

U.S. Department of State



Final Plan for Retrospective Analysis of Existing Rules

August 17, 2011

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I. Executive Summary of Final Plan and Compliance with Executive Order 13563

Executive Order 13563 recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. Before a rule is tested, it is difficult to be certain of its consequences, including its costs and benefits. The Department of State's plan is designed to create a defined mechanism for identifying certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Its review processes are also intended to facilitate the strengthening, complementing, or modernizing rules where necessary or appropriate.

This plan offers a large number of reform initiatives, promising significant economic benefits and savings. Among the most important potential reforms are initiatives that would promote exports by streamlining and simplifying existing requirements, and increase tourism by streamlining and simplifying visa processing requirements, consistent with Federal law and the Department's national security role.

Executive Order 13563 calls not for a single exercise, but for "periodic review of existing significant regulations," with close reference to empirical evidence. It explicitly states that "retrospective analyses, including supporting data, should be released online wherever possible." Consistent with the commitment to periodic review and public participation, the Department of State will continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563.

To that end, the Department of State believes that the public must have a meaningful opportunity to comment on the rules as we are reviewing them. Each of our rulemaking bureaus (primarily, the Bureaus of Consular Affairs, Educational and Cultural Affairs, Political-Military Affairs, and Administration) will provide notice to the public as it begins its review. The public will have the opportunity to provide comments on those rules within sixty days of that notice.

The Department of State welcomes public suggestions about reforms. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, the Department will give those suggestions careful consideration.

II. Scope of Plan

- a. **There are no sub-agencies within the Department of State for including in this plan.**
- b. **Check all the types of documents covered under this plan:**
- Existing regulations
 - Significant guidance documents
 - Existing information collections
 - Unfinished proposed rules
 - Other (Specify _____)

III. Public Access and Participation

- a. The Department of State is responsible for carrying out the nation's foreign policy, representing the United States, promoting U.S. business, protecting American citizens, ensuring U.S. border security, telling America's story to the world, and providing the platform from which all U.S. government agencies operate abroad. It is essential that we take every opportunity to engage the public as we do this vital work on its behalf, and that consistent with existing authorities and Executive Order 13563, we undertake reforms to simplify and streamline existing requirements when consistent with Federal law, with close attention to the views of the public and affected stakeholders.

Our era is one in which news from around the world is accessible to everyone on a moment-by-moment basis. Reflecting this new era, the Department has invested heavily in the use of social media, such as Facebook®, Twitter®, blogs, and wikis for internal collaboration and external engagement. We continually must engage the public in our work, which is why the Department's website presents up-to-date information on the issues of the day in foreign affairs and development assistance. Our Open Government website (<http://www.state.gov/open>) provides a central location where one can follow the Department's efforts on key initiatives including the release of datasets at www.data.gov. This plan, along with links to various government and other sites, is hosted at <http://www.state.gov>.

The Department of State published a second notice in the *Federal Register* on May 9, 2011 seeking public comment on our Preliminary Plan. The notice is located at <http://www.state.gov>, in the "About State" tab, Rules and Information Collection link.

- b. **Brief summary of public comments to notice seeking input:**

The Department of State received comments from the public in response to our *Federal Register* notices from the American Immigration Lawyers Association (AILA), the Institute for Policy Integrity at New York University School of Law,

BAE Systems, the International Association of Professional Numismatists, JMC (Japan Machinery Center for Trade and Investment), and several private citizens. One comment pertained to Medicare regulations regarding anesthesia services which are unrelated to the Department's mission.

- The AILA comments are described in Section V. c. of this plan.
- The Institute for Policy Integrity submitted a letter regarding how agencies should draft their plans. The Institute's letter contains comprehensive suggestions for all agencies, not just the State Department, and can be found at <http://www.regulations.gov/#!documentDetail;D=DOS-2011-0079-0017>. The Department appreciates the work that went into these suggestions, and will study them carefully and implement those that we believe will improve our processes.
- BAE Systems supports the objectives of the Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (DDTC), in the Export Control Reform initiative. Specifically, the comment relates to the proposed establishment of a general program license (Ref. item number 15, Tab B of the Appendix of this plan). Since this is a proposed rule not yet developed, a response at this juncture would be premature. However, the Department of State will carefully consider comments pertaining to specific rules as those rules are published in the *Federal Register*.
- The International Association of Professional Numismatists submitted comments regarding specific rules implemented by the Department of the Treasury. The rules were explained at 72 FR 38470, 74 FR 2838, and 76 FR 3012. The Department cannot address these comments at this time, since this matter is the subject of ongoing litigation against the Department of State.
- The JMC (Japan Machinery Center for Trade and Investment) commented on 22 C.F.R. 41.111, requesting that the Department consider reinstating the practice of revalidating employer-sponsored visas within the United States as a means of reducing the travel and expense burden on visa holders who must leave the United States to revalidate their visas. Through the course of retrospective review, rule writers and subject matter experts will consider the different interests and factors, including those relating to national security, which may be impacted by the regulation. While the Department appreciates the request, the initial security concerns that led to the termination of domestic revalidations in 2004 remain valid. Given these concerns, the Department has no plans in the immediate future to resume domestic revalidation.

- The comment on passports and citizenship raised issues entirely unrelated to the Department's preliminary plan; thus, there is no basis for a Department response to the comment.
- One individual asked about the manner in which the Department would stagger its periodic reviews and requests for public input to allow for meaningful and thoughtful comments. The Department of State agrees that the public must have a meaningful opportunity to comment on the rules as we are reviewing them. Each of our rulemaking bureaus (primarily, the Bureaus of Consular Affairs, Educational and Cultural Affairs, Political-Military Affairs, and Administration) will provide notice to the public as it begins its review. The public will have the opportunity to provide comments on those rules within sixty days of that notice.
- The Department received a request to provide a minimum of 90 days for the public to comment during the periodic review. The Department notes that Executive Order 13563 calls for a minimum comment period of 60 days for proposed rules. In a manner both consistent with the APA and in the spirit of transparency set out by the Executive Order, the Department will solicit public comments when appropriate and when feasible. The Department established an e-mail box on state.gov for interested parties to submit comments on additional regulations for ongoing review.
- One commenter inquired about the 17 day comment period for responses to the Department's request for comment, published March 15, 2011. Once the Department has submitted its final plan to implement the Executive Order, it will be published in the Federal Register along with the opportunity for public participation and comments. In the full spirit of the Executive Order, the Department also established an e-mail box, ereg@state.gov, for interested parties to submit comments on additional regulations for future review.
- Several comments identified and recommended specific regulations to be modified, streamlined, expanded, or repealed. While outside the scope of the present response by the Department, these concerns will be addressed and carefully considered during the process of retrospective review. Executive Order 13563 calls not for a single exercise, but for periodic review. Subject matter experts and rule writers will review these regulations and all other Department regulations throughout the course of the retrospective review, as prescribed by the Executive Order and scheduled in the Department's plan. The review will be conducted in the course of meeting the requirements of the Executive Order, assessing each regulation on a variety of factors including, but not limited to, the impact and benefit to the public, national security interests, economic

considerations, potential cost, burden reduction to both the public and the Federal government, changes in technology, and available alternatives. As rule writers progress through the retrospective review schedule, they will evaluate each existing regulation in light of all equities to ensure that the Department's regulatory scheme is appropriately updated to strike a balance among these factors and the current circumstances.

IV. Current Agency Efforts Already Underway Independent of E.O. 13563

a. Summary of pre-existing agency efforts (independent of E.O. 13563) already underway to conduct retrospective analysis of existing rules:

The Department has been committed to the retrospective analysis of existing rules. The Department is responsible for implementing the President's foreign policy, and that responsibility calls for continuing scrutiny of existing practices.

The Department recognizes that a key part of its mission is to engage the American public on the nation's foreign policy. The explosive growth in the Internet and social media tools has enabled greater citizen participation than was previously possible. As a result, the Department receives ongoing feedback on our regulations, Foreign Affairs Manual, public notices and information collections from the public at-large, DHS and other government agencies and other interested stakeholders. Our Exchange Visitor Program holds public meetings with private sector, academic and governmental program sponsors for providing oversight and compliance feedback.

b. What specific rules, if any, were already under consideration for retrospective analysis?

