the

airfare and any lodging and meal expenses incurred while the individual is awaiting transportation out of the United States. The resulting savings to

carriers from reduced inadmissibility cases as a result of this rule are presented in Table 24.

TABLE 24—SAVINGS TO CARRIERS FROM REDUCED INADMISSIBILITY CASES, PHASE II

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Inadmissibility cases (forecast) .....	568	629	697	773	857	3,524
Per traveler carrier cost .....	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880	\$1,880
Total Reduced Cost to Carriers (undiscounted) .....	1,067,840	1,182,520	1,310,360	1,453,240	1,611,160	6,625,120

CBP estimates the benefits to the agency associated with Phase II (CNMI EVS–TAP) for avoided inadmissibility cases will total \$479,264 undiscounted over the five-year period of analysis.

The benefit to carriers is expected to total \$6,625,120. The total benefit associated with Phase II over the five-year period of analysis is expected to total \$7,104,384 undiscounted. The total

benefit to both CBP and carriers over the five-year period of analysis is presented in Table 25.

TABLE 25—TOTAL BENEFITS OF PHASE II FROM REDUCED INADMISSIBILITY CASES

Economic benefit	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Savings to CBP .....	\$77,248	\$85,544	\$94,792	\$105,128	\$116,552	\$479,264
Savings to carriers .....	1,067,840	1,182,520	1,310,360	1,453,240	1,611,160	6,625,120
Phase II Total (undiscounted) .....	1,145,088	1,268,064	1,405,152	1,558,368	1,727,712	7,104,384

Table 26 presents the combined total benefits of Phase I and Phase II from reduced inadmissibility cases over the

five-year period of analysis. The total estimated benefit of Phase I and Phase II is expected to total \$10,394,496

undiscounted over the next five-year period.

TABLE 26—TOTAL BENEFITS OF PHASE I AND PHASE II FROM REDUCED INADMISSIBILITY

Total benefits	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Phase I:						
Savings to CBP .....	\$45,424	\$45,016	\$44,472	\$43,792	\$43,248	\$221,952
Savings to carriers .....	627,920	622,280	614,760	605,360	597,840	3,068,160

TABLE 26—TOTAL BENEFITS OF PHASE I AND PHASE II FROM REDUCED INADMISSIBILITY—Continued

Total benefits	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Phase I Total .....	673,344	667,296	659,232	649,152	641,088	3,290,112
Phase II:						
Savings to CBP .....	77,248	85,544	94,792	105,128	116,552	479,264
Savings to carriers .....	1,067,840	1,182,520	1,310,360	1,453,240	1,611,160	6,625,120
Phase II Total .....	1,145,088	1,268,064	1,405,152	1,558,368	1,727,712	7,104,384
Total Benefits .....	1,818,432	1,935,360	2,064,384	2,207,520	2,368,800	10,394,496

## Other Non-Monetized Benefits

Another important benefit of this rule that is discussed but not quantified, is the improvement to national security. Since all participants using the automated Form I-736 or CNMI EVS-TAP as a result of this IFR will be screened prior to boarding a carrier, information about their background that could be a threat to national security will be obtained by CBP and DHS before they board a plane.

Additionally, because parole is granted on a case-by-case basis, and therefore, not all PRC nationals have to be granted parole, CBP anticipates that

CNMI EVS-TAP will have a spillover effect to Chinese travelers from two groups: (1) those who, under the baseline, could seek to be paroled into the CNMI and did not have to (but could) obtain a visa to travel to the CNMI and (2) those who either could not or chose not to seek to be paroled into the CNMI and had to obtain a visa, but that will be able to travel without first obtaining a visa to the CNMI because of this IFR. Both of these groups will now be able to travel to the CNMI without paying the visa fee of \$160 and spending the time it takes to obtain a visa (90 minutes).<sup>74</sup> CBP does not know how many individuals will increase

their travel as a result of this rule, but CBP believes that this number will be relatively small and hence is discussed qualitatively in this analysis.

