



Federal Register

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Part IV

**Department of
Homeland Security**

**8 CFR Part 264
Suspending the 30-Day and Annual
Interview Requirements From the Special
Registration Process for Certain
Nonimmigrants; Interim Rule**

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 264

[ICE No. 2301-3]

RIN 1653-AA29

Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations for the registration and monitoring of certain nonimmigrant aliens. This rule amends existing regulations by suspending the 30-day and annual re-registration requirements for aliens who are subject to the National Security Entry-Exit Registration System (NSEERS) Registration. Instead of requiring all aliens subject to NSEERS to appear for 30-day and/or annual re-registration interviews, the DHS will utilize a more tailored system in which it will notify individual aliens of future registration requirements. This rule also eliminates the requirement for those nonimmigrant aliens subject to special registration who are also enrolled in the Student and Exchange Visitor Information System (SEVIS) to separately notify DHS of changes in educational institutions and addresses. Additionally, this rule clarifies how nonimmigrant aliens may apply for relief from special registration requirements and clarifies that certain alien crewmen are not subject to the departure requirements. Finally, certain conforming amendments have been made to the existing regulations to reflect the fact that the former Immigration and Naturalization Service (Service) has been abolished and its functions transferred from the Department of Justice to DHS under the Homeland Security Act of 2002 (HSA), Public Law 107-296.

DATES: *Effective date:* This interim rule is effective December 2, 2003.

Comment date: Written comments must be submitted on or before February 2, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, U.S. Citizenship and Immigration Services, DHS, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference ICE

No. 2301-03 on your correspondence. Comments may also be submitted electronically to DHS at *rfs.regs@dhs.gov*. Comments submitted electronically must include the ICE No. 2301-03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Robert Schoch, U.S. Immigration and Customs Enforcement, DHS, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 353-3173.

SUPPLEMENTARY INFORMATION:

Background

How Does Registration of Aliens Work Under the Existing Statutory and Regulatory Provisions?

Section 262(a) of the Immigration and Nationality Act (Act) provides that all aliens who have not previously been registered and fingerprinted pursuant to section 221(b) of the Act have a duty to apply for registration and to be fingerprinted if they remain in the United States for 30 days or longer. Under the existing regulations at 8 CFR 264.1(a), DHS registers nonimmigrants using Form I-94 (Arrival-Departure Record). Section 263(a) of the Act also authorizes the Secretary of DHS to prescribe special regulations and forms for the registration of special groups of aliens in the United States. As authorized by section 262(c) of the Act, the existing regulations at 8 CFR 264.1(e) contain general provisions waiving the fingerprinting requirement for many nonimmigrants. Accordingly, at the present time, most nonimmigrant aliens are admitted to the United States without being either fingerprinted or photographed.

Section 214 of the Act authorizes the Attorney General (now deemed to be the Secretary of DHS under the HSA) to prescribe conditions for the admission of nonimmigrant aliens. Section 215 of the Act provides for departure control from the United States. In addition, section 265 of the Act requires that all aliens who remain in the United States who are required to be registered under the Act must notify the Secretary of DHS of each change of address within ten days from the date of such change and furnish with such notice additional information as the Secretary of DHS may prescribe.

Prior to the enactment of the HSA and the transfer of the functions of the former Service from the Department of Justice to DHS, the Service exercised the previously described registration authority to require that certain classes of aliens be specially registered while in

the United States. Pursuant to section 263(a) of the Act, as well as the general registration authority under section 262 of the Act, the former Service promulgated 8 CFR 264.1(f), which required that certain nonimmigrant aliens be registered, fingerprinted, and photographed by the Service at the port of entry (POE) at the time the nonimmigrant aliens apply for admission. See 67 FR 52584 (Aug. 12, 2002). Registration at the POEs shall be known as "POE registration" for the purpose of this discussion. Additionally, pursuant to section 265 of the Act, 8 CFR 264.1(f) directed that certain nonimmigrant aliens designated by the Attorney General who were already in the United States appear before the Service for special registration. *Id.* Registration of aliens already present in the United States shall be known as "call-in registration" for the purpose of this discussion.

How Does This Rule Change the Current Special Registration Requirements?

