

# CRS Report for Congress

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## **Immigration: Alien Registration**

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# Immigration: Alien Registration

## Summary

Since the September 11, 2001 terrorist attacks, many U.S. officials and others have expressed concerns that the U.S. government is unaware of the addresses and whereabouts of many foreign nationals in the country. The Immigration and Nationality Act (INA) contains provisions for the registration of aliens, including the requirement that aliens provide notification of any change of address within 10 days. For many years, however, this address reporting requirement was generally not enforced.

The INA also authorizes the Attorney General to prescribe special regulations for the registration and fingerprinting of any class of aliens who are not U.S. legal permanent residents (LPRs). The Attorney General has exercised this authority at various times by requiring that nonimmigrant aliens (legal temporary residents) from designated countries be registered, photographed, and fingerprinted at the port of entry.

A rule, which took effect on September 11, 2002, applies expanded special registration requirements to certain newly arriving nonimmigrants as part of the National Security Entry-Exit Registration System (NSEERS). NSEERS covers arriving nonimmigrants from designated countries, as well as other arriving nonimmigrants who are determined to pose an elevated national security risk. Among other requirements, aliens subject to special registration under this rule are registered, fingerprinted, photographed, and checked against databases of known criminals and terrorists at the port of entry. Under the original rule, which has since been amended, those who remained for at least 30 days had to report to an immigration office to complete their registration and those remaining for more than 1 year had to reaffirm their registration information annually. A series of *Federal Register* notices published in late 2002 and early 2003 similarly required certain nonimmigrant males in the United States from designated countries to report to an immigration office to be registered, fingerprinted, and photographed. A subsequent rule, which became effective on December 2, 2003, amended the NSEERS regulations. Among other changes, it suspended the automatic 30-day and annual re-registration requirements.

A proposed rule, published in July 2002, would give notice to aliens, including LPRs, of their obligation to provide the government with a current address, including any change of address within 10 days, and the consequences of failing to do so.

Congress has acted on alien registration-related measures in recent years. The 107<sup>th</sup> Congress enacted the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173), which directs the General Accounting Office to study the feasibility and utility of requiring nonimmigrants to submit a current address and, where applicable, the name and address of an employer every year. In the 108<sup>th</sup> Congress, the FY2003 Consolidated Appropriations Resolution (P.L. 108-7) contains language requiring the Attorney General, in consultation with the Secretary of Homeland Security, to provide Congress with NSEERS-related documents and materials. This report will be updated as related developments occur.

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# Immigration: Alien Registration

## Introduction

The September 11, 2001 terrorist attacks called attention to the fact that the U.S. government is unaware of the addresses and whereabouts of many foreign nationals<sup>1</sup> in the United States. In the aftermath of the attacks, Congress sought to improve the tracking of one subgroup of foreign nationals: temporary legal residents. To better track these temporary residents, also known as nonimmigrants, the 107<sup>th</sup> Congress revived efforts to implement an entry-exit control system and a system for monitoring foreign students.<sup>2</sup> In addition, the Department of Homeland Security (DHS) is using the registration provisions of the Immigration and Nationality Act to track foreign nationals in the United States.<sup>3</sup> As detailed below, that act requires that most aliens in the United States for 30 days or longer be registered and provide notification of each change of address. The alien registration issue has also been considered to a limited extent in the 107<sup>th</sup> and 108<sup>th</sup> Congresses.

## Current Registration Provisions

Alien registration requirements, which date to the Alien Registration Act of 1940, were incorporated into the Immigration and Nationality Act (INA) of 1952.<sup>4</sup> They generally do not apply to, or can be waived in, the case of nonimmigrants entering under INA §101(a)(15)(A) (ambassadors and diplomats) or INA

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<sup>1</sup> The terms *foreign nationals*, *aliens*, and *noncitizens* are synonymous and refer to all foreign-born individuals who are not U.S. citizens.