## Results: Net Impact of Rule

For the five-year period of analysis, the present value cost of the IFR is estimated at \$7,018,942 (PV, 7-percent), which includes increased traveler opportunity cost for both Phase I and Phase II, information technology costs associated with the automation of Form I-736, as well as developing CNMI EVS-TAP. The estimated costs of this rule are presented in Table 27.

TABLE 27—TOTAL COSTS OF THE RULE (2022–2026)

[2021 USD]

Costs	Undiscounted	3% Discount rate		7% Discounted rate	
		Present value	Annualized	Present value	Annualized
Time burden, program development, operations and maintenance .....	\$8,247,289	\$7,676,396	\$1,676,176	\$7,018,942	\$1,711,855

The present value benefits are \$11,956,620 (PV, 7-percent), which result from a reduction in costs to CBP

resulting from the automation of Form I-736, and a reduction in costs associated with individuals found to be

inadmissible at Guam-CNMI POEs. The sums of the total benefits resulting from this rule are presented in Table 28.

TABLE 28—TOTAL BENEFITS OF THE RULE (2022–2026)

[2021 USD]

Benefits	Undiscounted	3% Discount rate		7% Discounted rate	
		Present value	Annualized	Present value	Annualized
Phase I:					
Automation of Form I-746 .....	\$6,876,422	\$6,302,883	\$1,376,263	\$5,633,886	\$1,377,519
Phase II:					
CNMI EVS-TAP .....	7,818,184	7,117,691	1,554,180	6,322,734	1,542,055
Total .....	14,694,606	13,420,574	2,930,443	11,956,620	2,919,574

The net present value is calculated as the difference between present value costs and present value benefits. The net

present value for this rule is calculated at \$4,937,678 (PV 7-percent), and accordingly the present value benefits

justify the present value costs (see Table 29).

<sup>74</sup> Form DS-160 time burden includes the time estimated to complete Form DS-160: Online Nonimmigrant Visa Application for the B-1, B2, or

B-1/B2.—See, e.g., U.S. Department of State, 60-Day Notice of Proposed Information Collection:

Application for Nonimmigrant Visa, 83 FR 13807 (Mar. 30, 2018).

TABLE 29—NET PRESENT BENEFITS OF THE RULE (2022–2026)  
[2021 USD]

Net benefits	Undiscounted	3% Discount rate		7% Discounted rate	
		Present value	Annualized	Present value	Annualized
Automation of Form I–736 and CNMI EVS–TAP .....	\$6,447,317	\$5,744,178	\$1,254,266	\$4,937,678	\$1,207,719

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities when the agency is required to publish a general notice of proposed rulemaking for a rule. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because this rule is being issued as an interim final rule under the foreign affairs exception described above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

### D. Unfunded Mandates Reform Act

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 (adjusted annually for inflation) 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.

### E. Privacy

CBP will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule, and will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records notice to fully outline processes that will ensure compliance with Privacy Act protections.

### F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this rulemaking are included in an existing

collection for CBP Forms I–736 (OMB control number 1651–0109).

This rule automates the collection of Form I–736 and requires that travelers under the G–CNMI VWP submit this information in advance of arrival. The rule also creates a new system, CNMI EVS–TAP, wherein travelers from the PRC to the CNMI can submit advance information to CBP so they may be vetted for a 14-day visa free admissibility period. These travelers will also need to complete an additional set of vetting questions. OMB Control number 1651–0109 will be revised to reflect the increase in burden hours as follows:

#### Form I–736

*Estimated Number of Respondents:* 1,370,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 1,370,000.

*Estimated Time per Response:* 21 minutes (0.35 hours).

*Estimated Total Annual Burden Hours:* 479,500.

#### CNMI EVS–TAP

*Estimated Number of Annual Respondents:* 230,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 230,000.

*Estimated Time per Response:* 26 minutes (0.433 hours).

*Estimated Total Annual Burden Hours:* 99,667.

#### List of Subjects

##### 8 CFR Part 212

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

##### 8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

##### 8 CFR Part 233

Air carriers, Aliens, Government contracts, Maritime carriers.