Currently, 8 CFR 264.1(f)(3) provides that aliens specially registered at a POE must appear before DHS 30 days after their admission into the United States for a continuing registration interview. This rule suspends this automatic 30-day continuing registration requirement.

As currently written, 8 CFR 264.1(f)(5) requires that all aliens who were subject to special registration appear for an annual re-registration interview. This rule also suspends the annual re-registration requirement.

The suspension of the 30-day and annual re-registration requirement applies to all aliens previously registered under the NSEERS program, whether call-in or POE registration, as well as any aliens registered subsequent to the effective date of this rule. In place of these previous requirements that all nonimmigrant aliens subject to NSEERS registration appear for additional 30-day and annual interviews, this rule will allow DHS, as a matter of discretion, to notify nonimmigrant aliens subject to NSEERS registration to appear for one or more additional continuing registration interviews in those particular cases where it may be necessary to determine whether the alien is complying with the conditions of his or her nonimmigrant visa status and admission.

This rule also provides that when an alien who is monitored under SEVIS notifies DHS of a change of address or educational institution through SEVIS, it also constitutes a notification for the purposes of NSEERS registration. It also clarifies that certain alien crewmen, described at section 101(a)(15)(D) of the

Act, and are subject to special registration, are exempted from the departure control requirements of 8 CFR section 264.1(f) (8).

Finally, this rule reflects that the Service was abolished, and DHS now performs its functions. Thus, throughout 8 CFR 264.1(f), this rule substitutes the Secretary of Homeland Security for the Attorney General, and replaces references to the Service with references to DHS.

This rule does not eliminate or in any way limit the authority of the Secretary of DHS under section 263 of the Act, for certain types of aliens, and section 265 of the Act, for any class or group of aliens, through notice, to require such aliens to appear for special registration in the future if circumstances so require. Additionally, this rule does not limit or alter any other special registration requirement under section 263 of the Act.

What Other Changes Are Made by This Rule?

This rule also clarifies how nonimmigrant aliens subject to NSEERS registration may apply for relief from registration departure requirements. Aliens subject to NSEERS registration are required to register their departure before an immigration officer at a designated port of departure and depart from that port on the same day. Aliens previously could contact the Service district director to obtain relief from these departure requirements. However, the abolition of the former Service and the distribution of its functions to various agencies within DHS, such as U.S. Citizenship and Immigration Services (CIS) and U.S. Customs and Border Protection (CBP), have created uncertainties for aliens as to how to seek such relief. For nonimmigrant aliens who have been NSEERS registered, this regulation clarifies how the alien may seek a waiver from the departure registration requirements.

First, under the revisions set out in this rule, a nonimmigrant alien subject to the departure registration requirements based upon NSEERS registration may seek relief from these requirements before his or her departure from an official designated by DHS or from the CBP field office director for the port from which the alien intends to depart. The alien seeking such relief must establish to the satisfaction of the field office director or designated official that exigent or unusual circumstances exist, and that the alien warrants a favorable exercise of discretion.

Additionally, for an alien who has been registered and who makes frequent

trips to the United States, based upon a showing of good cause, exigent or unusual circumstances, the CBP field office director over the port to which the alien most frequently arrives in the United States may exempt the alien from future POE registrations. The field office director or his designee will make the determination that the frequency of arrival warrants relief from the registration requirements on a case-by-case basis. In making this determination, the field office director or his designee will consider the mode of travel, business and economic concerns, purpose of travel, or other factors as determined by the director. In seeking such relief, the alien bears the burden of establishing he or she warrants a favorable exercise of discretion. If granted, relief from POE registrations also shall include relief from NSEERS registration departure control requirements.

An alien alternatively may seek an exemption from the NSEERS registration requirements from the Department of State by such forms and methods as the Department of State may prescribe.

There are no specific forms to request relief from the NSEERS requirements from DHS; an individual seeking relief should direct a letter to the appropriate CBP field office director. In such a letter, the alien should provide a detailed description of the type of relief sought, their full name, date-of-birth, Fingerprint Identification Number (which is reflected on the Form I-94), a 1" x 1" passport style photograph, the alien's A-number, if one has been assigned, and any documents that support the relief request. Information regarding the relief provisions will be provided to aliens upon completion of registration. Copies of these materials, known as the "walk-away" materials, are also available on the Web site www.ice.gov, in the special registration section.