<sup>2</sup> For information on entry-exit control, see CRS Report RL31727, *Border Security: Immigration Issues in the 108<sup>th</sup> Congress*, by Lisa M. Seghetti. For information on foreign student monitoring, see CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by (nam e/red acted). For an overview of the U.S. system of temporary admissions, see RL31381, *U.S. Immigration Policy on Temporary Admissions*, by (nam e/red acted).

<sup>3</sup> Prior to Mar. 1, 2003, alien registration was being administered by the Immigration and Naturalization Service (INS) of the Department of Justice. The Homeland Security Act of 2002 (P.L. 107-296, Nov. 25, 2002) abolished INS and transferred most of its functions to DHS as of Mar. 1.

<sup>4</sup> Act of June 27, 1952, ch. 477; 8 U.S.C. 1101 *et seq.* The INA is the basis of current immigration law.

§101(a)(15)(G) (representatives to, and officials and employees of, international organizations). In their current form, these requirements include the following:<sup>5</sup>

- No visa can be issued to an alien unless the alien has been registered in connection with the visa application.<sup>6</sup>
- Every alien who is age 14 or older, remains in the United States for 30 days or longer, and has not been registered must apply for registration and be fingerprinted before day 30. The Attorney General may waive the fingerprinting requirement in the case of any nonimmigrant.<sup>7</sup>
- The Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of certain enumerated groups, including aliens of any class who are not legal permanent residents (LPRs) of the United States.<sup>8</sup>
- The Attorney General and the Secretary of State are authorized to prepare forms for the registration of aliens. These forms are to contain questions about the date and place of the alien's entry into the United States; activities in which the alien has been and intends to be engaged; expected length of stay; any police or criminal record; and any additional matters.<sup>9</sup>
- Aliens required to be registered must notify the Attorney General in writing of each change of address within 10 days of the change and provide such additional information as the Attorney General may require. Similarly, the Attorney General, upon 10 days notice, may require the natives of any foreign state who are required to be registered to provide notification of their current addresses and such additional information as the Attorney General may require.<sup>10</sup>
- An alien required to apply for registration and to be fingerprinted who willfully fails to do so is guilty of a misdemeanor, and upon conviction, may be fined up to \$1,000 or imprisoned for up to 6 months, or both. An alien who fails to notify the Attorney General of a change of address is guilty of a misdemeanor, and upon conviction, may be fined up to \$200 or imprisoned for up to 30 days, or both. Regardless of whether such an alien is convicted or punished for failing to provide the address notification, the alien will be taken into custody and removed from the country unless the alien

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<sup>5</sup> The Homeland Security Act transferred most immigration-related functions from the Department of Justice (DOJ) to DHS. It is uncertain as of this writing whether any of the authorities enumerated here remain, in whole or in part, with DOJ and the Attorney General.

<sup>6</sup> INA §261; INA §221(b).

<sup>7</sup> INA §262(a), (c).

<sup>8</sup> INA §263(a).

<sup>9</sup> INA §264(a).

<sup>10</sup> INA §265(a), (b).

satisfies the Attorney General that “such failure was reasonably excusable or was not willful.”<sup>11</sup>

## Special Registration Requirements

At various times in the past, the Attorney General used the authority granted by the INA to prescribe special regulations and forms for the registration and fingerprinting of certain groups of aliens. Until its abolition in March 2003, the Immigration and Naturalization Service (INS) administered alien registration. In January 1991, on the eve of the Persian Gulf War, INS promulgated a rule requiring all nonimmigrants carrying Iraqi or Kuwaiti travel documents who applied for admission to the United States, except for those entering as diplomats or officials of international organizations, to be registered, photographed, and fingerprinted at the port of entry. According to the summary of the rule in the *Federal Register*: “This action is necessary to protect and safeguard the interests and security of the United States as a precaution against reprisals ...”<sup>12</sup>

