

in exceptional circumstances, it would be prudent to allow the Attorney General to abbreviate or waive the normally required training for State and local law enforcement officers.

The Department believes that it will rarely be necessary for the Attorney General to declare a mass influx of aliens. As discussed below in the Regulatory Procedures Section, however, the Department believes that the country currently is facing an increased risk of a mass influx of aliens. In the event that a mass influx of aliens does occur, the need to abbreviate or waive the normally required training may be necessary if the Service does not receive enough advance knowledge of the mass influx of aliens or the influx occurs at an unanticipated location. The Department believes that it is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens. Therefore, the Department is amending the applicable regulations to allow the Attorney General to abbreviate or waive the otherwise normally required training requirement when such an action is necessary to protect public safety, public health, or national security. Such officers, however, still would be required to adhere to applicable Service policies and standards.

This interim rule is intended to solicit comments from the public on the very limited issue of whether the regulations should allow for the abbreviation or waiver of the normal training requirement. The Department welcomes comments on steps that can be taken to minimize the need for the Attorney General to exercise his authority to abbreviate or waive training requirements in the event of a declared mass influx of aliens. In particular, the Department welcomes comments on how the written contingency agreements with the appropriate State or local officials could be formulated to help ensure that this authority would be exercised only under extraordinary circumstances. The Department does not intend to reconsider any of the other issues addressed by the final rulemaking.

It is important to note that even if State and local law enforcement officers have not completed the training devised by the Service, these individuals still are trained law enforcement officers and can be expected to respond in an appropriate manner. In addition, most, if not all, of the functions such State and local law enforcement officers would be asked to perform during a declared mass influx of aliens would not require

detailed training in immigration matters. Rather, these individuals are likely to be asked only to apprehend, transport, or temporarily guard aliens who are part of the mass influx. As a result, the abbreviation or waiver of the normally required training requirement is not likely to affect the public in an adverse manner.

Regulatory Procedures

Good Cause

This interim rule is effective immediately upon the date of publication. The Department finds that good cause exists for adopting this rule without the prior notice ordinarily required by 5 U.S.C. 553(b) because a delay in the implementation of the rule would pose a substantial risk to public safety and national security.

The Department believes that the country currently is at risk for a mass influx of aliens. Present conditions in Haiti are prime for creating a mass migration to the United States. Not only have rising prices and the collapse of the informal banking sector worsened an already reeling economy, but a prolonged drought has afflicted the northwest portion of the country and severe floods have hit southern Haiti. Internal security in Haiti also has deteriorated.

Indeed, on October 29, 2002, a Haitian vessel beached off Biscayne Bay, Florida, with 214 predominantly Haitian aliens jumping off and wading ashore. Another 21 migrants were detained offshore by an United States Coast Guard ("USCG") cutter. On November 8, 2002, the USCG interdicted 25 Haitians who were using a small wooden vessel to attempt a voyage to the United States. The interdiction took place off the coast of Haiti. Finally, on November 11, 2002, the USCG interdicted two wooden vessels carrying a total of 237 Haitians and one Bahamian, 30 miles south of Great Inagua, in the Bahamas.

At the present time, an insufficient number of State and local law enforcement officers who have completed the otherwise required immigration training are available to exercise immigration law enforcement authority pursuant to section 103(a)(8) of the Act in an expeditious manner in the event the Attorney General declares a mass influx of aliens. This lack of State and local officers who have completed training presents an immediate risk to public safety and national security. Therefore, the publication of this interim rule is necessary to provide the Attorney General with the tools and flexibility to

address any unanticipated situations that might occur during a mass influx of aliens.

For the same reasons, the Department also finds that it has good cause to issue this interim rule with an immediate effective date, in accordance with 5 U.S.C. 553(d). Because additional delay is contrary to the public interest, there is good cause under 5 U.S.C. 553(d) to make this rule effective as of February 26, 2003.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows the Attorney General to waive normally required training requirements in the event that the State or local law enforcement officers available to respond to a mass influx of aliens is insufficient to protect public safety, public health, or national security. Because this rule involves only the waiver of training requirements, it should impose little or no economic impact on small entities. Indeed, the exercise of this waiver may confer a small economic benefit on affected entities because they will not have to devote personnel and time for any training that is waived. Moreover, this rule does not affect a substantial number of small entities as that term is defined in 5 U.S.C. 601(6). Because of the remote chance of a mass influx of aliens occurring in most States, only a very few local law enforcement agencies are ever expected to enter into agreements with the Attorney General to exercise immigration law enforcement authorities pursuant to section 103(a)(8) of the Act. In addition, the decision of a small entity to participate in the event of a mass influx of aliens is purely voluntary on the part of the entity.

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 were 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 in the Small Business Regulatory Enforcement Fairness Act of