This rule further clarifies to aliens applying for relief that, until an application for relief from the NSEERS registration requirements is granted, the alien is required to comply with the registration requirements.

The decision of any DHS officer or official to grant or deny relief from the NSEERS registration provisions is done as an exercise of discretion, and as such is final and cannot be appealed.

A DHS officer authorized to grant relief also may terminate such relief by providing notice to the alien.

Why Is This Rule Necessary?

The former Service, and now DHS (as of March 1, 2003), have evaluated the

utility of the 30-day and annual interviews under the current requirements for national security and immigration enforcement purposes. Additionally, DHS is under a congressional mandate set forth in various amendments to the Act to create a comprehensive entry-exit system. In carrying out this mandate through the establishment of the US-VISIT Program, DHS has reviewed the use of the special registration program for both POE and call-in registrations. After considering these factors, DHS has determined it is appropriate to suspend the continuing registration requirements set out in 8 CFR 264.1(f), that automatically required aliens subject to NSEERS registration to report for 30-day and/or annual re-registration interviews. Special registration of aliens at POEs has, consistent with the program's intent, provided important law enforcement benefits, which have included the identification of a number of alien terrorists and criminals. This rule is not amending the procedures for NSEERS registration at the POE's. In addition to US-VISIT, which will soon become operational, DHS has other systems available that can help ensure that those aliens who are already subject to NSEERS registration remain in compliance with the terms of their visa and admission. For example, Congress mandated that DHS develop a student monitoring system. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, section 641; "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" (USA Patriot Act), Public Law 107-56, section 416. This system, SEVIS, is now fully operational. Schools now must report directly to DHS when a student or exchange visitor alien changes schools, fails to appear for classes or otherwise fails to maintain his or her student status following admission into the United States.

Thus, DHS is now in a position to suspend the mandatory re-registration interview requirements for those aliens who are already subject to NSEERS registration, which will reduce the burden on those required to register under the current regulations, as well as to DHS. Instead, DHS will be able to schedule re-registration interviews on a more targeted and effective basis, only in those particular cases where it may be appropriate for additional scrutiny to ensure that an alien remains in compliance with the terms of his or her nonimmigrant visa and admission.

Who Is Affected by This Rule?

Aliens who have been subject to NSEERS registration, whether as a result of being registered at a POE upon arrival, or as a result of being called in to register by **Federal Register** notice, are affected by the rule, because it reduces their current reporting requirements by eliminating the mandatory 30-day and annual re-registration interviews. Additionally, aliens who hereafter enter the United States and are NSEERS registered at a POE are affected by this rule. Affected aliens have been or will be given a Form I-94 documenting their registration, which will reflect their Fingerprint Identification Number (FIN). DHS uses the FIN recorded on the Form I-94 to identify the records of an alien subject to special registration. Based upon the number of aliens who have previously registered, DHS estimates that over the 6 month time span from December 2003 through May 2004, approximately 82,532 aliens will benefit from this change and will not have to report for either a 30-day or annual re-interview during that period.

How Does This Rule Affect Registration at POEs?

This rule does not affect the procedures for the NSEERS registration of aliens, including fingerprinting, photographing, and provision of information, at POEs. As is obligatory under current regulations, nonimmigrant aliens subject to POE registration will still be required, utilizing the information collection system in place, to provide routine and readily available information as a condition of admission. This includes such information as is necessary to identify the alien in the United States. Lists of information that may be required during NSEERS registration have previously been issued. See, e.g., 67 FR 40581, 40582.

Registration at POEs continues to allow DHS to determine if an alien's fingerprints match those of known terrorists or criminals, and to detain for removal or refuse admission of the alien if such an identity match is established.

How Will DHS Provide Notice to Individual Aliens That They Must Appear for an Additional Registration Interview?