In December 1993, INS published an interim rule that removed these special registration requirements for Iraqis and Kuwaitis. The rule also added a new provision to the INS regulations on registration.<sup>13</sup> That provision stated that the Attorney General may require, by public notice in the *Federal Register*, that certain nonimmigrants of specific countries be registered and fingerprinted upon arrival in the United States. The supplementary information accompanying the rule described the provision as “a procedural change which affords the Attorney General more flexibility in responding to specific political situations than was formerly available [when changes in regulation were required].”<sup>14</sup> Under the authority of the provision, INS published a separate notice in the same issue of the *Federal Register* requiring all nonimmigrants bearing Iraqi or Sudanese travel documents who applied for admission to the United States, except for those entering as diplomats or officials of international organizations, to be registered, photographed, and fingerprinted at the port of entry. The notice indicated that such measures were necessary in light of “recent terrorist activities perpetrated on United States soil and the discovery of terrorist plots.”<sup>15</sup> In September 1996, INS published a *Federal Register* notice

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<sup>11</sup> INA §266(a), (b).

<sup>12</sup> U.S. Department of Justice, Immigration and Naturalization Service, Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Kuwaiti Travel Documents; Final Rule. *Federal Register*, vol. 56, no. 11, Jan. 16, 1991, p. 1566.

<sup>13</sup> These regulations are codified at 8 CFR Part 264. The added provision was 8 CFR 264.1(f).

<sup>14</sup> U.S. Department of Justice, Immigration and Naturalization Service, Addition of Provision for the Registration and Fingerprinting of Nonimmigrants Designated by the Attorney General; Removal of the Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Kuwaiti Travel Documents; Interim Rule. *Federal Register*, vol. 58, no. 245, Dec. 23, 1993, pp. 68024-68025.

<sup>15</sup> U.S. Department of Justice, Immigration and Naturalization Service, Requirement for the  
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similarly providing for the registration, photographing, and fingerprinting of nonimmigrants holding Iranian or Libyan travel documents.<sup>16</sup> In July 1998, INS published a notice consolidating and replacing these two notices covering nonimmigrants holding Iranian, Iraqi, Libyan, or Sudanese travel documents.<sup>17</sup>

## 2002 Registration-Related Rules

According to the Department of Justice (DOJ), the September 11, 2001 terrorist attacks highlighted weaknesses in the U.S. immigration system. Under the system in place at that time, DOJ maintained, it was difficult to know whether nonimmigrants in the country were following their stated plans, whether they remained beyond their authorized period of stay, and how to locate them, if necessary. To address these and other concerns, INS proposed two rules in 2002 that drew on the INA's registration provisions and other authority.

### Entry-Exit Registration System

On June 5, 2002, DOJ outlined a proposal for a "National Security Entry-Exit Registration System" (NSEERS). In prepared remarks on the proposal, Attorney General John Ashcroft said:

This system will expand substantially America's scrutiny of those foreign visitors who may pose a national security concern and enter our country. And it will provide a vital line of defense in the war against terrorism.

The Attorney General described NSEERS as the first step toward developing a congressionally mandated entry-exit data system to track virtually all foreign visitors.<sup>18</sup>

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<sup>15</sup> (...continued)

Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Sudanese Travel Documents; Notice. *Federal Register*, vol. 58, no. 245, Dec. 23, 1993, pp. 68157-68158.

<sup>16</sup> U.S. Department of Justice, Immigration and Naturalization Service, Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iranian and Libyan Travel Documents; Notice. *Federal Register*, vol. 61, no. 173, Sept. 5, 1996, pp. 46829.

<sup>17</sup> U.S. Department of Justice, Immigration and Naturalization Service, Requirement for Registration and Fingerprinting of Certain Nonimmigrants; Notice. *Federal Register*, vol. 63, no. 139, July 21, 1998, p. 39109.

<sup>18</sup> U.S. Department of Justice, *Attorney General Prepared Remarks on the National Security Entry-Exit Registration System, June 6, 2002*. Available at [<http://www.usdoj.gov/ag/speeches/2002/060502agpreparedremarks.htm>], visited Jan. 6, 2004. (Hereafter cited as DOJ, *Attorney General Prepared Remarks*.) For additional information on the congressionally mandated entry-exit system, see CRS Report RL31727, *Border Security: Immigration Issues in the 108<sup>th</sup> Congress*, by Lisa M. Seghetti.