See the latest publication of the Department's submission to the Unified Agenda of Federal Regulatory and Deregulatory Actions in www.reginfo.gov. The Bureau of Consular Affairs, for example, was already in the process of reviewing Part 71 of 22 CFR, Consular Protection Loans. In addition, see Section V. c. below, for rules in the Bureau of Political-Military Affairs that were already under consideration for retrospective analysis. Revisions to the U.S. Munitions List were already in progress.

V. Elements of Final Plan/Compliance with E.O. 13563

a. How does the agency plan to develop a strong, ongoing culture of retrospective analysis?

The Department's leadership, beginning with Secretary Clinton, is looking forward to the opportunities presented in the E.O. initiative. We recognize the importance of streamlining existing requirements and of reducing unjustified burdens. Recent and coming reforms, designed to streamline the export control process within the

constraints of Federal law, are a clear example. We also recognize the importance, for this and other endeavors, of collaboration, engagement, partnerships, and accountability. The principal focus of this plan is to build on the work currently underway and expand our engagement with all of our stakeholders. We have created a Rules and Information Collection website, linked to the Department's home page. The website provides access to available information and represents an effort to engage the public more dynamically, solicit input, and increase collaboration for an on-going retrospective analysis. The URL for the site is:
<http://www.state.gov/m/a/dir/rulemaking/index.htm>.

State's mission also includes making relevant information available to the public. The Bureau of Consular Affairs provides detailed travel information about countries and documentation of U.S. citizens and foreign nationals via the Internet on www.travel.state.gov. The first quantitative assessment of online open government efforts recently found this site to be one of the highest ranking in online transparency. State.gov also scored high in this transparency project, which surveyed more than 36,000 citizens who visited 14 federal sites during the fourth quarter of 2009.

Through our website, we will encourage the public to review and provide us with their comments on the best way to conduct our analysis on an ongoing basis. We will also actively seek views from the public on specific rules or Department-imposed obligations that might be modified or repealed. To promote a culture of retrospective evaluation, an executive committee was created within the Department with responsibility for developing preliminary and final plans and for subsequent periodic reviews. All offices responsible for writing rules were requested to nominate a representative who will be an active and responsible regulatory review member. Although our regulatory procedures are dynamic and have constant triggers that promote review and amendment to our rules and other guidance, we will conduct annual reviews, with the first one commencing on the anniversary after the completion of the initial review. In addition, each proposed rule and final rule will be reviewed for meeting the requirements of the E.O.

The Department's goal is to create a systematic method for identifying those significant rules that are obsolete or no longer make sense. While this review will focus on the elimination of rules that are no longer warranted, the Department will also consider strengthening, complementing, or modernizing rules where necessary or appropriate including, as relevant, undertaking new rulemaking. For this purpose, the Department has developed a checklist to not only serve as a guide to rule writers, but also to serve as an official record of the systematic review of each significant rule.

Furthermore, the Department will also consider how regulations might be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses and the measurement of actual results. When appropriate, the Department will use pilot programs that will allow us to better measure the impact of a proposed rule, before formally implementing it.

b. Prioritization. What factors and processes will the agency use in setting priorities?

The Department of State is the agency with lead responsibility for formulating and carrying out the nation's foreign policy. The Department operates in Washington, D.C., and in nearly 200 countries, with over 285 locations world-wide. State's major program areas include diplomacy, border security, U.S. citizen's services, and foreign assistance. The Department's Mission Statement is to *Advance freedom for the benefit of the American people and the international community by helping to build and sustain a more democratic, secure, and prosperous world composed of well-governed states that respond to the needs of their people, reduce widespread poverty, and act responsibly within the international system.* The Department, being the diplomatic arm of the U.S. government, generates many narrative documents, treaties, and inter-governmental agreements.

The fundamental activities of diplomacy are based on human contact and the establishment of common dialogue to both further ties, as well as resolve conflict in a peaceful manner between nations. This function is not the subject of rulemaking; for this reason, the Department does not publish many rules on a year-to-year basis.

When the Department develops rulemakings, it acts consistent with the requirements of Executive Order 13563. The Department's rules are reviewed on a continuing basis consistent with the principles established in the E.O. The Department will not impose a mandatory schedule for review on the organizations responsible for promulgating rules. Instead, bureaus will establish their own priorities and guidelines, giving priority to significant regulations affected by: comments from the public; other agencies' and internal feedback; changes in legislation; and, where applicable, to simplify language based on the provisions of the Plain Writing Act of 2010 (Public Law 111-274).

c. Initial list of candidate rules for review over the next two years:

Some of the rules listed in this section were identified during a public comment period, and/or the responsible bureau had identified them for review prior to the development of this plan. Detailed plans for the major rulemaking bureaus may be found in the Appendix section.

- **Bureau of Political-Military Affairs**

A complete list of regulatory changes that the Bureau of Political-Military Affairs can immediately foresee may be found at Tab B of the Appendix. The list should not be construed as a limitation on the bureau's ability to propose and staff additional changes based upon statutory changes, geo-political developments, new departmental requirements/priorities, or other unforeseen events.

The overall effect of the rule reviews will be to promote exports by simplifying the regulatory structure for exporters of defense articles and services. Most importantly, this would be effected by clarifying what is covered by the United States Munitions List (USML). At the moment, almost all USML categories are being reviewed, with the goal of revising them into a “positive” list that describes controlled items using objective criteria, rather than broad, open-ended, subjective, or design intent-based criteria frequently found on the current USML.

Certain licensing exemptions will reduce the burden for exporters by eliminating the requirement of submitting an export license application. Other changes that will reduce the burden to the public include the electronic payment of registration fees, and, for those licenses decremented electronically through the Automated Export System, the discontinuation of the requirement to send in expired or exhausted licenses.

- **Bureau of Resource Management**

Repeal Part 8 of 22 CFR, **Federal Advisory Committee Act (FACA)** Regulation for the Department of State.

Part 8 is 35 years old and out of date. In the years since it was initially published, the General Services Administration (GSA) published its FACA regulation in 41 CFR Part 102-3. There is no reason for the Department to have a separate regulation in the CFR. The Department will repeal its regulation and publish a Foreign Affairs Manual provision that identifies which offices have responsibility for certain FACA functions, and any internal procedures to be used in managing advisory committees.

- **Bureau of Consular Affairs**

The Bureau of Consular Affairs (CA) will review one fourth of their regulations each quarter to comply with the annual retrospective review requirement of E.O. 13563. CA will ensure sufficient independence from those responsible for writing and implementing regulations through a review and approval process that includes top level managers and others who are not rule writers. These will include: the Assistant Secretary for Consular Affairs, Principal and Deputy Assistant Secretaries (all of whom are career officers with extensive field experience), attorneys, subject matter experts, consular officers abroad, passport specialists, and the Department’s internal and interagency process. The full report, including cost savings and burden reduction, may be found at Tab B of the Appendix.

Revisions of CA’s rules will promote significant goals for the public. The Visa Office’s retrospective analysis will review each regulation in order to: ensure an efficient visa regulatory scheme free of administrative burdens or obsolete visa requirements; identify processing steps that can be streamlined; and eliminate any restrictions that contribute to confusion or excessive costs to the public and the Department. The Department recognizes that a visa process that is simplified and

streamlined, while remaining consistent with Federal law and the Department's national security role, would have the effect of encouraging individuals overseas to apply for visas and travel to the United States; such legitimate travel could promote tourism, growth and job creation.

When the review results in a revision to a regulation, the revisions will take into consideration all available alternatives of visa processing regulations and reflect the approach that maximizes net benefits, including national security and potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity.

The Overseas Citizens Services Office's (OCS) retrospective analysis will review each regulation in order to increase simplicity and clarity, eliminate outdated information and obsolete rules, update technological references, and focus on maximizing OCS's and U.S. embassies' and consulates' ability to provide consular services to U.S. citizens abroad in a timely, cost efficient and effective manner.