In place of the automatic re-registration requirements set out in the original NSEERS registration provisions, this rule substitutes a more tailored approach to re-registration. The determination of whether an alien will be subject to additional registration

requirements will be made on a case-by-case basis. The admission of any nonimmigrant alien subject to NSEERS registration is subject to the requirement that, under this rule, he or she may be required to appear for future continuing re-registration interviews at the discretion of DHS. At the time of admission, DHS will advise all nonimmigrant aliens subject to special registration that they may be required to appear for additional registration interviews upon notice. DHS will separately notify those aliens selected to appear before DHS to comply with the additional re-registration requirements, which for a small number of aliens may be more frequent than the 30-day and annual re-registration requirements set out in the prior rule. However, only aliens who are notified of the re-registration requirements will have to appear before DHS for such requirement, and the majority of individuals registered will see a reduction in the burden of additional registration as a result of this rule. Notification under these regulations may be given to the alien in a manner reasonably calculated to reach the alien, which shall include, but is not limited to, notice by publication in the **Federal Register**, a letter sent via standard U.S. postal mail to the last address provided by the alien to DHS using regular mail, an e-mail to the address the alien provided to DHS during a previous NSEERS registration interview, or in-person delivery. The nonimmigrant alien must appear at the designated U.S. Immigration and Customs Enforcement office location, and on the specified date and time, unless otherwise specified in the notice. DHS will provide the alien at least ten days, measured from the date DHS publishes or sends notice to the alien, to comply with the re-registration obligation.

Notice to an alien of registration or re-registration requirements may be issued by the ICE Assistant Secretary, his designee, or any other such individual designated by the Secretary of DHS.

How Does This Rule Affect an Alien's Obligation To Notify DHS of a Change of Address or Employment?

This rule reiterates, for this distinct group of nonimmigrant aliens who are subject to NSEERS registration, and who remain in the United States for more than thirty days, the requirement that the nonimmigrant alien notify DHS of any change of address, employment and/or educational institution within 10 days of such change. Affected aliens may notify DHS by mail, or such other means as the Secretary of DHS may designate, of a change of address. The

required form, the AR-11 for Special Registration, is available at DHS offices and on the DHS Internet Web site at <http://www.uscis.gov>, in the special registration section.

However, this rule discontinues the requirement that student aliens monitored under SEVIS who are subject to special registration separately notify DHS of a change in their educational institution or address, if such information is provided to DHS through SEVIS. This rule provides that when an alien reports a change of address or educational institution to DHS through SEVIS, that action fulfills his or her special registration requirement to notify DHS of changes in address. However, student aliens who are monitored under SEVIS who are subject to special registration will still be required under 8 CFR 264.1(f)(5) to notify DHS of any change of employment which is currently not captured in the SEVIS system.

How Does This Rule Affect Departure Control Requirements?

This rule does not change the general requirement that a nonimmigrant alien subject to NSEERS registration, either POE registration or a prior or future call-in registration, also report his or her actual departure from the United States. Cessation of departure controls is inconsistent with the congressional mandate requiring that DHS establish a comprehensive entry-exit monitoring system. As DHS develops the larger system mandated by Congress, to be called US-VISIT, it will integrate the NSEERS registration currently in use. This requirement of departure registration means that the alien must appear at a designated Port of Departure before a departure control officer, i.e., a CBP inspector, on the day he or she departs the United States to close his or her registration and also depart from that port. This departure requirement will ensure that all NSEERS registrations are properly closed.

If the departure control requirements do not continue, registration records for the nonimmigrant aliens subject to NSEERS registration would be left open without explanation. This could result in serious difficulties, including the possibility of future inadmissibility, for already registered aliens who depart and attempt to return to the United States.

The most recent **Federal Register** notice listing Ports of Departure can be found at 68 FR 8967. This rule does not alter or amend that list.

This rule does clarify that certain alien crewmen described at 101(a) (15) (D) of the Act who are subject to special registration requirements are exempt

from the departure registration requirements of 8 CFR 264(f) (8).

Does This Rule Change Any of the Penalties for Failing To Comply With the Special Registration Provisions?

No. This rule does not change any of the penalties for failing to comply with the special registration provisions. Moreover, this rule does not excuse any prior failure to comply with special registration provisions.