INS proposed a rule to implement NSEERS on June 13, 2002, and issued the final rule on August 12, 2002.<sup>19</sup> The rule took effect on September 11, 2002. Under the rule, expanded special registration requirements apply to nonimmigrant aliens from designated countries. These requirements also apply to individual nonimmigrants from any country who a consular officer abroad or an inspection officer at the port of entry determines meet undisclosed criteria indicating that the alien's presence in the United States warrants monitoring in the interests of national security or law enforcement. These requirements do not apply to nonimmigrants applying for admission as diplomats or officials of international organizations. According to the supplementary information accompanying the rule, the covered individuals constitute "only a small percentage of the more than 35 million nonimmigrant aliens who enter the United States each year." DOJ estimated that NSEERS would track about 100,000 visitors in the first year.<sup>20</sup>

Upon arrival in the United States, aliens subject to special registration under the rule are fingerprinted, photographed, and checked against databases of known criminals and terrorists. They also are required to register by providing "routine and readily available information," such as personal information and information about their plans in the country. The original rule, which has since been amended as described below, required aliens registered at a port of entry to satisfy subsequent 30-day and annual registration requirements. Under the original rule, if these aliens remained in the country for 30 days or longer, they had to report to an immigration office between day 30 and day 40 to complete their registration by providing additional documentation of compliance with their visas, including proof of residence, employment, and school enrollment as applicable. Those aliens remaining for more than 1 year had to reaffirm their registration information annually.

Aliens subject to special registration who remain in the United States for 30 days or longer also have to provide notification of any change in their residential address, employment, or educational institution within 10 days. Upon leaving the United States, special registrants are required to report their exit at the port of departure.<sup>21</sup>

On September 11, 2002, NSEERS was implemented at selected ports of entry. On October 1, 2002, the system went into effect at all remaining land, air, and sea

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<sup>19</sup> U.S. Department of Justice, Immigration and Naturalization Service, Registration and Monitoring of Certain Nonimmigrants; Proposed Rule. *Federal Register*, vol. 67, no. 114, June 13, 2002, pp. 40581-40586; U.S. Department of Justice, Immigration and Naturalization Service, Registration and Monitoring of Certain Nonimmigrants; Final Rule. *Federal Register*, vol. 67, no. 155, Aug. 12, 2002, pp. 52583-52593. The final rule amends 8 CFR 264.1(f), discussed above.

<sup>20</sup> DOJ, *Attorney General Prepared Remarks*.

<sup>21</sup> A notice published in the *Federal Register* lists the ports from which special registrants can depart the United States. See U.S. Department of Justice, Immigration and Naturalization Service, Notice Designating Additional Ports-of-Entry for Departure of Aliens Who Are Subject to Special Registration. *Federal Register*, vol. 68, no. 38, Feb. 26, 2003, pp. 8967-8968. This notice corrects an earlier notice on the same subject published in *Federal Register*, vol. 68, no. 33, Feb. 19, 2003, pp. 8047-8048.



ports of entry. It covers nonimmigrants who are citizens or nationals of Iran, Iraq, Libya, Sudan, and Syria, as well as other nonimmigrants determined to pose an elevated national security risk as explained above.<sup>22</sup> An internal INS memorandum dated September 5, 2002, which has been reported on by various media outlets, stated that the Attorney General had determined that nonimmigrant males applying for admission who are citizens or nationals of Pakistan, Saudi Arabia, or Yemen and are between the ages of 16 and 45 warranted special registration. According to the memorandum, these individuals were to be subject to special registration as of October 1, 2002. The memorandum also enumerated the seven criteria to be used by immigration inspectors to determine whether to require the special registration of arriving nonimmigrants from any country. Among these criteria were the following: The alien has made unexplained trips to Iran, Iraq, Libya, Sudan, Syria, Saudi Arabia, or one of nine other specified countries; and “The nonimmigrant alien’s behavior, demeanor, or answers indicate that the alien should be monitored in the interest of national security.” Neither DOJ nor INS would comment on this memorandum.<sup>23</sup>