Passport Services' retrospective analysis will ensure continuous consideration and improvement in areas such as border security, integrity of travel and citizenship documents, efficiency in the passport issuance process, and customer service. These revisions will have multiple positive impacts, including strengthening law enforcement and supporting border security by ensuring the integrity of U.S. travel and citizenship documents, thus leading to greater efficiencies within Passport Services and simplifying the rules that apply to the public.

Consular Affairs performs an annual examination of costs, time allocations, and volumes associated with all consular services. The activity-based cost model is used to determine which consular fees are set at a level higher or lower than the updated true cost, thereby increasing the efficiency of the Department of State by adjusting consular fees only on an as-needed basis at a level that recovers costs. Moreover, the notice-and-comment process provides customers a more transparent view of the work and costs involved in providing consular services and the associated fees.

Consular Affairs works very closely with the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS) on overlapping regulations and will reach out to counterparts regarding the retrospective analysis process as appropriate.

Certain provisions will be reviewed pursuant to a request from the American Immigration Lawyers Association (AILA). The Department will carefully consider AILA's comments, which are included here:

- Part 41 of 22 CFR: Section 111(b), **Issuance of Nonimmigrant Visas in the United States**
“As of July 16, 2004, DOS ceased visa reissuance (visa revalidation) for the C, E, H, I, L, O, and P nonimmigrant visa

(NIV) categories due to the requirement of biometrics capture for these categories as a result of the Enhanced Border Security and Visa Entry Reform Act (Pub. L. No. 107-173). *See* 69 Fed. Reg. 35121 (June 23, 2004). Visa revalidation greatly enhanced and facilitated international business travel and should be reinstated for the above-referenced visa categories. Biometrics for visa revalidations could be captured by USCIS Application Support Centers.”

- Part 41 of 22 CFR: Section 111(d), **Automatic Extension of Validity at Ports of Entry**

“This provision permits a nonimmigrant with an unexpired I-94 Arrival/Departure Record, who is returning to the United States from a contiguous territory after an absence of not more than 30 days, to be readmitted notwithstanding the fact that the underlying nonimmigrant visa has expired, unless the individual has applied for (and presumably been denied) a nonimmigrant visa while abroad. This provision should be amended to permit such individuals to reenter the United States for the period of admission remaining on his or her I-94 card.”
- Part 41 of 22 CFR: Section 81, **Fiancé(e) or Spouse of a U.S. Citizen and Derivative Children**

“DOS announced that effective February 1, 2010, it would no longer allow a K-3 applicant to choose whether to proceed with K-3 processing at an NIV consulate or the I-130/immigrant visa (IV) processing at an IV consulate where the National Visa Center (NVC) has received approval notices for both the K-3 and the I-130 petitions. Given the difference in processing times for K-3 NIVs versus IVs at certain consular posts, and the resulting delay in family reunification caused by this recent change, this regulation should be amended to permit the applicant to choose between proceeding with the K-3 or IV application under these circumstances.”
- Part 41 of 22 CFR: Section 103(b)(3), **Filing an Electronic NIV Application—Electronic Signature**

“On April 29, 2008, DOS amended the regulations relating to NIV applications to offer an electronic application procedure on Form DS-160. *See* 73 Fed. Reg. 23067. The supplementary information to the final rule states that while a third party may assist the applicant in preparing the DS-160, the applicant must electronically sign the application him- or herself. This requires the applicant to physically click the “submit” button and does not permit an authorized attorney or representative to do so on the applicant’s behalf. This is extremely burdensome for applicants

who may not have a computer, access to a computer, or cannot sufficiently complete the electronic form. This provision should be amended to permit a third party to sign the electronic DS-160 with the express consent of the applicant.”

○ Part 41 of 22 CFR: Section 105(a), **NIV Supporting Documents, and §41.121(b): Refusal Procedure**

“22 CFR §41.105(a) states that “[a]ll documents and other evidence presented by the alien, including briefs submitted by attorneys and other representatives, shall be considered by the consular officer.” Though 22 CFR §41.121(b) requires a consular officer to “inform the alien of the ground(s) of ineligibility” when a visa is refused, the information provided in the denial letter is often of a very general nature. The regulations should be amended to require consular officers to provide a detailed statement of ineligibility to demonstrate that all submitted documents were reviewed and considered in accordance with §41.105(a).”

○ Part 42 of 22 CFR: Section 65, **IV Supporting Documents**

“Immigrant visa applicants are required to submit originals of essential documents such as birth certificates, marriage certificates, and police certificates to the NVC. The physical case file, including the original documents, is forwarded to the consulate, but documents can get lost in the file transfer process. This practice should be amended to permit IV applicants to submit good, clear copies of original documents to the NVC and to permit the applicant to bring original documents to the interview for inspection by the consular officer.”

○ Part 42 of 22 CFR: Section 21(b), **Immigrant Visas for Surviving Beneficiaries/Spouses of Deceased U.S. Citizens**

“USCIS regulations promulgated in 2006, 8 CFR §204.2(i)(1)(iv), allow for the automatic conversion of an I-130 petition to an I-360 petition upon the petitioner’s death in the case of a spouse (widow) of a U.S. citizen. Section 568(c) of the FY2010 Appropriations Act, Pub. L. No. 111-83, included provisions permitting widows married less than two years to similarly self-petition, as well as provisions for benefits for other surviving relatives. Under INA §204(l), such individuals are eligible for survivor benefits if they can show a U.S. residence at the time of the petitioner’s death, even where they have proceeded abroad for the sole purpose of consular processing. However, it appears that DOS has yet to issue guidance or regulations on the treatment of surviving beneficiaries, and may in fact be treating widow petitions as automatically revoked under 8 CFR §205.1(a)(3), in cases where the petitioner dies before the beneficiary has immigrated to the United States.

We ask that regulations and/or guidance be implemented in this regard.”

- A proposal for the right to counsel at U.S. embassies and consulates.

The comments from AILA are located at

<http://www.regulations.gov/#!documentDetail;D=DOS-2011-0047-0004>.

- **Bureau of Educational and Cultural Affairs**

The Bureau of Educational and Cultural Affairs (ECA) fosters mutual understanding between the people of the United States and the people of other countries to promote friendly and peaceful relations, as mandated by the *Mutual Educational and Cultural Exchange Act of 1961*.

The Exchange Visitor Program (Title 22, Part 62) governs 15 different categories of exchange, each with its own regulations. The regulations are regularly reviewed and updated for each of the categories. The general public is actively involved in all rulemakings, including public meetings and requests for comments. ECA’s report may be found at Tab C of the Appendix.

- d. **Structure and Staffing. High-level agency official responsible for retrospective review.**

Name/Position Title: Patrick F. Kennedy, Under Secretary for Management

Email address: RegulatoryReview@state.gov

- e. **How does the agency plan to ensure that agency’s retrospective team and process maintains sufficient independence from the offices responsible for writing and implementing regulations?**

The Department recognizes the importance of independence from the offices responsible for writing and implementing regulations. The Under Secretary for Management is the lead Department of State official for overall operational implementation of the Executive Order. The retrospective team answers to that official, not to the rule writers. With respect to prospective rules, proposed drafts of such rules must be cleared by the Office of the Legal Adviser, the Bureau of Resource Management, and other offices relevant to the regulation’s subject matter, which are typically independent of the rule writers. For example, rules affecting consular affairs require clearance by the Assistant Secretary for Consular Affairs and several Deputy Assistant Secretaries all of whom are career field officers, while various additional circumstances may require clearance by the Office of the Inspector General (OIG) and the Office of Management and Budget (OMB). These required clearance steps ensure objective channels of review for rule drafts.

It is possible, but very unlikely, that third parties will perform the analyses.

- f. **Describe agency actions, if any, to strengthen internal review expertise. This could include training staff, regrouping staff, hiring new staff, or other methods.**

A working group was created to enforce the Department's efforts for making the most up-to-date information available online for the public and Department staff, for discussing information about the requirements of the E.O. and for planning the initial and on-going annual reviews. Looking forward, the Department's bureaus will participate in the rule writing process by contributing staff to the retrospective team. This approach will provide a rich retrospective review exchange with the public and will ensure that all aspects of the Department's broad expertise are reflected in the E.O.'s retrospective analysis of existing rules efforts. The Department will coordinate periodic training for its retrospective team participants to ensure familiarity with the Federal Docket Management System and to ensure consistency throughout the lookback process.