Under section 214(a) of the Act, as amended by the HSA, the admission of all nonimmigrant aliens to the United States "shall be for such time and under such conditions as the [Secretary of DHS] may by regulations prescribe." The Secretary of DHS may impose conditions on admission that are rationally related to the maintenance of nonimmigrant status. See, e.g., *Narenji v. Civiletti*, 617 F.2d 745, 747 (D.C. Cir. 1980)(upholding regulation requiring Iranians on student visas to report and "provide information as to residence and maintenance of nonimmigrant status" or be subject to deportation proceedings). The regulations that currently implement section 214 of the Act provide in part that one condition of a nonimmigrant's continued stay in the country "is the full and truthful disclosure of all information requested" by DHS. 8 CFR 214.1(f).

The NSEERS registration requirements previously imposed upon aliens, either through POE registration or call-in registration, were intended in part to ensure that nonimmigrant aliens are complying with their nonimmigrant status (e.g., by continuing to be students or employees, as contemplated at the time of the issuance of their visas or admission). Additionally, 8 CFR 214.1(f) was amended to reflect that a nonimmigrant alien's willful failure to comply with the special registration provisions constitutes a failure to maintain the relevant nonimmigrant status, and would render the alien removable under section 237(a)(1)(C)(i) of the Act.

Although this rule amends the regulations to eliminate the existing automatic 30-day and annual re-registration interview requirements, aliens who willfully failed to comply with prior registration requirements, including aliens who failed before December 2, 2003 to appear for a required initial call-in registration, a 30-day re-registration interview, or an annual re-registration interview, remain subject to the penalties outlined above and in previous **Federal Register** notices. Additionally, aliens who willfully fail to comply with any future call-in notice or additional registration

requirement imposed pursuant to this rule would be removable under section 237(a)(1)(C)(i) of the Act.

What Is the Effect of an Alien's Failure To Comply With the Departure Reporting Requirements Upon the Alien's Subsequent Application for Admission?

An alien who is subject to the special registration requirements who has failed, without good cause, to report his or her departure with DHS is presumed inadmissible to the United States. The presumption of inadmissibility arises if there was no good cause for the alien's failure to report to DHS at the time of his or her departure from the United States. However, an alien may overcome the presumption of inadmissibility by establishing to the Secretary of State and the Secretary of DHS that he or she does not seek to enter the United States to engage solely, principally, or incidentally in any unlawful activity.

An alien who fails to report his or her departure may, at the time he or she applies for a new nonimmigrant visa abroad, attempt to establish that there was good cause for the failure to report and, in the event that no good cause is found, that he or she is not inadmissible under section 212(a)(3)(A)(ii) of the Act. If the consular officer, in adjudicating the new visa application, finds good cause existed for the alien's failure to register departure or that the alien is not inadmissible under section 212(a)(3)(A)(ii) of the Act, the inspecting officer at the POE, while not bound by the DOS determination, will consider this finding as a significantly favorable factor in determining whether the alien is inadmissible due to his or her prior failure to register at the time of departure from the United States.

Good Cause Exception

Immediate implementation of this interim rule with provision for post-promulgation public comments is based upon the good cause exception found at 5 U.S.C. 553(b)(B). Pursuant to 5 U.S.C. 553(b)(B), prior notice and opportunity for comment is not necessary where it is "impracticable, unnecessary, or contrary to the public interest." DHS estimates that without this regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews between December 2003 and May 2004. Therefore DHS believes there is an urgent need for the immediate implementation of this rule suspending the automatic interview requirements to avoid unnecessarily burdening the public impacted by this rule.

Initial Regulatory Flexibility Act Determination

The regulatory Flexibility Act of 1980, as amended (RFA) was enacted by Congress to ensure that small entities (small businesses, not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." DHS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

This rule will not affect small entities as defined at 5 U.S.C. 605(b) and will relieve cost burdens on individuals.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), I have reviewed this rule and by approving it, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

Executive Order 12866, "Regulatory Planning and Review," requires a determination whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to E.O. 12866's requirements.