### Amendments to the Regulations

For the reasons set forth above, DHS amends parts 212, 214, and 233 of title 8 of the Code of Federal Regulations (8 CFR parts 212, 214, and 233) as follows:

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

■ 1. The authority citation for part 212 is revised to read as follows:

**Authority:** 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108–458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110–229 (8 U.S.C. 1185 note); Pub. L. 115–218; 8 CFR part 2.

Section 212.1(q) and (r) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 2. Amend § 212.1 as follows:

■ a. Revise paragraph (q)(1)(v);

■ b. In paragraph (q)(1)(x), at the end of the text remove “; and” and add in its place “.”;

■ c. Remove paragraph (q)(1)(xi);

■ d. In paragraph (q)(2)(ii)(B), add at end of the last sentence before the period, “, and must be in possession of a Taiwan National Identity Card and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs”;

■ e. In paragraph (q)(4), add the heading “*Ineligibility due to admission under the Guam–CNMI Visa Waiver Program.*”;

■ f. Revise paragraph (q)(5)(iv);

■ g. In paragraph (q)(5)(v), add the text “(see § 1.4)” after the text “(CBP Form I–94)”;

■ h. Remove and reserve paragraph (q)(6);

■ i. Revise the paragraph (q)(7) paragraph heading;

■ j. In paragraph (q)(7)(i):

■ i. Remove the designation and heading;

■ ii. Remove the words “his or her” and add in their place the words “the alien’s” in the first instance and the words “the officer’s” in the second instance;

■ k. In paragraph (q)(8)(ii)(A), in the first sentence remove the words “his or her” and add in their place the words “the alien’s”;



■ l. In paragraph (q)(8)(ii)(B), remove the reference to “paragraph (b)(1)” and add in its place “paragraph (q)(8)(ii)(A)”;

■ m. Add paragraphs (q)(9) and (10); and

■ n. Add paragraph (r).

The revision and additions read as follows:

**§ 212.1 Documentary requirements for nonimmigrants.**

\* \* \* \* \*

(q) \* \* \*

(1) \* \* \*

(v) On or after November 29, 2024, receive electronic travel authorization pursuant to paragraph (q)(9) of this section; prior to this date, receive electronic travel authorization pursuant to paragraph (q)(9) of this section or be in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736);

\* \* \* \* \*

(5) \* \* \*

(iv) On or after November 29, 2024, transport an alien who has received electronic travel authorization pursuant to paragraph (q)(9) of this section; prior to this date, transport an alien who has received electronic travel authorization pursuant to paragraph (q)(9) of this section or an alien in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736), and

\* \* \* \* \*

(6) [Reserved]

(7) *Maintenance of status—satisfactory departure.* \* \* \*

\* \* \* \* \*

(9) *Electronic Travel Authorization—*

(i) *Travel authorization required.* Each nonimmigrant alien intending to travel to Guam or the CNMI under the Guam-CNMI Visa Waiver Program on or after November 29, 2024, must, within the time specified in paragraph (q)(9)(ii) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the Guam-CNMI Visa Waiver Program, from CBP. In order to receive a travel authorization, each nonimmigrant alien intending to travel to Guam or the CNMI under the Guam-CNMI Visa Waiver Program must provide the data elements set forth in paragraph (q)(9)(iii) of this section to CBP, in English, in the manner specified herein. Prior to this date, travelers must either receive an electronic travel authorization pursuant to this subparagraph or provide the required information via a completed and signed paper Guam-CNMI Visa Waiver Information Form (CBP Form I-736) upon arrival.

(ii) *Time.* Each alien falling within the provisions of paragraph (q)(9)(i) of this section must receive a travel authorization prior to embarking on a carrier for travel to Guam or the CNMI.

(iii) *Required elements.* CBP will collect such information as the Secretary deems necessary to issue a travel authorization, as reflected by the electronic Guam-CNMI Visa Waiver Information Form (Form I-736).

(iv) *Duration—(A) General rule.* A travel authorization issued under the Guam-CNMI Visa Waiver Program will be valid for a period of two years from the date of issuance, unless the passport of the authorized alien will expire in less than two years, in which case the authorization will be valid until the date of expiration of the passport.