- g. **How will the agency plan for retrospective analysis over the next two years, and beyond?**

This plan has been developed collaboratively under the direction of the Under Secretary of Management. The team is composed of bureau representatives currently active in the rule writing and rule review process. Because the Department regulatory procedures are dynamic in nature, there are triggers that promote our on-going review and amendment to our rules and other guidance.

The Department uses the semi-annual Unified Agenda of Regulatory and Deregulatory Actions (the Agenda) as another way to review existing regulations. The Department's portion of the Agenda describes the regulatory actions that State has recently completed or expects to promulgate in the next year.

As rules are reviewed, Department regulatory offices determine which agencies will be involved based on existing practices for inter-agency review of proposed or revised rules.

- h. **How will the agency decide what to do with analysis?**

As described in section V. b. of this plan, rulemaking in the Department of State is a decentralized function. Department organizations maintain their own schedule for reviewing regulations. The triggers that promote review and amendment of rules may generate from a variety of sources. For example, the Bureau of Administration maintains ongoing, regular reviews of the Department of State Acquisition Regulation (DOSAR) codified in Chapter 6 of 48 CFR. Updates to the DOSAR are published at regular intervals in the *Federal Register*,

as necessary, and are subject to public comment. Typically, DOSAR changes are generated by requirements from the Federal Acquisition Regulation (FAR).

Another example is the Bureau of Consular Affairs (CA), which receives ongoing feedback on its regulations, public notices and information collection from sources such as the American Immigration Lawyers Association (AILA), adoption service providers, adoption accrediting entities, other public and private lawyers, the public at large, the Department of Homeland Security, other government agencies, the court system through litigation, consular officials in the field and other stakeholders. Certain CA regulations, such as the adoption regulations (Parts 96, 97, 98 and 99 of 22 CFR) and Western Hemisphere Travel Initiative Regulations (22 CFR Part 53) included not only the required public comment periods, but extensive public hearings and briefings. When CA receives feedback, it reviews the guidance and determines whether or not changes are necessary. Furthermore, CA conducts annual reviews of pertinent Foreign Affairs Manual regulations which can result in revisions to the Code of Federal Regulations.

- i. **What are the agency's plans for revising rules? How will agencies periodically revisit rules (e.g., through sunset provisions, during regular intervals)?**

The Department will review each rule and determine whether or not it should be revised.

- j. **Describe how the agency will coordinate with other federal agencies that have jurisdiction or similar interests:**

As administrators of the International Traffic in Arms Regulations (ITAR) and rules dealing with passport/visa issues, the Department already coordinates with other Federal agencies when it promulgates rules, and will do the same if the retrospective analysis reveals existing rules that must be changed.

- k. **Will the plan be peer reviewed?**

This plan was developed by a team led by the Department's Under Secretary for Management, composed of employees throughout the Department. The public will be given an opportunity to comment on the plan, but it will not be peer-reviewed in the scientific sense.

VI. Components of Retrospective Cost-Benefit Analysis

During the initial review process, the Department will assess the potential costs and benefits of its regulatory actions according to OMB Circular A-4, Regulatory Analysis, and best practices. In addition, the Department generally implements and reviews rules based on statutory requirements, recouping the cost of service, and increase in net benefits.

A working group, consisting of Department individuals with expertise in rule writing, will ensure an effective retrospective analysis by taking into consideration the effectiveness of the regulatory scheme and its costs and benefits on the regulated parties. In general, due to the nature of the Department's regulatory actions, the incorporation of experimental design does not apply.

VII. Publishing the Agency's Plan Online

The Department will publish this plan on its Open Government website: <http://www.state.gov/m/a/dir/rulemaking/index.htm> and <http://www.state.gov/open/>.

APPENDIX

TAB A – BUREAU OF POLITICAL-MILITARY AFFAIRS

TAB B – BUREAU OF CONSULAR AFFAIRS

TAB C – BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS

TAB A

BUREAU OF POLITICAL-MILITARY AFFAIRS

**BUREAU OF POLITICAL-MILITARY AFFAIRS
DIRECTORATE OF DEFENSE TRADE CONTROLS (DDTC)**

Rulemaking, Regulations Under Review and Burden Reduction

This plan contains a list of regulations being written or reviewed by the Directorate of Defense Trade Controls (DDTC). Most of these proposed rulemakings are a result of the President's Export Control Reform initiative, the object of which is to simplify and clarify the regulations that govern the export of commodities and technologies. DDTC administers the International Traffic in Arms Regulations (ITAR), and therefore is working on the revision of the defense trade regulations. Other government agencies are working on the regulations they administer.

The overall effects of the revision of these regulations will be to simplify the regulatory structure for exporters of defense articles and defense services and reduce the number of export licenses submitted by exporters. Currently, the United States Munitions List (USML) controls all defense articles equally, regardless of sensitivity. The USML categories are being reviewed, with the goal of revising them into a "positive" list that describes defense articles using objective criteria, rather than broad, open-ended, subjective, or design intent-based criteria frequently found on the current USML. Defense articles that do not require the stringent controls of the Arms Export Control Act will be moved to the jurisdiction of the Department of Commerce, where the licensing burden on exports can be dramatically reduced.

Certain licensing exemptions will reduce burden for exporters by eliminating the requirement of submitting an export license application. Other changes that will reduce burden to the public include the electronic payment of registration fees and, for those licenses decremented electronically through the Automated Export System, the discontinuation of the requirement to return to DDTC expired licenses.

Most rules are in draft stages, with the expectation that all will be published as final rules by mid- 2012. Where available, citations are provided for those rules that have been published as proposed or final rules.

This is a list of regulatory changes that DDTC can immediately foresee, but should not be construed as a limitation on DDTC's ability to propose and staff additional changes based upon statutory changes, geo-political developments, new departmental requirements/priorities, or other unforeseen events.

- 1) Revision of 22 CFR 121, International Traffic in Arms Regulations (ITAR), United States Munitions List (USML). Each category listed below will be the subject of a separate rule (only one proposed rule has been published to date).

The object of the revision is to more clearly identify items that are defense articles. In addition, certain items now covered by the USML are to be moved to the Commerce Control List, where they may be subject to more flexible licensing policies.

- Category I—Firearms, Close Assault Weapons and Combat Shotguns
- Category II—Guns and Armament
- Category III—Ammunition/Ordnance
- Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- Category VI—Vessels of War and Special Naval Equipment.
- Category VII—Tanks and Military Vehicles (Proposed rule published December 10, 2010, 75 FR 76930)
- Category VIII—Aircraft and Associated Equipment
- Category IX—Military Training Equipment and Training
- Category X—Protective Personnel Equipment and Shelters
- Category XI—Military Electronics
- Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII—Auxiliary Military Equipment
- Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV—Spacecraft Systems and Associated Equipment
- Category XVI—Nuclear Weapons, Design and Testing Related Items
- Category XVII—Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Category XVIII—Directed Energy Weapons
- Category XIX – Gas Turbine Engines
- Category XX—Submersible Vessels, Oceanographic and Associated Equipment

Net effects: Regulatory clarification. This will lead to reduction of burden, in many instances, by eliminating the necessity of an export license from the Department of State. This reduction in license volume will result in cost savings to the defense industry, as fees paid by defense manufacturers and exporters to register with the Department of State are determined in part by the number of licenses submitted. Regulatory clarification also should lead to burden reduction through the decreased use of the commodity jurisdiction determination procedure, for a USML that clearly delineates defense articles should lead to less ambiguity on the part of exporters.

- 2) New licensing exemption for certain replacement parts and incorporated articles (ITAR sections 123.28 and 126.19). Net effect: Reduce burden by eliminating the need for the affected public to submit license applications in certain instances. Proposed rule published March 15, 2011, 76 FR 13928.