**Aliens in the United States.** In addition to requiring the special registration of certain newly arriving nonimmigrants, INS published a notice in the *Federal Register* on November 6, 2002, similarly requiring the registration of certain nonimmigrants already residing in the United States.<sup>24</sup> The notice required nonimmigrant males who were citizens or nationals of Iran, Iraq, Libya, Sudan, and Syria, were at least 16 years old, and were last admitted to the United States on or before September 10, 2002, to report to an immigration office by December 16, 2002, to be registered, fingerprinted, and photographed. (A *Federal Register* notice published on January 16, 2003, reopened the registration period for individuals covered by the November 6, 2002 notice. It stated that those individuals who had not registered as required could do so between January 27, 2003, and February 7, 2003, and would be considered to be in compliance.<sup>25</sup>) Following this initial registration,

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<sup>22</sup> U.S. Department of Justice. *Attorney General Ashcroft Announces Implementation of the First Phase of the National Security Entry-Exit Registration System*. August 12, 2002. Available at

[[http://www.usdoj.gov/opa/pr/2002/August/02\\_ag\\_466.htm](http://www.usdoj.gov/opa/pr/2002/August/02_ag_466.htm)], visited Jan. 6, 2004; U.S. Department of Justice, Immigration and Naturalization Service, Registration and Monitoring of Certain Nonimmigrants From Designated Countries; Notice. *Federal Register*, vol. 67, no. 173, Sept. 6, 2002, pp. 57032-57033.

<sup>23</sup> The memorandum, written by INS Executive Associate Commissioner Johnny N. Williams, is available in *Interpreter Releases*, Sept. 30, 2002, pp. 1481-1484. It also can be accessed at

[[http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=29019](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=29019)], visited Jan. 6, 2004.

<sup>24</sup> U.S. Department of Justice, Immigration and Naturalization Service, Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice. *Federal Register*, vol. 67, no. 215, Nov. 6, 2002, pp. 66765-66768.

<sup>25</sup> U.S. Department of Justice, Immigration and Naturalization Service, Permission for Certain Nonimmigrant Aliens From Designated Countries To Register in a Timely Fashion; Notice. *Federal Register*, vol. 68, no. 11, Jan. 16, 2003, pp. 2366-2367. According to the accompanying supplementary information, this notice was prompted by the fact that some

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these individuals were required to register annually. A December 2, 2003 DHS rule, described below, suspended this annual re-registration requirement.

Subsequent *Federal Register* notices, published on November 22, 2002, December 18, 2002, and January 16, 2003, made nonimmigrant males from additional countries who were at least 16 years old and were last admitted to the United States on or before September 30, 2002, subject to special registration.<sup>26</sup> The November 22 notice covered citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, or Yemen. They were required to report to an immigration office by January 10, 2003, to be registered, fingerprinted, and photographed. (Like those covered by the November 6, 2002 notice, individuals covered by this notice who had not registered by the deadline were given the opportunity to do so between January 27, 2003, and February 7, 2003, under the terms of the January 16 notice cited above.) The December 18 notice required citizens or nationals of Pakistan or Saudi Arabia<sup>27</sup> to report to an immigration office by February 21, 2003, to be registered, fingerprinted, and photographed, and the January 16 notice required citizens or nationals of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait to report by March 28, 2003. A February 19, 2003 *Federal Register* notice extended these registration deadlines to March 21, 2003, and April 25, 2003, respectively.<sup>28</sup> Following their initial registration, as set forth in the notices, these individuals were required to register annually. As described below, this annual re-registration requirement was suspended in December 2003.

During an April 2003 speech, Secretary of Homeland Security Tom Ridge signaled the end of NSEERS registrations for aliens within the country. He announced a new entry-exit system called the U.S. Visitor and Immigration Status

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<sup>25</sup> (...continued)

covered individuals remained unaware of the registration requirements. The supplementary information characterized the provision of an additional registration period as “an act of grace” and “an act that is entirely within the Attorney General’s discretion.”