(B) *Exception.* For travelers from countries or geographic areas which have not entered into agreements with the United States whereby their passports are recognized as valid for the return of the bearer to the country or geographic area of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport, a travel authorization issued under the Guam-CNMI Visa Waiver Program is not valid beyond the six months prior to the expiration date of the passport. Travelers from these countries or geographic areas whose passports will expire in six months or less will not receive a travel authorization.

(C) *Changes to the validity period.* The Secretary, in consultation with the Secretary of State, may increase or decrease the Guam-CNMI Visa Waiver Program travel authorization validity period otherwise authorized by subparagraph (A) for a designated Guam-CNMI Visa Waiver Program country or geographic area. Notice of any change to the Guam-CNMI Visa Waiver Program travel authorization validity periods will be published in the **Federal Register**. The Guam-CNMI Visa Waiver Program website will be updated to reflect the specific Guam-CNMI Visa Waiver Program travel authorization validity period for each Guam-CNMI Visa Waiver Program country or geographic area.

(v) *New travel authorization required.* A new travel authorization is required if any of the following occurs:

(A) The alien is issued a new passport;

(B) The alien's name changes;

(C) The alien's gender changes;

(D) The alien's country of citizenship changes; or

(E) The circumstances underlying the alien's previous responses to any of the Guam-CNMI Visa Waiver Information

Form (Form I-736) questions requiring a “yes” or “no” response (eligibility questions) have changed.

(vi) *Limitations—(A) Current authorization period.* A travel authorization under the Guam-CNMI Visa Waiver Program is a positive determination that an alien is eligible, and grants the alien permission, to travel to Guam or the CNMI under the Guam-CNMI Visa Waiver Program and to apply for admission under the Guam-CNMI Visa Waiver Program during the period of time the travel authorization is valid. A travel authorization under the Guam-CNMI Visa Waiver Program is not a determination that the alien is admissible to Guam, the CNMI, or the United States. A determination of admissibility is made only after an applicant for admission is inspected by a CBP officer at a U.S. port of entry in Guam or the CNMI.

(B) *Not a determination of visa eligibility.* A determination under the Guam-CNMI Visa Waiver Program that an alien is not eligible to travel to Guam or the CNMI under the Guam-CNMI Visa Waiver Program is not a determination that the alien is ineligible for a visa to travel to Guam, the CNMI, or the United States and does not preclude the alien from applying for a visa before a United States consular officer.

(C) *Revocation.* A determination under the Guam-CNMI Visa Waiver Program that an alien is eligible to travel to Guam or the CNMI to apply for admission under the Guam-CNMI Visa Waiver Program may be revoked at the discretion of the Secretary.

(10) *Severability.* The provisions of paragraphs (q) and (r) of this section are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

(r) *Aliens admissible under the Commonwealth of the Northern Mariana Islands (CNMI) Economic Vitality & Security Travel Authorization Program (EVS-TAP)—(1) Description.* In accordance with Public Law 110-229, the Secretary, in consultation with the Secretaries of the Departments of the Interior and State, may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or the Commonwealth of the Northern Mariana Islands (CNMI). The requirements for the Guam-CNMI Visa Waiver program are set forth in paragraph (q) of this section. Also in accordance with Public Law 110-229 and the process provided therein, the Secretary may add countries to the list of those whose nationals may obtain a visa waiver, with any special

requirements the Secretary may impose. The CNMI Economic Vitality & Security Travel Authorization Program (EVS–TAP) is a restricted travel authorization sub-program of the Guam–CNMI Visa Waiver Program that allows a nonimmigrant alien who is a national of the People’s Republic of China (PRC) to be admitted to the CNMI only without a visa in specified circumstances. A visa is still required for a nonimmigrant alien who is a national of the PRC seeking to be admitted to Guam.