- 3) New licensing policy for transfer of defense articles to dual national and third-country national employees (ITAR section 126.18). Net effect: Reduce burden by eliminating the need for the affected public to submit license applications in certain instances. Proposed rule published August 11, 2010, 75 FR 48625. Final rule published on May 13, 2011, 76 FR 28174.
- 4) New licensing exemption for the temporary export for personal use of chemical agent protective gear (ITAR section 123.17). Net effect: Reduce burden by eliminating the need for the affected public to submit license applications in certain instances. Proposed rule published March 23, 2011, 76 FR 16353.
- 5) New electronic submission of registration payments (ITAR parts 120, 122, and 129). Net effect: Reduce burden through process enhancements. Specifically, revisions to the form used by the public to register as defense exporters/manufacturers/brokers will cut the estimated burden time in half. As there are currently approximately 10,000 registrants, this will amount to a burden reduction of 10,000 hours annually. Proposed rule published February 24, 2011, 76 FR 10291.
- 6) Clarification of records maintenance requirement (ITAR section 122.5). Net effect: Reduce burden by clarifying the regulatory requirement in this instance.
- 7) Discontinue submissions of form DSP-53 (ITAR section 123.4). Net effect: Regulatory clarification, as the State Department does not have the authority to regulate the permanent importation of defense articles. For those foreign governments requiring documentation of the Federal government's approval of the temporary importation of defense articles, which the State Department is authorized to regulate, the State Department's DSP-61 or DSP-85 must be used. Proposed rule published July 14, 2011, 76 FR 41438.
- 8) Change in requirements for the return of licenses (ITAR section 123.22). Net effect: Reduce burden by eliminating the need for the affected public to return expired license applications in certain instances. Proposed rule published July 14, 2011, 76 FR 41440.
- 9) Revision of agreements procedures (ITAR part 124). Net effect: Potential for burden reduction with the adoption of a form for this information collection.
- 10) Update information on sanctioned countries (ITAR section 126.1). Net effect: Regulatory clarification. Accurately describing proscribed destinations in the regulations will provide information to applicants to preclude them from expending resources pursuing contracts that will not be approved by the U.S. government.
- 11) Clarify and reflect new policy for exports made by or for the U.S. government (ITAR section 126.4). Net effect: Regulatory clarification, which may lead to more frequent use of this available licensing exemption.
- 12) Revise brokering regulations (ITAR part 129). Net effect: Regulatory clarification.

13) Revise definition of “defense service” (ITAR sections 120.9, 120.38, 124.1, and 124.2). Net effect: Reduce burden by eliminating the need for the affected public to submit license applications in certain instances. Proposed rule published April 13, 2011, 76 FR 20590.

14) New regulations implementing the Australia and UK defense cooperation treaties (ITAR parts 120, 123, 124, 126, 127, and 129). Net effect: Reduce burden by eliminating the need for the affected public to submit license applications in certain instances.

15) Establishment of a general program license which would allow multiple exporters to collaborate with foreign partners on U.S. government programs (ITAR part 123).

16) Revise/establish definitions of/for “technology,” “specially designed,” and “public domain” (ITAR part 120). Net effect: Part of the USML review, and the overall effort to more clearly distinguish defense items from commercial items in regulations.

17) Revision of Missile Technology Control Regime annex (ITAR part 121). Net effect: Burden reduction associated with clear and updated regulations.

TAB B

BUREAU OF CONSULAR AFFAIRS

**BUREAU OF CONSULAR AFFAIRS
REGULATORY WORK – COST SAVINGS AND
BURDEN REDUCTION**

22 CFR Part 41 - Visas

Recent Visa Office (VO) regulatory initiatives were aimed at reducing repetitive and unnecessary burdens on the public and Department personnel while promoting programs that are cost-effective and achieve the right balance between facilitating travel for legitimate travelers and national security. Reforms to reduce Department burdens through effective screening and fraud prevention programs are central to VO's regulatory scheme.

Effective implementation of the Government Paperwork Reduction Act, in addition to the transition of the diversity visa from a paper-based program to an electronic one, led VO to consider using electronic applications more widely as a cost-effective and security-minded means of managing millions of applications every year. Recent regulatory initiatives show how the Department's use of technology is improving screening while, at the same time, reducing costs of record storage and retrieval, reducing time of consular officer and local staff spent reviewing repetitive and incomplete information, increasing safety at embassies and consulates, and allowing better use of existing personnel, thus reducing the need for increased human and financial resources.

22 CFR 41.103 - Filing an Application

Earlier, the Department amended 22 CFR 41.103 to permit the electronic submission of the Online Nonimmigrant Visa Application (DS-160). In August 2010, the Department amended 22 CFR 42.63 to provide for the submission of the Online Application for Immigrant Visa and Alien Registration (DS-260). These applications are part of the Department's Consular Electronic Application Center (CEAC) that provides immigrant and nonimmigrant visa applicants with an online process to electronically complete and submit applications. The CEAC initiative streamlines the application process and reduces the amount of paper generated during the application, satisfying both the Government Paperwork Elimination Act, as well as advancing the spirit of "green legislation" endorsed by the Administration and making better use of existing resources.

Cost Savings and Burden Reduction to the Public

Streamlining the application process by converting to an electronic system conserves both time and resources. Previously, nonimmigrant visa applicants completed paper applications in addition to separate supplemental nonimmigrant forms for different types of visas. Now, the electronic applications include all other supplemental nonimmigrant forms, saving applicants' time and lessening the burden on Department resources to collect repetitive and incomplete data, submitted on paper applications. Applicants may save their data on their computers to be updated and resubmitted on future applications.

CEAC ensures that an application is *complete* prior to being accepted, saving field officer and locally employed staff time by not having to review incomplete applications and collect repetitive information. This saves Department resources by filtering incomplete information, and allows officers to more efficiently and closely review visa applications especially those of marginal applicants. Because CEAC completes basic administrative processing in advance for applicants, visa windows can avoid an influx of interviewees who are otherwise documentarily unqualified. Staff and the public are made safer by reduced crowds at overseas embassies and consulates that are easier for security personnel to screen and monitor. Additionally, given the time and expense for visa applicants to travel to an interview, requiring them to do so only when they have completed the application forms and information requirements saves them time and money.

Electronic applications negate the need for a large storage and shipment program and archiving of paper applications for many years. Storing applicant information electronically saves the Department time and money as well as file space. Implementing an electronic system vastly improved the ability to search, manage, and retrieve the millions of records maintained by the Department both domestically and overseas, improving the Department's fraud prevention efforts and collaboration with law enforcement. These records are also less susceptible to damage, loss, and misfiling. Electronic storage reduces labor, servicing, and shipping costs incurred every time a record requires retrieval.

As data collected electronically are often shared with interagency partners for security review of applicants, regulatory initiatives allow for real-time information sharing, thus improving our national security screening.

Quantitative Cost Savings and Burden Reduction

Consular Affairs performs an annual examination of costs associated with all consular services. The activity-based cost model is used to determine costs and those costs are used to set fees. The model is also used to determine savings achieved. By not incurring expenses associated with a paper application process, Department studies have shown that the costs of managing the electronic system have saved the Department approximately \$341,300,000 each year since 2008, primarily in expensive secure storage overseas.¹ These savings will continue into the future.

¹ With small exceptions, the Department receives an average of 10 million NIV applications each year. The processing cost of a paper application was approximately \$38. The processing cost of an electronic application is approximately \$3.87. The difference in processing costs for 10 million applications is \$341,300,000.

BUREAU OF CONSULAR AFFAIRS – LOSS OF NATIONALITY

22 CFR Part 50, Subpart B - Loss of Nationality

In 2008, the Bureau of Consular Affairs revised 22 CFR 50.51, Review of Finding of Loss of Nationality, to provide a simplified procedure to request a review of previous findings on loss of nationality. This administrative review process decreases the burden on U.S. citizens and former U.S. citizens and results in timelier decision-making.

Pursuant to Immigration and Nationality Act of 1952 (INA), as amended, Section 349 (a), 8 U.S.C. 1481, a U.S. citizen may lose his/her U.S. citizenship by performing one of seven potentially expatriating acts voluntarily and with the intention of relinquishing U.S. citizenship. Pursuant to INA Section 358, whenever a U.S. diplomatic or consular officer has reason to believe that a person abroad has lost his/her U.S. nationality by performing one or more of the statutory acts of expatriation, the officer must certify the facts upon which the belief is based to the Department, which will then determine whether to approve a Certificate of Loss of Nationality with respect to that person. Persons who a diplomatic or consular officer believed committed a potentially expatriating act, were asked to complete a five-page form, the DS-4079, Request for Determination of Possible Loss of United States Citizenship, to determine whether the person committed an expatriating act, and if so, whether he/she did so voluntarily and with the intention of relinquishing U.S. citizenship (as required by statute).