<sup>26</sup> U.S. Department of Justice, Immigration and Naturalization Service, Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice. *Federal Register*, vol. 67, no. 226, Nov. 22, 2002, pp. 70525-70528; U.S. Department of Justice, Immigration and Naturalization Service, Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice. *Federal Register*, vol. 67, no. 243, Dec. 18, 2002, pp. 77641-77644; U.S. Department of Justice, Immigration and Naturalization Service, Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice. *Federal Register*, vol. 68, no. 11, Jan. 16, 2003, pp. 2363-2366.

<sup>27</sup> The Dec. 18, 2002 notice rescinded a notice published on Dec. 16, 2002, which applied to citizens or nationals of Armenia, as well as Pakistan and Saudi Arabia. According to the summary of the December 18 notice, the earlier notice “incorrectly listed Armenia as a designated country.”

<sup>28</sup> U.S. Department of Justice, Immigration and Naturalization Service, Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice. *Federal Register*, vol. 68, no. 33, Feb. 19, 2003, pp. 8046-8047.

Indication Technology (US-VISIT) System,<sup>29</sup> which, he said, was scheduled to begin operations by the end of the year. Secretary Ridge stated:

I want to stress that the phase-in of the new VISIT system will provide us with the crucial biometric information needed to end the domestic registration of people from certain countries, which has been conducted for the past several months under a system known as NSEERS.<sup>30</sup>

**Number of Registrants.** Through September 30, 2003, 177,260 individuals had been registered under NSEERS. Of this total, 93,741 were registered at a port of entry, and 83,519 were registered when they reported to an immigration office.<sup>31</sup> As of December 1, 2003, individuals from more than 150 countries had been registered in the NSEERS program.<sup>32</sup>

## Address Reporting

As noted in the earlier discussion of current registration requirements, aliens required to be registered under the INA must notify the U.S. government in writing of each change of address within 10 days. This reporting requirement applies to virtually all aliens who remain in the United States for 30 days or longer, including LPRs. These individuals number in the millions.<sup>33</sup> Former provisions of the INA

<sup>29</sup> For information on US-VISIT, see CRS Report RL31727, *Border Security: Immigration Issues in the 108<sup>th</sup> Congress*, by Lisa M. Seghetti.

<sup>30</sup> U.S. Department of Homeland Security, *Remarks by Secretary of Homeland Security Tom Ridge To the National Press Club*, Apr. 29, 2003. Available at [<http://www.dhs.gov/dhspublic/display?content=582>], visited Jan. 6, 2004.

<sup>31</sup> U.S. Department of Homeland Security, *Changes to National Security Entry/Exit Registration System (NSEERS)*, Dec. 1, 2003. This fact sheet and other materials on special registration can be accessed at [[http://www.ice.gov/graphics/enforce/imm/imm\\_sr.htm](http://www.ice.gov/graphics/enforce/imm/imm_sr.htm)], visited Jan. 6, 2004. With respect to the NSEERS data, it should be noted that the port of entry registration number refers to the number of individuals registered as opposed to the number of registrations. (There have been 207,007 registrations at a port of entry through September 30, 2003.) These numbers differ because some individuals entered the country more than once and were registered at a port of entry on each visit.

<sup>32</sup> U.S. Department of Homeland Security, *Changes to National Security Entry/Exit Registration System (NSEERS)*, Dec. 1, 2003.

<sup>33</sup> According to sample data from the 2000 census of the U.S. population, about 19 million noncitizens were residing in the United States in 2000. For various reasons, however, there are likely to be discrepancies between this figure and the number of individuals who are subject to (or who, even with stepped-up enforcement, would comply with) the address reporting requirement. First, all census data are self-reported; no verification of citizenship status is conducted. Second, Census Bureau estimates exclude individuals who are in the country temporarily without changing their usual place of residence. As a result, these estimates exclude most nonimmigrants in the United States, many of whom may meet criteria subjecting them to address reporting. At the same time, some nonimmigrants, such as tourists, may be unlikely to file change-of-address reports, even if legally subject to the requirement. Finally, Census Bureau estimates of noncitizens include unauthorized aliens.