This rule is considered by DHS to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. However, it does not have an impact on the economy of \$100 million or more and, therefore, is not economically significant. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

DHS has assessed both the costs and benefits of this rule as required by Executive Order 12866. First, this rule significantly reduces costs to the public by reducing the burden of re-registration and continuing registration requirements for aliens present in the United States. Without this regulation, in between December 2003 and May 2004, an estimated 82,532 aliens would be subject to re-registration under prior regulations. Assuming that each interview will last 45 minutes, and each alien will have to prepare approximately 30 minutes for the interview, DHS anticipates that between December 2003 and May 2004, the burden reduction on the public to be a total of over 103,000 hours.

DHS also will experience a burden reduction, based upon the reduced costs related to information collection and

processing. Based upon the number of estimated registrations between December 2003 and May 2004 and assuming that each registration lasts approximately 45 minutes, under this regulation DHS estimates it will be able to reallocate almost 62,000 work hours. DHS is able to shift personnel who would have conducted these re-registration interviews to other law enforcement functions. These resources also can be better utilized to craft a targeted registration process that meets the national security needs of the country.

The costs to DHS of not amending the regulations would be significant. Because the initial call-in registrations by the former Service occurred over a brief period of months, the number of aliens appearing for re-registration in a brief period of time will be significant. DHS would be forced to reallocate personnel resources from other law enforcement functions in order to timely register aliens.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

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 are 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 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

The regulations at 8 CFR 264.1(f)(7) allows an alien who has been registered under the provisions of 8 CFR 264.1(f) and who has not yet departed from the United States, to seek relief from the departure control requirement contained in 8 CFR 264.1(f)(8) for that admission. In order to seek relief the alien must apply to the U.S. Customs and Border Protection field office director for the port from which the alien intends to depart. In making an application for relief, the alien must establish that exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion. This request for relief is considered an information collection requirement under the Paperwork Reduction Act (PRA).

The Department of Homeland Security (DHS) and the U.S. Immigration and Customs Enforcement (ICE) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The DHS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, immediate OMB approval has been requested. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725—17th Street, NW., Suite 10235, Washington, DC 20503.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the DHS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 2, 2004. During 60-day regular review, all comments and

suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202—514—3291, Director, Regulations and Forms Services Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Exemption from NSEERS Registration Requirements.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number. File No. OMB—40. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information collection allows an alien to seek an exemption from the NSEERS registration requirements by submitting a letter to the Department of Homeland Security containing specific information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,900 annual burden hours.

If additional information is required contact: Mr. Steve Cooper, PRA

Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636-26, Washington, DC 20202.

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule suspends the 30-day and annual re-registration requirements for aliens who are subject to NSEERS registration. The OMB information collection number under NSEERS is 1115-0254. It is estimated that approximately 82,000 aliens will no longer be subject to the 30-day or annual re-registration interviews once this rule is implemented. Accordingly, ICE has submitted the required Paperwork Reduction Change Worksheet (OMB-83C) to OMB reflecting the reduction in burden hours for NSEERS.

List of Subjects in 8 CFR Part 264

Reporting and recordkeeping requirements.

■ Accordingly, part 264 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for Part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303-1305; 8 CFR part 2.

■ 2. Section 264.1(f) is revised to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(f) *Registration, fingerprinting, and photographing of certain nonimmigrant aliens.*

(1) Registration requirement for certain nonimmigrants. Notwithstanding the provisions in paragraph (e) of this section, nonimmigrant aliens identified in paragraph (f)(2) of this section are subject to special registration, fingerprinting, and photographing requirements upon arrival in the United States. This requirement shall not apply to those nonimmigrant aliens applying for admission to the United States under sections 101(a)(15)(A) (8 U.S.C. 1101(a)(15)(A)) or 101(a)(15)(G) (8 U.S.C. 1101(a)(15)(G)) of the Act. In addition, this requirement shall not apply to those classes of nonimmigrant aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not

apply, or to any individual nonimmigrant alien to whom the Secretary of Homeland Security or the Secretary of State determines it shall not apply. Completion of special registration pursuant to this paragraph (f) is a condition of admission under section 214 of the Act (8 U.S.C. 1184) if the inspecting officer determines that the alien is subject to registration under this paragraph (f) (hereinafter “nonimmigrant alien subject to special registration”).