In 1998, the Department adopted an administrative presumption (based on legal precedent) with respect to certain potentially expatriating acts. Currently, there are three statutory acts for which intent to retain U.S. citizenship is presumed: 1) naturalizing in a foreign country; 2) taking a routine oath of allegiance to a foreign country; or 3) accepting non-policy level employment with a foreign government. Unless the individual performing any of these acts affirmatively represents to a consular officer that he/she committed the act with the intention of relinquishing his/her U.S. citizenship, the Department will presume that the act was performed without such intent. Most recently, this policy change was extended to service in the armed forces of a foreign state.

Cost Savings and Burden Reduction to the Public

This eliminated the need for a U.S. diplomatic or consular officer abroad to separately assess each case in which a U.S. citizen naturalizes in a foreign country and/or takes a routine oath or accepts a non-policy level position in a foreign government. It also reduces the burden on U.S. citizens as they are no longer required to submit evidence of intent to retain U.S. nationality or asked to complete the DS-4079 if they perform any of these acts.

As workloads abroad rise, these changes not only provide better customer services, but also allowed the Department to more effectively deploy existing personnel.

BUREAU OF CONSULAR AFFAIRS – PASSPORT SERVICES

22 CFR Part 51, Subpart B - Passports

In the last five years, the Department has promoted convenience, U.S. job creation, and security through various initiatives. Our efforts include streamlined procedures while promoting security of the passports, enhanced cooperative efforts, interagency cooperation, greater use of technology, and better customer service. For example, in 2007, the Department introduced the innovative passport card. The passport card is a wallet-size travel document that provides a less expensive, secure and convenient alternative to the passport book for those who travel frequently in North America by land or by sea.

Over the last few years, the Department opened eleven agencies and centers, most in major metropolitan areas, to facilitate the ability of U.S. citizens to apply for passport services, reduce the time needed to issue passports, promote job growth, and meet the increasing demands for passports. The Department received ARRA funds to support the passport facility costs, however, no additional funds were requested to hire additional staff or to pay for related system costs. The Department reprioritized resource needs in order to meet the demand in the new facilities and piloted new technology in order to support Department goals without requesting additional resources. To further these efforts, the Department has also expanded its network of designated Acceptance Facilities to over 9,000. These facilities are located throughout the United States for an applicant's convenience and employ thousands of agents (employees of other agencies and the courts) who are authorized to accept and pre-process applications.

Passport integrity and national security concerns require additional documentation with applications as well as more detailed analysis and review of the applications. Yet the estimated burden time for applicants over the past five years has remained constant. We have vastly improved our data-sharing capabilities to rapidly verify applicants' identity and claims to citizenship. By entering into additional data-sharing agreements with other agencies as well as the use of commercially available background services, we are better able to focus on detection of fraudulent claims to citizenship and identity. This permits better adjudication of questionable cases without additional resources as well as improved customer service to all applicants.

Cost Savings and Burden Reduction to the Public

The opening of passport acceptance and service agencies in eleven cities created 577 new jobs at the same time improving service delivery and outreach.

**RETROSPECTIVE REVIEW SCHEDULE
VISA SERVICES
LEGISLATION AND REGULATIONS (CA/VO/L/R)
22 CFR 40-42**

As noted in the body of the Plan, the Department recognizes that simplifying and streamlining visa processing requirements, while remaining consistent with Federal law and the Department's national security role, would have the effect of encouraging individuals overseas to apply for visas and travel to the United States; such legitimate travel could promote tourism, growth and job creation.

CA/VO/L/R is responsible for Parts 40, 41, and 42 of volume 22 of the Code of Federal Regulations (CFR). These three parts are comprised of 125 regulations. The division's review of these regulations will proceed in chronological order throughout the three parts. The scheduled process provides for review of a minimum of one-fourth of the regulations each quarter as some sections will require fewer revisions than others. The division's review will consider a variety of factors regarding each regulation's necessity, complexity, accuracy, and involvement of the public in the rule's promulgation.

Below is the schedule by which the division plans to review the following specific regulations, arranged according to the quarter in which they will be reviewed. As the retrospective review plan is finalized, the division will assign specific dates to this schedule.

Quarter One

22 CFR 40.1- Definitions

- 40.2 Documentation of nationals
- 40.3 Entry into areas under U.S. administration
- 40.4 Furnishing records and information from files for court proceedings
- 40.5 Limitations on the use of NCIC criminal history information
- 40.6 Basis for refusal
- 40.9 Classes of inadmissible aliens
- 40.11 Medical grounds of ineligibility
- 40.21 Crimes involving moral turpitude and controlled substance violators
- 40.22 Multiple criminal convictions
- 40.24 Prostitution and commercialized vice
- 40.31 Immigrant membership in totalitarian party
- 40.41 Public charge
- 40.51 Labor certification
- 40.52 Unqualified physicians
- 40.53 Uncertified foreign health-care workers
- 40.61 Aliens present without admission or parole
- 40.62 Failure to attend removal proceedings
- 40.63 Misrepresentation; falsely claiming citizenship
- 40.64 Stowaways
- 40.65 Smugglers
- 40.66 Subject of civil penalty

- 40.67 Student visa abusers
- 40.68 Aliens subject to INA 222(g)
- 40.71 Documentation requirements for immigrants
- 40.72 Documentation requirements for non-immigrants
- 40.81 Ineligible for citizenship
- 40.82 Alien who departed the U.S. to avoid service in the Armed Forces
- 40.91 Certain aliens previously removed
- 40.92 Aliens unlawfully present
- 40.93 Aliens unlawfully present after previous immigration violation

Quarter Two

- 22 CFR 40.101 Practicing polygamists
- 40.102 Guardian required to accompany excluded alien
- 40.103 International child abduction
- 40.103 Unlawful voters
- 40.105 Former citizens who renounced citizenship to avoid taxation
- 40.201 Failure of application to comply with INA
- 40.202 Certain former exchange visitors
- 40.203 Alien entitled to A, E, or G non-immigrant classification
- 40.205 Applicant for immigrant visa under INA 203(c)

- 22 CFR 41.0 Definitions
- 41.1 Exemption by law or treaty from passport and visa requirements
- 41.2 Exemption or waiver by Secretary of State and Secretary of Homeland Security of passport and/or visa requirements for certain categories of non-immigrants
- 41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.
- 41.11 Entitlement to nonimmigrant status
- 41.12 Classification symbols
- 41.21 Foreign Officials—General
- 41.22 Officials of foreign governments
- 41.23 Accredited officials in transit
- 41.24 International organization aliens
- 41.25 NATO representatives, officials, and employees
- 41.26 Diplomatic visas
- 41.27 Official visas
- 41.31 Temporary visitors for business or pleasure
- 41.32 Nonresident alien Mexican border crossing identification cards; combined border crossing identification cards and B-1/B-2 visitor visa
- 41.33 Nonresident alien Canadian border crossing identification card (BCC)
- 41.41 Crewmen
- 41.51 Treaty trader, treaty investor, or treaty alien in a specialty occupation
- 41.52 Information media representative

