

to the United States and possess positive evidence of their identity and the intended purpose of their stay in the United States upon such arrival. This will lessen the possibility that persons who pose security risks to the United States and other potential immigration violators may improperly gain admission to the United States. There is reasonable concern that publication of the rule as a proposed rule could lead to an increase in applications for admissions by mala fide non-citizen residents of Canada or Bermuda seeking to avoid the passport requirement and consular screening process during the period between the publication of a proposed and a final rule. Accordingly, the Service finds that it is impracticable and contrary to the public interest to publish this rule with prior notice and comment period.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule removes the passport and visa waiver for certain residents of Canada and Bermuda having a common nationality with Canadian nationals or with British subjects in Bermuda respectively. Residents of Canada or Bermuda who are affected by the rule will be required to obtain a passport and nonimmigrant visa for entry to the United States. This rule will affect individual nonimmigrant aliens who are not considered small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly this regulation has been submitted to the Office of Management and Budget for review.

By requiring residents of Canada and Bermuda who are citizens of British Commonwealth countries to have a passport and nonimmigrant visa to enter the United States, they will also be required to complete Form I-94, Arrival/Departure Record and pay the appropriate fee, currently \$6, at land border ports-of-entry. For those residents who travel frequently from Canada to the United States, the Service may issue the Form I-94, Arrival/Departure Record, allowing multiple entries.

The Service estimates approximately 1 million British Commonwealth nationals are living as permanent residents of Canada, and that there will be approximately 500,000 entries to the United States each year at land border ports-of-entry. Based on this total annual estimate of 500,000 entries of British Commonwealth nationals, the Service anticipates that the additional fees collected from Form I-94s, issued to these residents of Canada who are British commonwealth nationals, may amount to as much as 3 million dollars per year.

The Service believes inspections staffing already planned for the affected land border ports-of-entry will be sufficient to accommodate the workload that will be generated by the British Commonwealth nationals, an no increased staff payroll costs will be incurred to inspect and process the 500,000 annual estimated applicants.

Because currently planned staffing will be sufficient to accommodate the increased numbers of applicants, a cost benefit would accrue from the collection of the Form I-94 fee from British Commonwealth nationals. The cost benefit would result by offsetting part of the current payroll subsidy that is required because current Form I-94 fees do not fully recover the costs of the associated inspections operations.

Therefore, the collection of the fee from British Commonwealth nationals will serve to improve border security and will also contribute to clearer fiscal

as well as operational separation of the inspections enforcement operations from the immigration service operations associated with Form I-94 applications. \$3 million in new collections will fund the annual payroll cost of 48 of approximately 74 currently subsidized inspector positions at land border ports-of-entry.

As previously stated, the passport and visa requirement is being imposed to increase security and safeguard the United States. The events of September 11, 2001 resulted in the need to assess and evaluate current practices in order to strengthen the law enforcement and security interests of the United States. Requiring permanent residents of Canada and Bermuda who are British Commonwealth nationals to have a nonimmigrant visa will ensure that these applicants for admission are properly screened via the Department of State's visa issuance process prior to arrival at a port-of-entry to the United States and possess positive evidence of their identity and the intended purpose of their stay in the United States upon such arrival. This will lessen the possibility that potential immigration violators or persons who pose security risks to the United States may improperly gain admission to the United States.

Of the 54 countries affected by this regulation, only 6, Australia, Brunei, Ireland, New Zealand, Singapore and the United Kingdom, are eligible for the Visa Waiver Program. In order to be designated as a participating Visa Waiver Program country, nationals of the country must have a low refusal rate for U.S. visas. In addition, the Attorney General, in consultation with the Secretary of State must determine that the country's designation for the Visa Waiver Program would not compromise U.S. law enforcement or national security interests, including interests in enforcing immigration laws.

Implementation of this regulation will align the visa requirement for permanent residents of Canada or Bermuda who are nationals of the British Commonwealth countries with that of other permanent residents of Canada or Bermuda. All permanent residents of Canada or Bermuda who are not citizens of Canada or Bermuda will require a passport and nonimmigrant visa unless they are nationals of a country designated as eligible for the Visa Waiver Program, in which case they will only require a valid passport.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National