(2) Identification of aliens subject to registration at ports-of-entry. Nonimmigrant aliens in the following categories are subject to the requirements of paragraph (f)(3) of this section:

(i) Nonimmigrant aliens who are nationals or citizens of a country or territory designated by the Secretary of Homeland Security, in consultation with the Secretary of State, by a notice in the **Federal Register**;

(ii) Nonimmigrant aliens whom a consular officer or an inspecting officer has reason to believe are nationals or citizens of a country or territory designated by the Secretary of Homeland Security, in consultation with the Secretary of State, by a notice in the **Federal Register**; or

(iii) Nonimmigrant aliens who meet pre-existing criteria, or whom a consular officer or the inspecting officer has reason to believe meet pre-existing criteria, determined by the Secretary of Homeland Security or the Secretary of State to indicate that such aliens' presence in the United States warrants monitoring in the national security interests, as defined in section 219 of the Act (8 U.S.C. 1189), or law enforcement interests of the United States.

(3) *Obligations regarding registration.*

(i) Any nonimmigrant alien who is included in paragraph (f)(2) of this section, and who applies for admission to the United States, shall be specially registered by providing information required by the Department of Homeland Security, shall be fingerprinted, and shall be photographed, by Department of Homeland Security, at the port-of-entry at such time the nonimmigrant alien applies for admission to the United States. The Department of Homeland Security shall advise the nonimmigrant alien subject to special registration that the nonimmigrant alien may, upon ten days notice, and at the Department of Homeland Security's discretion, be required to appear at a U.S. Immigration and Customs Enforcement office in person to verify information by providing additional information or

documentation confirming compliance with the conditions of his or her visa status and admission. The Department of Homeland Security will determine on a case-by-case basis which aliens must appear in person to verify information. The nonimmigrant alien subject to special registration must appear at the designated office location, and on the specified date and time, unless otherwise specified in the notice.

(ii) At the time of verification of information for registration pursuant to paragraph (f)(3)(i) of this section, the nonimmigrant alien subject to special registration shall provide the Department of Homeland Security with proof of compliance with the conditions of his or her nonimmigrant visa status and admission, including, but not limited to, proof of residence, employment, or registration and matriculation at an approved school or educational institution. The nonimmigrant alien subject to special registration shall provide any additional information required by the Department of Homeland Security.

(4) *Registration of aliens present in the United States.* (i) The Secretary of Homeland Security, by publication of a notice in the **Federal Register**, also may impose such special registration, fingerprinting, and photographing requirements upon nonimmigrant aliens who are nationals, citizens, or residents of specified countries or territories (or a designated subset of such nationals, citizens, or residents) who have already been admitted to the United States or who are otherwise in the United States. A notice under this paragraph (f)(4) shall explain the procedures for appearing in person and providing the information required by the Department of Homeland Security, providing fingerprints, photographs, or submitting supplemental information or documentation.

(ii) Any nonimmigrant alien who is currently subject to special registration as a result of the publication of any previous **Federal Register** notice may, while he or she remains in the United States, upon 10 days notice and at the Department of Homeland Security's discretion, be required to appear at a Department of Homeland Security Office in person to provide additional information or documentation confirming compliance with his or her visa and admission. The Department of Homeland Security will determine on a case-by-case basis which aliens must appear in person to verify information. The nonimmigrant alien subject to special registration must appear at the designated office location, and on the

specified date and time, unless otherwise specified in the notice.

(5) *Obligation to provide updated information.* In addition to any additional re-registrations that may be required pursuant to paragraphs (f)(3) and (f)(4) of this section, any nonimmigrant alien subject to special registration under this paragraph (f) who remains in the United States for 30 days or more shall notify the Department of Homeland Security by mail or other such means as determined by the Secretary of Homeland Security, using a notification form designated by the Department of Homeland Security, of any change of address, change of residence, change of employment, or change of educational institution within 10 days of such change. Notice to the Department of Homeland Security of a change of address, change of residence or change of educational institution made within 10 days of such a change through the Student and Exchange Visitor Information System (SEVIS) shall constitute notice under this paragraph.

