

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