

above the full summer pool elevation of a TVA reservoir but below the maximum shoreline contours of that reservoir.

Maximum shoreline contour means an elevation typically five feet above the top of the gates of a TVA dam. It is sometimes the property boundary between TVA property and adjoining private property.

Nonnavigable houseboat means any houseboat not in compliance with one or more of the criteria defining a navigable houseboat.

Owner or landowner ordinarily means all of the owners of a parcel of land. Except as otherwise specifically provided in this part, in all cases where TVA approval is required to engage in an activity and the applicant's eligibility to seek approval depends on status as an owner of real property, the owner or owners of only a fractional interest or of fractional interests totaling less than one in any such property shall not be considered, by virtue of such fractional interest or interests only, to be an owner and as such eligible to seek approval to conduct the activity without the consent of the other co-owners. In cases where the applicant owns water access rights across adjoining private property that borders TVA-owned shoreland, TVA may exercise its discretion to consider such person an owner, taking into account the availability of the shoreline to accommodate similarly situated owners and such other factors as TVA deems to be appropriate. In subdivisions where TVA had an established practice prior to September 8, 2003 of permitting individual or common water-use facilities on or at jointly-owned lots without the consent of all co-owners, TVA may exercise its discretion to continue such practice, taking into account the availability of the shoreline to accommodate similarly situated owners and other factors as TVA deems to be appropriate; provided, however, that the issuance of a TVA permit conveys no property interests, and the objections of a co-owner may be a basis for revocation of the permit.

Shoreland means the surface of land lying between minimum winter pool elevation of a TVA reservoir and the maximum shoreline contour.

Shoreline means the line where the water of a TVA reservoir meets the shore when the water level is at the full summer pool elevation.

Shoreline Management Zone (SMZ) means a 50-foot-deep vegetated zone designated by TVA on TVA-owned land.

TVA means the Tennessee Valley Authority.

TVA property means real property owned by the United States and under the custody and control of TVA.

Vice President means the Vice President, Resource Stewardship, TVA, or a functionally equivalent position.

Water-based structure means any structure, fixed or floating, constructed on or in navigable waters of the United States.

Winter drawdown elevation means the elevation to which a reservoir water level is lowered during fall to provide storage capacity for winter and spring floodwaters.

Winter pool means the lowest level expected for the reservoir during the flood season.

Dated: July 31, 2003.

Kathryn J. Jackson,

Executive Vice President, River Systems Operations and Environment, Tennessee Valley Authority.

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 4434]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Suspension of Transit Without Visa Program

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule suspends the visa and/or passport waiver provisions of Department of State regulations, commonly known as the Transit Without Visa (TWOV) and the International-to-International (ITI) programs. By waiving the passport and/or visa requirements, the provisions of Department of State regulations facilitate travel through the United States of aliens who must transit the United States on direct and continuous travel from one country to another. This waiver, however, indirectly allows this category of aliens to bypass the formal nonimmigrant visa process that includes the prescreening of aliens prior to their arrival at a port of entry in the United States. Recent intelligence indicates a possible terrorist threat specific to the TWOV and ITI programs and additional increased threats of activities against the interests and the security of the United States. Therefore the Department of State and the Department of Homeland Security (DHS) have determined to suspend those programs. The rule is

necessary in view of the recent intelligence reports.

DATES: This rule is effective August 2, 2003; written comments must be submitted by September 22, 2003.

ADDRESSES: Please submit written comments to the Chief, Legislation and Regulations Division, Directorate for Visa Services, Department of State, 2401 E Street, NW., Washington, DC 20520-0106, by FAX to (202) 663-3898, or by e-mail to visaregs@state.gov.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Legislation and Regulations Division, Directorate for Visa Services, Department of State, 2401 E Street, NW., Washington, DC 20520-0106, (202) 663-1202.

SUPPLEMENTARY INFORMATION:

What Are the TWOV and ITI Programs?

Pursuant to section 212(d)(4) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(4)(C), the Secretary of Homeland Security (previously the Secretary's authority under this section was exercised by the Attorney General) and the Secretary of State, acting jointly, may waive the visa and/or passport requirements for aliens proceeding in immediate and continuous transit through the United States. Therefore, aliens from many nations who desire to travel through the United States in transit from one country to another without the need of obtaining a visa may do so under the Transit Without Visa (TWOV) and International to International (ITI) procedures permitted under the provisions of 22 CFR 41.2(i).

Why Is It Necessary To Suspend the TWOV and ITI Programs?

The waiver of passport and/or visa requirements permitted by these programs precludes the prescreening of participating aliens prior to their arrival at a port of entry in the United States. Because these aliens do not have to apply for a visa and be interviewed by a consular officer, there is no opportunity for U.S. authorities to determine prior to their arrival at the U.S. border whether a participating alien's travel is legitimate and whether the alien poses any threat to the United States. In view of the current intelligence of a possible terrorist threat specific to these programs, the Secretaries of State and Homeland Security have determined that the programs immediately be suspended while they evaluate the security risks involved in these programs over the next 60 days. During the 60 day review period, DHS and the Department of State will be reviewing comments and taking other steps to develop plans that

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.