(2) *Eligibility.* To be admissible under the CNMI EVS–TAP, prior to embarking on a carrier for travel to the CNMI, the nonimmigrant alien must:

- (i) Be a national of the PRC;
- (ii) Be classifiable as a visitor for business or pleasure;
- (iii) Be solely entering and staying on the CNMI for a period not to exceed 14 days;
- (iv) Be in possession of a round trip ticket that is nonrefundable and nontransferable and bears a confirmed departure date not exceeding 14 days from the date of admission to the CNMI. “Round trip ticket” includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;
- (v) Receive an electronic travel authorization from CBP pursuant to paragraph (r)(9) of this section;
- (vi) Be in possession of a completed and signed I–94 (see § 1.4), Arrival–Departure Record (CBP Form I–94);
- (vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by the PRC;
- (viii) Have not previously violated the terms of any prior admissions or parole;
- (ix) Waive any right to review or appeal an immigration officer’s determination of admissibility at the port of entry into the CNMI; and
- (x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding or deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, after December 31, 2029, an application for asylum if permitted under section 208 of the Act.

(3) *Suspension or Discontinuation of Program.* (i) The Secretary may suspend

the CNMI EVS–TAP for good cause including, but not limited to the following circumstances: (A) The admissions of visitors from the PRC have resulted in an unacceptable number of visitors from the PRC remaining unlawfully in the CNMI, unlawfully obtaining entry to other parts of the United States, or seeking withholding of removal or asylum; or (B) Visitors from the PRC pose a risk to law enforcement or security interests, including the enforcement of immigration laws of the CNMI or the United States.

(ii) The Secretary, in consultation with the Secretary of the Interior and the Secretary of State, may also discontinue the CNMI EVS–TAP based on the evaluation of all factors the Secretary deems relevant including, but not limited to, electronic travel authorization, procedures for reporting lost and stolen passports, repatriation of aliens, rates of refusal for nonimmigrant visitor visas, overstays, exit systems, and information exchange.

(4) *Ineligibility due to admission under the CNMI EVS–TAP.* Admission under this section renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act or as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident.

- (ii) Change of nonimmigrant status; or
- (iii) Extension of stay.

(5) *Requirements for transportation lines.* A transportation line bringing any alien to the CNMI pursuant to this section must:

(i) Enter into a contract on CBP Form I–760, made by the Commissioner of U.S. Customs and Border Protection on behalf of the government;

(ii) Transport an alien only if the alien is a national of the PRC and is in possession of a valid unexpired ICAO compliant, machine readable passport issued by the PRC;

(iii) Transport an alien only if the alien is in possession of a round trip ticket as defined in paragraph (r)(2)(iv) of this section bearing a confirmed departure date not exceeding 14 days from the date of admission to the CNMI which the carrier will unconditionally honor when presented for return passage. This ticket must be:

(A) Valid for a period of not less than one year,

(B) Nonrefundable except in the country in which issued or in the country of the alien’s nationality or residence, and

(C) Issued by a carrier which has entered into an agreement described in paragraph (r)(5) of this section.

(iv) Transport an alien only if the alien has received electronic travel authorization from CBP pursuant to paragraph (r)(9) of this section.

(6) [Reserved.]

(7) *Maintenance of status—satisfactory departure.* If an emergency prevents an alien admitted under the CNMI EVS–TAP, as set forth in this paragraph (r), from departing from the CNMI within the alien’s period of authorized stay, an immigration officer having jurisdiction over the place of the alien’s temporary stay may, in the officer’s discretion, grant a period of satisfactory departure not to exceed 15 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(8) *Inadmissibility and Deportability—(i) Determinations of inadmissibility.* (A) An alien who applies for admission under the provisions of the CNMI EVS–TAP, who is determined by an immigration officer to be inadmissible to the CNMI under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the CNMI and removed. Such refusal and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing. The provisions of 8 CFR subpart 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2030. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to January 1, 2030; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Secretary enumerated in section 212(d) of the Act.

(C) Refusal of admission under this paragraph shall not constitute removal for purposes of the Act.

