

the end of the public comment period and the further 30-day delay.

Accordingly, DHS has determined that prior notice and public comment on this rule, and a delay in the effective date, would be impracticable and contrary to the public interest.

Moreover, DHS is making this rule effective upon signature, prior to publication in the **Federal Register**, in view of the urgency of the threats posed to the public safety and security of the United States. Upon signature, DHS will provide actual notice of the suspension of the TWOV and ITI programs to all affected air carriers, and has also provided widespread publicity of this change to the traveling public. Accordingly, there is good cause to publish this interim rule and to make it effective upon its signature. DHS welcomes post-promulgation public comment on this interim rule.

Regulatory Flexibility Act

Since this document is not subject to the prior notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This interim final rule will not impose additional reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department, however, concludes at this time that this regulatory action is not economically significant under section 3(f)(1), and specifically requests comments regarding this determination. 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, section 3(f), and has made a reasoned determination that the benefits justify the costs.

Suspending the Transit Without Visa program will safeguard the homeland security interests of the United States by controlling the entry of persons permitted to travel to and through the United States. DHS and the Department of State have received credible intelligence that certain terrorist organizations have identified this exemption from the normal visa issuance procedures to gain access to

the United States or an aircraft en route to the United States to cause injury to United States infrastructure or its citizens. We cannot at this time present any quantifiable information regarding this threat.

Costs include the potential for lost airline revenue for those air carriers who have historically carried Transit Without Visa passengers. The air carriers transported 381,065 TWOV passengers and 233,434 ITI passengers to the United States in fiscal year 2002. For the purposes of this analysis, DHS assumes an average price per flight of \$800 for TWOV passengers, and requests comments on this assumption. Therefore, the total revenue the airlines earn from these passengers is approximately \$300 million per year. With this program suspended, passengers that would otherwise be able to travel through the United States without visas would now be required to obtain visas, which may result in some travelers re-routing their trips away from the United States and fewer travelers transiting through the United States. The re-routing may affect demand for travel on U.S. airlines versus foreign airlines. The diminished number of travelers transiting the United States may also adversely affect retail businesses at certain airports. Note that DHS does not at this time know for how long this program will be suspended, and therefore what fraction of this yearly revenue may be affected by any activity attributable to this rulemaking. This rule calls for a suspension and 60 day review and possible permanent modifications to the program. When DHS has determined the possible permanent impact of these modifications, we will reassess all assumptions and estimations regarding costs.

For the purposes of the Executive Order, costs also include the lost consumer surplus of passengers participating in the TWOV program. This impact, however, depends crucially on the price elasticity of TWOV program flights and the characteristics of reasonable substitutes for these flights, such as obtaining a visa for an otherwise identical itinerary, switching travel out of the United States, or not traveling at all. This cost should be bounded by the time and convenience of obtaining a visa for an otherwise identical flight, which is a viable alternative for these passengers. Currently, the State Department charges approximately \$100 per visa application. Without quantifying convenience costs, if passengers simply obtained a visa and did not otherwise alter their flight plans, the cost of the

rule to passengers would be approximately \$40 million per year. Again, DHS does not know for how long this program will be suspended. Note that this would also be the total cost of the rule, since airlines would not lose any of their revenue under this scenario. We encourage the submission of comments further quantifying the potential economic impact.

Executive Order 13132: Federalism

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

List of Subjects

8 CFR Part 212

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

8 CFR Part 214

Administrative practice and procedure, Aliens, Reporting and record keeping requirements.

8 CFR Part 231

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

8 CFR Part 233

Air carriers, Aliens, Maritime carriers, Reporting and recordkeeping requirements.

Amendment of the Regulations

■ Accordingly, chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

§ 212.1 [Amended]

■ 2. The text of § 212.1 paragraphs (f)(1) through (f)(2) are removed and reserved.