Quarter Three

- 22 CFR 41.53 Temporary workers and trainees

- 41.54 Intracompany transferees (executives, managers, and specialists)
- 41.55 Aliens with extraordinary ability
- 41.56 Athletes, artists and entertainers
- 41.57 International cultural exchange visitors and visitors under the Irish Peace Process Cultural Training Program Act (IPPCTPA)
- 41.58 Aliens in religious occupations
- 41.59 Professionals under the North American Free Trade Agreement
- 41.61 Student—academic and nonacademic
- 41.62 Exchange visitors
- 41.63 Two-year home-country physical presence requirement
- 41.71 Transit aliens
- 41.81 Fiancé or spouse of a U.S. citizen and derivative children
- 41.83 Certain witnesses and informants
- 41.84 Victims of trafficking in persons
- 41.86 Certain spouses and children of lawful permanent resident status
- 41.101 Place of application
- 41.102 Personal appearance of applicant
- 41.103 Filing an application
- 41.104 Passport requirements
- 41.105 Supporting documents and fingerprinting
- 41.106 Processing
- 41.107 Visa fees
- 41.108 Medical examination
- 41.111 Authority to issue visa
- 41.112 Validity of visa
- 41.113 Procedures in issuing visas
- 41.121 Refusal of individual visas
- 41.122 Revocation of visas
- 22 CFR 42.1 Aliens not required to obtain immigrant visas
- 42.2 Aliens not required to present passports

Quarter Four

- 22 CFR 42.11 Classification symbols
- 42.12 Rules of chargeability
- 42.21 Immediate relatives
- 42.22 Returning resident aliens
- 42.23 Certain former U.S. citizens
- 42.24 Adoption under the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000
- 42.31 Family-sponsored immigrants
- 42.32 Employment-based preference immigrants
- 42.33 Diversity immigrants
- 42.41 Effect of approved petition
- 42.42 Petitions for immediate relative or preference status
- 42.43 Suspension or termination of action in petition cases

- 42.51 Department control of numerical limitations
- 42.52 Post records of visa applications
- 42.53 Priority date of individual applicants
- 42.54 Order of consideration
- 42.55 Reports on numbers and priority dates of applications on record
- 42.61 Place of application
- 42.62 Personal appearance and interview of applicant
- 42.63 Application forms and other documentation
- 42.64 Passport requirements
- 42.65 Supporting documents
- 42.66 Medical examination
- 42.67 Execution of application, registration, and fingerprinting
- 42.68 Informal evaluation of family members if principal applicant precedes them
- 42.71 Authority to issue visa; visa fees
- 42.72 Validity of visas
- 42.73 Procedure in issuing visas
- 42.74 Issuance of new or replacement visas
- 42.81 Procedure in refusing individual visas
- 42.82 Revocation of visas
- 42.83 Termination of Registration

**RETROSPECTIVE REVIEW SCHEDULE
PASSPORT SERVICES (CA/PPT)
22 CFR PART 51**

Passport Services' main regulation is Part 51 of Title 22 of the Code of Federal Regulations – Passports. PPT also shares responsibility for review of 7 FAM 1300. It is PPT's practice to conduct regular reviews of both the regulation and the Foreign Affairs Manual (FAM). In fact, PPT is currently working with the Office of the Legal Adviser (L/CA) to revise and add to 22 CFR Subparts E and F. Subpart D is also currently being revised. In addition, each year in May PPT and Overseas Citizen Services (OCS) conduct a review of 7 FAM 1300 and make the necessary revisions. PPT will continue to work with OCS to annually review and revise 7 FAM 1300. However, specifically to implement Executive Order 13563, PPT proposes routine quarterly reviews of 22 CFR Part 51.

PPT is also responsible for 22 CFR Part 53, Passport Requirement and Exceptions, which were revised most recently in coordination with U.S. Department of Homeland Security regarding the Western Hemisphere Travel Initiative.

At the beginning of each quarter, various divisions within PPT will meet to discuss how and which offices will conduct the review of 22 CFR Part 51. During the quarter, assigned subparts of 22 CFR Part 51 will be reviewed to ensure consistency with the requirements of Executive Order 13563. The review will be completed by the end of the quarter, and the suggested changes and updates will be submitted to PPT/L (Legal Affairs and Law Enforcement Liaison) by the last day of the quarter. During the next quarter, PPT/L will review and, as needed, begin the process for implementing the changes resulting from the previous quarter.

Quarter 1 – January 1	PPT (including, but not limited to, PPT/A, PPT/L, PPT/PMO, PPT/IIC & PPT/SPCA) reviews & revises 22 CFR Part 51 Subparts A&B	
	Due Date: March 31	
Quarter 2 – April 1	PPT (including, but not limited to, PPT/A, PPT/L, PPT/PMO & PPT/SPCA) reviews & revises 22 CFR Part 51 Subparts C&D	PPT/L Reviews & implements changes from Q1 review
	Due Date: June 30	

Quarter 3 – July 1	PPT (including, but not limited to, PPT/A & PPT/L,) reviews & revises 22 CFR Part 51 Subparts E&F	PPT/L Reviews & implements changes from Q2 review
	Due Date: September 30	
Quarter 4 – October 1	PPT (including, but not limited to, PPT/A, PPT/L, PPT/PMO, PPT/IIC & PPT/SPCA) reviews 22 CFR Part 53 and all of 22 CFR Part 51 for consistency	PPT/L Reviews & implements changes from Q3 review
	Due Date: December 31	
Quarter 1 – January 1	PPT (including, but not limited to, PPT/A, PPT/L, PPT/PMO, PPT/IIC & PPT/SPCA) reviews & revises 22 CFR Part 51 Subparts A&B	PPT/L Reviews & implements changes from Q4 review
	Due Date: March 31	

22 CFR 51 Passports

51.1 Definitions

Subpart A – General

- 51.2 Passport issued to nationals only
- 51.3 Types of passports
- 51.4 Validity of passports
- 51.5 Adjudication and issuance of passports
- 51.6 Verification of passports and release of information from passport records
- 51.7 Passport property of U.S. government
- 51.8 Submission of currently valid passport
- 51.9 Amendment of passports
- 51.10 Replacement passports

Subpart B – Application

- 51.20 General
- 51.21 Execution of passport application

- 51.22 Passport agents and passport acceptance agents
- 51.23 Identity of applicant
- 51.24 Affidavit of identifying witness
- 51.25 Name of applicant to be used in passport
- 51.26 Photographs
- 51.27 Incompetents
- 51.28 Minors

Subpart C – Evidence of U.S. Citizenship or Nationality

- 51.40 Burden of Proof
- 51.41 Documentary Evidence
- 51.42 Persons born in the United States applying for a passport for the first time.
- 51.43 Persons born outside the United States applying for a passport for the first time
- 51.44 Proof of resumption or retention of U.S. citizenship
- 51.45 Department discretion to require evidence of U.S. citizenship or non-citizen nationality.
- 51.46 Return or retention of evidence of U.S. citizenship or non-citizen nationality.

Subpart D – Fees

- 51.50 Form of Payment
- 51.51 Passport Fees
- 51.52 Exemption from Payment of Passport Fees
- 51.53 Refunds
- 51.54 Replacement Passports without Payment of Applicable Fee
- 51.55 Execution Fee Not Refundable
- 51.56 Expedited Passport Processing

Subpart E – Denial, Revocation and Restriction of Passports

- 51.60 Denial and Restriction of Passports
- 51.61 Denial of Passports to Certain Convicted Drug Traffickers
- 51.62 Revocation or limitation of passports
- 51.63 Passports invalid for travel into or through restricted areas; prohibition on passports valid only for travel to Israel.
- 51.64 Special Validation of Passports for Travel to Restricted areas
- 51.65 Notification of Denial or Revocation of Passport
- 51.66 Surrender of Passport

Subpart F – Procedures for Review of Certain Denials and Revocations

- 51.71 Request for Hearing to Review Certain Denials and Revocations

- 51.72 The Hearing
- 51.73 Transcript and Record of the Hearing
- 51.73 Privacy of Hearing
- 51.74 Final Decision

22 CFR 53 – Passport Requirement and Exceptions

- 53.1 Passport Requirement; definitions
- 53.2 Exceptions
- 53.3 Attempt of a Citizen to Enter Without a Valid Passport
- 53.4 Optional Use of a Valid Passport

**RETROSPECTIVE REVIEW SCHEDULE
OVERSEAS CITIZEN SERVICES
POLICY REVIEW AND INTERAGENCY LIAISON (CA/OCS/PRI)**

CA/OCS/PRI is responsible for Parts 50, 51 (CA/PPT/L primary duty), 52, 53 (CA/PPT/L primary duty), 71, 72, 92, 93, 94, 96, 97, 98, 99, 102, and 193 of volume 22 of the Code of Federal Regulations (CFR). CA/OCS/PRI's review of these regulations will proceed in chronological order throughout the three parts. The scheduled process will review a minimum of one-fourth of the regulations each quarter as some sections will require fewer revisions than others. The office's review will consider a variety of factors regarding each regulation's necessity, complexity, accuracy, and involvement of the public in the rule's promulgation.