(ii) *Determination of deportability.* (A) An alien who has been admitted to the CNMI under the provisions of this section who is determined by an immigration officer to be deportable from the CNMI under one or more of the grounds of deportability listed in section 237 of the Act, shall be removed from the CNMI to the alien's country of nationality or last residence. Such removal will be determined by DHS authority that has jurisdiction over the place where the alien is found, and will be effected without referral of the alien to an immigration judge for a determination of deportability. The provisions of 8 CFR part 208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2030. No application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2030; however, aliens physically present or arriving in the CNMI prior to January 1, 2030, may apply for withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

(B) Removal by DHS under paragraph (r)(8)(ii)(A) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(iii) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the CNMI under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the CNMI. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the CNMI. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

(9) *Electronic Travel Authorization—*  
(i) *Travel authorization required.* Each nonimmigrant alien intending to travel to the CNMI under the CNMI EVS-TAP as described in paragraph (r)(1) of this section must, within the time specified in paragraph (r)(9)(ii) of this section, receive a travel authorization from CBP, which is a positive determination of eligibility to travel to the United States under the CNMI EVS-TAP. In order to receive a travel authorization, each nonimmigrant alien intending to travel

to the CNMI under the CNMI EVS-TAP must provide the information set forth in paragraph (r)(9)(iii) of this section electronically to CBP, in English, in the manner specified herein.

(ii) *Time.* Each alien falling within the provisions of paragraph (r)(9)(i) of this section must receive a travel authorization prior to embarking on a carrier for travel to the CNMI.

(iii) *Required elements.* CBP will collect such information as the Secretary deems necessary to issue a travel authorization, as reflected by the electronic CNMI EVS-TAP application questions.

(iv) *Duration—*(A) *General rule.* A travel authorization issued under the CNMI EVS-TAP will be valid for a period of one year from the date of issuance.

(B) *Exceptions.* If the passport of the authorized alien will expire in less than one year but greater than six months, the authorization will be valid until six months prior to the expiration date of the passport. Travelers whose passports will expire in six months or less will not receive a travel authorization.

(C) *Changes to the validity period.* The Secretary, in consultation with the Secretary of State, may increase or decrease the CNMI EVS-TAP travel authorization validity period otherwise authorized by paragraph (r)(9)(iv)(A) of this section. Notice of any change to the CNMI EVS-TAP travel authorization validity period will be published in the **Federal Register**. The CNMI EVS-TAP website will be updated to reflect the travel authorization validity period.

(v) *New travel authorization required.* A new travel authorization is required if any of the following occurs:

(A) The alien is issued a new passport;

(B) The alien's name changes;

(C) The alien's gender changes;

(D) The alien's country of citizenship changes; or

(E) The circumstances underlying the alien's previous responses to any of the CNMI EVS-TAP questions requiring a "yes" or "no" response (eligibility questions) have changed.

(vi) *Limitations—*(A) *Current authorization period.* A travel authorization under the CNMI EVS-TAP is a positive determination that an alien is eligible, and grants the alien permission, to travel to the CNMI under the CNMI EVS-TAP and to apply for admission under the CNMI EVS-TAP during the period of time the travel authorization is valid. A travel authorization under the CNMI EVS-TAP is not a determination that the alien is admissible to the CNMI. A determination of admissibility is made

only after an applicant for admission is inspected by a CBP officer at a U.S. port of entry in the CNMI.

(B) *Not a determination of visa eligibility.* A determination under the CNMI EVS-TAP that an alien is not eligible to travel to the CNMI under the CNMI EVS-TAP is not a determination that the alien is ineligible for a visa to travel to the CNMI and does not preclude the alien from applying for a visa before a United States consular officer.

(C) *Revocation.* A determination under the CNMI EVS-TAP that an alien is eligible to travel to the CNMI to apply for admission under the CNMI EVS-TAP may be revoked at the discretion of the Secretary.

(10) *Severability.* The provisions of paragraphs (q) and (r) of this section are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

(11) *Implementation date.* The requirements of this paragraph will take effect 45 days after the publication by the Secretary of notification in the **Federal Register** announcing the implementation of CNMI EVS-TAP.

## PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218.

■ 4. Section 214.1 is amended by revising paragraph (c)(3)(viii), to read as follows:

### § 214.1 Requirements for admission, extension, and maintenance of status.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(viii) Any nonimmigrant admitted pursuant to the Guam-CNMI Visa Waiver Program, or its sub-program, the CNMI Economic Vitality & Security Travel Authorization Program (EVS-TAP), as provided in section 212(l) of the Act.

\* \* \* \* \*

## PART 233—CONTRACTS WITH TRANSPORTATION LINES

■ 5. The authority citation for part 233 continues to read as follows:

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

■ 6. Section 233.6 is revised to read as follows:

**§ 233.6 Aliens entering Guam or the Commonwealth of the Northern Mariana Islands pursuant to Title VII of Public Law 110–229, “Consolidated Natural Resources Act of 2008.”**

A transportation line bringing aliens to Guam or the Commonwealth of the Northern Mariana Islands under the visa waiver provisions of § 212.1(q) of this chapter or to the Commonwealth of the Northern Mariana Islands under the visa waiver provisions of § 212.1(r) of this chapter must enter into an agreement on CBP Form I–760. Such agreements must be negotiated directly by U.S. Customs and Border Protection and head offices of the transportation lines.

**Alejandro N. Mayorkas,**  
*Secretary of Homeland Security.*

[FR Doc. 2024–00645 Filed 1–17–24; 8:45 am]

**BILLING CODE** 9111–14–P

## **FEDERAL HOUSING FINANCE AGENCY**

### **12 CFR Parts 1209, 1217, and 1250**

**RIN 2590–AB31**

#### **Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is adopting this final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** Effective January 18, 2024, and applicable beginning January 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Frank R. Wright, Assistant General Counsel, at (202) 649–3087, [Frank.Wright@fhfa.gov](mailto:Frank.Wright@fhfa.gov) (not a toll-free number); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

FHFA is an independent agency of the Federal government, and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), as well as the Federal Home Loan Banks (collectively, the Banks) and the Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).<sup>1</sup> FHFA oversees the Enterprises and Banks (collectively, the regulated entities) and the Office of Finance to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.<sup>2</sup> Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA’s Rules of Practice and Procedure (12 CFR part 1209) (the Enforcement regulations) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.<sup>3</sup> FHFA’s Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.<sup>4</sup> FHFA’s Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed \$150,000.<sup>5</sup>

## **The Adjustment Improvements Act**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Adjustment Improvements Act), requires FHFA, as well as other federal

agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.<sup>6</sup> The Adjustment Improvements Act required agencies to make an initial “catch-up” adjustment of their CMPs upon the statute’s enactment,<sup>7</sup> and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.<sup>8</sup>

The Adjustment Improvements Act sets forth the formula that agencies must apply when making annual adjustments, based on the percent change between the October Consumer Price Index for All Urban Consumers (the CPI–U) preceding the date of the last adjustment and the October CPI–U for the year before that.

## **II. Description of the Rule**

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 of the Enforcement regulations to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.<sup>9</sup> This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. This rule also adjusts the maximum amounts for civil money penalties under the Program Fraud Civil Remedies Act by amending the text of 12 CFR 1217.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation.

The Adjustment Improvements Act directs federal agencies to calculate each annual CMP adjustment as the percent change between the CPI–U for the previous October and the CPI–U for

<sup>6</sup> See 28 U.S.C. 2461 note.

<sup>7</sup> FHFA promulgated its catch-up adjustment of its CMPs with an interim final rule published July 1, 2016. 81 FR 43028.

<sup>8</sup> FHFA promulgated its most recent annual adjustment of its CMP with a final rule published December 29, 2022. 87 FR 80023.

<sup>9</sup> See, e.g., 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013–03 (May 31, 2013).

<sup>1</sup> See Safety and Soundness Act, 12 U.S.C. 4513 and 4631–4641.

<sup>2</sup> *Id.*

<sup>3</sup> See 12 CFR part 1209.

<sup>4</sup> See 12 CFR part 1250.

<sup>5</sup> See generally, 31 U.S.C. 3801 *et seq.*