

will ensure security. DHS and the Department of State have received specific, credible intelligence, including intelligence from the FBI and the CIA, that certain terrorist organizations have identified the visa and passport exemptions of the TWOV and ITI programs as a means to gain access to the United States, or to gain access to aircraft en route to or from the United States, to cause damage to infrastructure, injury, or loss of life in the United States or on board the aircraft. Consequently, upon the signing of this rule and the signing of a similar rule by the Secretary of Homeland Security (see the Department of Homeland Security rule published elsewhere in this issue of the **Federal Register**) the TWOV and ITI programs immediately will be suspended. The suspension of these programs will require aliens seeking to transit the United States to be in possession of valid passports and visas unless the passport and/or visa requirements may be waived under other provisions of Part 41 and such a waiver has been obtained.

Regulatory Findings

Administrative Procedure Act

The immediate implementation of this rule as an interim rule, with a 45-day provision for post-promulgation public comments, is based on findings of "good cause" pursuant to 5 U.S.C. 553(b) and 553(d)(3). The effective date of this rule on August 2, 2003 is necessary for the national security of the United States and to prevent the TWOV and ITI programs from being used to conduct terrorist acts against the United States. There is a reasonable concern that publication of this rule with an effective date 30 to 60 days after publication would leave the United States unnecessarily vulnerable to a specific terrorist threat against persons in the United States during the interval between the publication of the rule and its effective date. To prevent such a result, DHS and the Department of State have determined that prior notice and public comment on this rule would be impractical and contrary to the public interest. Accordingly, there is good cause to publish this interim rule and to make it effective August 2, 2003.

Inapplicability of Prior Public Notice and Comment and Delayed Effect Requirements and the Regulatory Flexibility Act

The Secretaries of State and Homeland Security have concluded that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with prior

notice and public comment requirements for these changes to the regulations. 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 serious damage, injury, or death in the United States. Due to this credible security threat, it is necessary to implement certain measures to control the entry of persons arriving in the United States.

Inasmuch as this suspension is predicated on a national security emergency as noted above, pursuant to 5 U.S.C. 553(b)(3)(B), prior notice and public procedure thereon are unnecessary and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. 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.*).

The Unfunded Mandates 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 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

Although this rule may be determined to be a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, it is exempt from review under that section pursuant to sections 801 and 808(2) of that Act. The Department finds good cause in the potential direct threat from terrorists to find that review of this rule under section 804 is impractical and contrary to the public interest.

Executive Order 12866

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department, however, in conjunction with DHS, concludes at this time that this regulatory action is not economically significant under section 3(f)(1), and specifically requests comments regarding this determination. The Office of Management and Budget (OMB) and the Department of Justice (DOJ) have reviewed this rule and its

companion DHS rule printed elsewhere in this edition of the **Federal Register**, and have provided clearances. The DHS rule contains a DHS-conducted assessment of costs and benefits analysis; The Department of State adopts that analysis, upon which the determination of economic significance of this rule is based, as in the DHS rule.

Executive Order 13132

This regulation 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 require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Passports and visas.

■ Accordingly, for the reasons discussed in the preamble, part 41 is amended as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681 *et seq.*

§ 41.2 [Amended]

■ 2. The text of § 41.2 paragraph (i) is removed and reserved.

Dated: August 2, 2003.

Maura Harty,

Assistant Secretary of State, Bureau of Consular Affairs, Department of State.

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.