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required nonimmigrants to submit address notices every 3 months and required other aliens, including LPRs, to submit such notices every year, regardless of whether their addresses had changed.<sup>34</sup> Both of these reporting requirements were repealed by the Immigration and Nationality Act Amendments of 1981 in the stated interest of improving the efficiency of INS.<sup>35</sup>

Under current law, aliens who fail to submit change-of-address notices can be fined and/or imprisoned, and are subject to being taken into custody and removed from the country. According to a July 2002 DOJ fact sheet, however, both compliance with and enforcement of this requirement have been lacking.<sup>36</sup> As a result, the government does not have the current addresses of many noncitizens required to be registered.

A rule proposed by INS on July 26, 2002, would provide notice to aliens of their obligation to submit address notices and the consequences of failing to do so.<sup>37</sup> The rule would amend various immigration forms to require aliens applying for immigration benefits to acknowledge having received notice of the following:

- the alien must provide a valid current address, including any change of address within 10 days of the change;
- the most recent address provided by the alien will be used for all purposes, including the service of a written notice informing the alien of the initiation of removal proceedings (referred to as a “notice to appear”); and
- if the alien has changed addresses and failed to provide notification, the alien will be held responsible for any communications sent to the prior address.

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<sup>33</sup> (...continued)

While these aliens are not legally exempt from the address reporting requirement, as a practical matter they may be less likely to comply than legal aliens.

<sup>34</sup> These provisions had been included in INA §265.

<sup>35</sup> P.L. 97-116, §11, Dec. 29, 1981. For additional information on the act and its rationale, see U.S. Congress, House Committee on the Judiciary, *Immigration and Nationality Act Amendments of 1981*, report to accompany H.R. 4327, 97<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 97-264 (Washington: GPO, 1981).

<sup>36</sup> U.S. Department of Justice, *Obligation of Noncitizens to Provide Current Address to INS*, July 22, 2002 (on file with CRS). Among the points made in the fact sheet are the following: “far too many noncitizens fail to notify the Immigration and Naturalization Service (INS) of a change in their address,” and “INS has not effectively enforced these existing [registration and address reporting] requirements in the past.”

<sup>37</sup> U.S. Department of Justice, Immigration and Naturalization Service, Address Notification to be Filed With Designated Applications; Proposed Rule. *Federal Register*, vol. 67, no. 144, July 26, 2002, pp. 48818-48821. This rule would amend 8 CFR 103.2.

According to the July 2002 DOJ fact sheet cited above, this rule will help track noncitizens, will enhance the ability to initiate and complete removal proceedings,<sup>38</sup> and will facilitate contacting aliens in a timely fashion about their applications for immigration benefits. The comment period on the rule ended on August 26, 2002.

## Reactions to the Rules

These registration and address reporting rules have been controversial. Supporters portray the entry-exit registration system as a needed means of reducing the nation's vulnerability to future terrorist attacks. In addition, they view it as a reasonable way to begin addressing the problem of illegal immigration by identifying individuals who remain in the country beyond their authorized period of stay. Critics take issue with the system's purported national security benefits, characterizing it as an inefficient and counterproductive approach that will create resentment of the United States in the Muslim and Arab world and will undermine international support for the U.S. war on terrorism. They describe it as a blatant example of racial and ethnic profiling, which, they maintain, runs counter to core democratic values. Critics, as well as some supporters, also have questioned whether such a system would be effectively implemented.

