

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