Below is the schedule by which CA/OCS/PRI plans to review the following specific regulations, arranged according to the quarter in which they will be reviewed. As the retrospective review plan is finalized, the office will assign specific dates to this schedule.

	22 CFR Part	Drafting Participants
Quarter 1 – January 1	22 CFR Part 50 (Nationality)	CA/OCS/PRI; CA/PPT/L; L/CA; USCIS
	22 CFR Part 51 (Passports)	CA/PPT/L Lead; CA/OCS/PRI coordinating with CA/PPT/L; L/CA
	22 CFR Part 53 (Passport Requirement and Exceptions)	CA/PPT/L Lead; CA/OCS/PRI coordinating with CA/PPT/L; L/CA
	22 CFR Part 71 (Consular Protection, Loans)	CA/OCS/PRI; CA/OCS/ACS; L/M; L/CA; L/EMP; RM; HHS
	22 CFR Part 72 (Deaths and Estates)	CA/OCS/PRI; CA/OCS/ACS; L/CA
	22 CFR 52 (Marriage)	CA/OCS/PRI; L/CA
	Due Date: March 31	
Quarter 2 – April 1	22 CFR Part 92 (Notarials, Authentication, Judicial)	CA/OCS/PRI; L/CA; DOJ
	22 CFR Part 93 (Service on a Foreign State)	CA/OCS/PRI; L/DL; L/CA; DOJ
	Due Date: June 30	
Quarter 3 – October 1	22 CFR Parts 96, 97, 98, 99 (Inter-Country Adoption)	CA/OCS/PRI; CA/OCS/CI; USCIS; L/CA

	22 CFR Part 94 (Child Abduction)	CA/OCS/PRI; CA/OCS/CI; DOJ; L/CA
	Due Date: December 31	
Quarter 4 – January 1	22 CFR Part 193 (Hostage Benefits)	CA/OCS/PRI; S/CT; L/CA
	22 CFR Part 102 (Civil Aviation)	CA/OC/PRI; CA/OCS/ACS; CA/OCS/Crisis Mgt; S-ES-O-CMS; EBB; NTSB; L/CA; L/EB
	Due Date: March 31	

22 CFR 50 - Nationality

Subpart A--PROCEDURES FOR DETERMINATION OF UNITED STATES NATIONALITY OF A PERSON ABROAD

50.1 Definitions

50.2 Determination of U.S. Nationality of Persons Abroad

50.3 Application for Registration

50.4 Application for Passport

50.5 Application for Registration of Birth Abroad

50.6 Registration at the Department of Birth Abroad

50.7 Consular Report of Birth Abroad of a Citizen of the United States of America

50.8 Certification of Report of Birth Abroad of a United States Citizen

50.9 Card of identity

50.10 Certificate of nationality

50.11 Certificate of identity for travel to the United States to apply for admission

Subpart B--RETENTION AND RESUMPTION OF NATIONALITY

50.20 Retention of nationality

50.30 Resumption of nationality

Subpart C--LOSS OF NATIONALITY

50.40 Certification of loss of U.S. nationality

50.50 Renunciation of nationality

50.51 Review of finding of loss of nationality

22 CFR 51- Passports – *CA/PPT/L has primary responsibility for this regulation, but CA/OCS/PRI works closely with CA/PPT/L because the regulation has overseas applicability.*

51.1 Definitions

Subpart A – General

- 51.2 Passport issued to nationals only
- 51.3 Types of passports
- 51.4 Validity of passports
- 51.5 Adjudication and issuance of passports
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- 99.1 - Definitions
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RETROSPECTIVE REVIEW SCHEDULE
OFFICE OF THE COMPTROLLER
22 CFR Part 22

CA's Office of the Comptroller (CA/C) is responsible for the retrospective review of 22 CFR Part 22, Schedule of Fees for Consular Services – Department of State and Foreign Service.

22 CFR Part 22 lists the schedule of fees for the consular services which the Department provides. These services include activities such as: U.S. passport applications and related records; visa services; records of births, marriages and deaths abroad; authentication services; repatriation services; and death and estate services. This regulation also governs how the Department collects, retains, and refunds these fees.

Per OMB Circular A-25, which establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources, the CA/C performs an annual examination of costs, time allocations, and volumes associated with all consular services. Through this annual examination, the Department updates the activity-based cost model used to examine the costs and methodologies involved in setting consular fees at a level that recovers costs. Although the cost model is updated on an annual basis, consular fees are only adjusted on an as-needed basis.

Updating the cost model on an annual basis and increasing consular fees on an as-needed basis increases efficiency by allowing the Department to do smaller updates with additional analysis. Upon determining which current consular fees are set at a level higher or lower than the updated true cost, the Department begins the process of writing rules and notices to be submitted to the Federal Register. The Federal Register process provides customers a more transparent view of the work and costs involved in providing consular services and the associated fees. Additionally, the Federal Register process provides the public an opportunity to comment on the cost model findings and request additional detail for a better understanding of the underlying information included in the cost model.

22 CFR Part 22 Schedule of Fees for Consular Services – Department of State and Foreign Service

- 22.1 Schedule of Fees
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- 22.3 Remittances in the United States
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- 22.6 Refund of Fees
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TAB C

**BUREAU OF EDUCATIONAL AND CULTURAL
AFFAIRS**

**BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR PRIVATE SECTOR EXCHANGE**

EXCHANGE VISITOR PROGRAM

Title 22: Foreign Relations – Part 62, Exchange Visitor Program

These regulations implement the Mutual Educational and Cultural Exchange Act of 1961 (the “Act”), as amended, Public Law 87-256, 22 U.S. C. 2451 et seq. (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Department of State in furthering the foreign policy objectives of the United States. These exchanges are defined by section 102 of the Act, 22 U.S. C. 2452, and section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, 8 U.S.C.

The Secretary of State facilitates activities specified in the Act, in part, by designating public and private entities to act as sponsors of the Exchange Visitor Program. The purpose of the Program is to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experience, and to encourage Americans to participate in educational and cultural program in other countries.

Program Administration

The Exchange Visitor Program regulations govern 15 different categories of exchange, each with its own regulations. The regulations are regularly reviewed and updated for each of the categories. The general public is actively involved in all rulemakings, including public meetings and requests for comments on rulemakings.

Costs associated with operating all aspects of the Exchange Visitor Program, staff and services, are supported in total by fees from designated sponsors.

All Exchange Visitor Program regulations are in effect and will continue to implement the Act as long as it is in effect.

Current Rulemakings and Impact

- 1) Subpart A - General Provisions - This section of the Exchange Visitor Program regulations contains the general requirements for organizations to apply for and conduct an exchange visitor program.

Impact: This section of the regulations was last updated in 1993 and is being rewritten to remove any redundancies in the requirements for program administration resulting from regulatory changes in individual categories.

- 2) Summer Work Travel – Interim Final Rule - This rule was published in the *Federal Register* on April 26, 2011. It went into effect on July 15, 2011. The Department is in

the process of reviewing the comments received and expects to publish a final rule within the next three months.

Impact: Regulatory changes put in place additional safeguards necessary to ensure the health and safety of foreign program participants in the United States.

Public Access and Outreach

In June 2011, the Bureau of Educational and Cultural Affairs updated and launched www.j1visa.state.gov dedicated to the J-1 Visa Exchange Visitor Program. The website makes information more accessible and user friendly for potential visitors, as well as program sponsors and host families, to participate in the Exchange Visitor Program.

The features and content of the website reflect the Department of State's commitment to the President's Transparency and Open Government initiative by reflecting state-of-the-art web design and plain language instructions on how to participate in the Exchange Visitor Program. The site will intuitively direct users from high-level, accessible information about the program to the necessary complex regulatory and legal information that dictate visa eligibility, administration, and compliance. Information for visa seekers is easily accessible in mobile, low bandwidth, and high bandwidth environments.