(6) [Reserved]

(7) *Relief from registration requirements.* A nonimmigrant alien subject to special registration may apply for relief from the registration requirements as follows:

(i) *Relief from departure controls set out in 264.1(f)(8).* An alien who has been registered under the provisions of this section (f) and has not yet departed the United States may seek relief from the departure control requirement contained in paragraph (f)(8) for that admission by applying to the U.S. Customs and Border Protection field office director for the port from which the alien intends to depart. In making an application for relief, the alien must establish that exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion.

(ii) *Frequent travelers.* An alien who previously has been registered and who would otherwise be subject to registration at a port of entry under the provisions of paragraphs (f)(2) and (3) of this section may seek relief from the registration requirements from the Secretary of Homeland Security after his initial registration if the alien makes frequent trips to the United States. An alien seeking relief under this paragraph from the Secretary of Homeland Security may apply to the U.S. Customs

and Border Protection field office director for the port to which the alien most frequently arrives in the United States. The field office director or his designee will make the determination that the frequency of arrival warrants relief from the registration requirements on a case-by-case basis, and will consider in this analysis the mode of travel, business and economic concerns, purpose of travel, or other factors as determined by the director. In making an application for relief, the alien must establish that good cause or exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion.

(iii) *Exemption from registration.* At a Department of State consular office abroad, an alien may seek exemption from these regulations from the Department of State by such methods as it may prescribe.

(iv) *For all applications for relief.* Any decision of a Department of Homeland Security officer or official to grant or deny relief under this paragraph (f)(7) is final and not appealable. Absent receipt of a decision exempting or relieving the nonimmigrant alien from these requirements, he or she shall comply with the special registration requirements contained in this section.

(v) *Termination of relief.* Relief granted under paragraphs (f)(7)(i) or (ii) of this section may be terminated by notice to the alien by any field office director or other Department of Homeland Security officer or official authorized to grant such relief.

(8) *Departure requirements.* (i) General requirements. When a nonimmigrant alien subject to special registration departs from the United States (other than nonimmigrant crewmen as defined under section 101(a)(15)(D) of the Act) he or she shall report to an inspecting officer of the Department of Homeland Security at any port-of entry unless the Department of Homeland Security has, by publication of a notice in the **Federal Register**, specified that nonimmigrant aliens subject to special registration may not depart from specific ports. This paragraph (f)(8) applies only to those nonimmigrant aliens who have been registered under paragraph (f)(3) of this section, or who have been required to register pursuant to paragraph (f)(4) of this section, and who have not been granted relief from the departure requirements under paragraph (f)(7).

(ii) *Presumption of inadmissibility.* Any nonimmigrant alien subject to special registration who fails, without good cause, to be examined by an inspecting officer at the time of his or her departure and to have his or her departure recorded by the inspecting officer shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act (8 U.S.C. 1182(a)(3)(A)(ii)), as an alien whom the Secretary of Homeland Security has reasonable grounds to believe, based on the alien's past failure to conform with the requirements for special registration, seeks to enter the United States to engage in unlawful activity.

(iii) *Overcoming inadmissibility.* An alien may overcome the presumption of inadmissibility set out in paragraph (f)(8)(ii) by making a showing that he or she satisfies conditions set by the Secretary of Homeland Security and the Secretary of State. If a consular officer, in adjudicating a new visa application by an alien that previously failed to register his or her departure from the United States, finds good cause existed for the alien's failure to register departure or that the alien is not inadmissible under section 212(a)(3)(A)(ii) of the Act, the inspecting officer at the port-of-entry, while not bound by the consular officer's decision, will consider this finding as a significantly favorable factor in determining whether the alien is admissible.

(9) *Completion of registration.* Registration under this paragraph (f) is not deemed to be complete unless all of the information required by the Department of Homeland Security and all requested documents are provided in a timely manner. Any additional re-registration that may be required and each change of material fact is a registration that is required under sections 262 and 263 of the Act (8 U.S.C. 1302, 1303). Each change of address required under this paragraph (f) is a change of address required under section 265 of the Act (8 U.S.C. 1305).

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Dated: November 27, 2003.

Tom Ridge,

Secretary of Homeland Security.

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