The proposed address reporting rule has likewise elicited strong reactions. Some support the underlying idea, agreeing that it is important for the government to have the current addresses of foreign nationals in the United States. As with the entry-exit registration proposal, however, some of these supporters, as well as opponents, have raised doubts about whether the information would be processed in a timely fashion. In 2002, when INS had responsibility for processing immigration forms, it was reported in July that the agency had not filed 2 million documents submitted by immigrants, including 200,000 change-of-address cards.<sup>39</sup> It was further reported in early September 2002 that INS had received 870,000 change-of-address forms since publication of the proposed address reporting rule in July and

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<sup>38</sup> With respect to removal proceedings, the proposed rule responds to a Board of Immigration Appeals (BIA) decision in *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA, 2001). In that case, BIA found that an in absentia order of removal could not be entered against an alien who had not actually received, and could not be charged with receiving, a notice to appear. The notice to appear notifies the alien of the removal hearing, as well as of the requirement that the alien immediately provide (or have provided) the Attorney General with a current address and telephone number, and the consequences of failing to do so. According to the supplementary information accompanying the proposed address reporting rule, the rule seeks to prevent similar factual circumstances from arising in future cases. See *Federal Register*, vol. 67, no. 144, July 26, 2002, pp. 48818-48819; and "BIA Considers In Absentia Order Notice Requirements," *Interpreter Releases*, vol. 78, Oct. 29, 2001, pp. 1678-1681.

<sup>39</sup> See, for example Marcus Stern, "Mishandled Address-change Cards a Major Failure for INS," *San Diego Union-Tribune*, June 27, 2002. Available at [[http://www.signonsandiego.com/news/nation/20020727-9999\\_1n27records.html](http://www.signonsandiego.com/news/nation/20020727-9999_1n27records.html)], visited Jan. 6, 2004.

had processed some 100,000.<sup>40</sup> Moreover, some supporters have questioned whether processing updated address information would be the best use of immigration-related resources. In addition to questioning the feasibility of implementing large-scale address reporting, opponents have voiced substantive objections to the proposal. They argue that strictly enforcing the change-of-address reporting requirement could subject some otherwise law-abiding aliens to severe punishment, possibly including removal. Critics also fear selective enforcement of the reporting requirement on the basis of race, ethnicity, or other characteristics.

## 2003 Changes to the Special Registration System

On December 2, 2003, DHS published an interim rule in the *Federal Register* to amend the NSEERS regulations.<sup>41</sup> The rule became effective on December 2 and provided for a 2-month comment period, ending on February 2, 2004. The interim rule suspends the requirements that: (1) individuals registered under NSEERS at a port of entry report after 30 days to complete their registration; and (2) all NSEERS registrants re-register annually. Instead, according to the summary of the rule, “DHS will utilize a more tailored system in which it will notify individual aliens of future registration requirements.” Under the new rule, DHS will decide on a case-by-case basis which registrants must appear at a DHS office (specifically, a U.S. Immigration and Customs Enforcement office) for one or more additional registration interviews to determine whether they are in compliance with the conditions of their nonimmigrant visa status and admission. For some aliens, these interviews may be more frequent than the prior 30-day and annual re-registration requirements. Among the other changes made by the rule are conforming amendments to the regulations to reflect the transfer of immigration-related functions from DOJ to DHS under the Homeland Security Act of 2002 (P.L. 107-296).

In the supplementary information accompanying the rule, DHS offered several reasons why the suspension of the automatic re-registration requirements is appropriate and advantageous. It indicated that there are other tracking systems, including US-VISIT and the Student and Exchange Visitor Information System (SEVIS),<sup>42</sup> that can help ensure that NSEERS registrants remain in compliance with the terms of their visas and admission. In addition, DHS stated that suspending the 30-day and annual re-registration requirements “will reduce the burden on those required to register under the current regulations, as well as to DHS.” With respect to the latter, it further stated that DHS resources not needed for re-registrations can be used for other purposes, including “to craft a targeted registration process that meets the national security needs of the country.”

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<sup>40</sup> Suzanne Gamboa, “Address Change Forms Flood INS,” *Associated Press*, Sept. 6, 2002.

<sup>41</sup> U.S. Department of Homeland Security, Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants; Interim Rule. *Federal Register*, vol. 68, no. 231, Dec. 2, 2003, pp. 67577-67584. This rule and related materials can be accessed at [[http://www.ice.gov/graphics/enforce/imm/imm\\_sr.htm](http://www.ice.gov/graphics/enforce/imm/imm_sr.htm)], visited Jan. 6, 2004.

<sup>42</sup> For information on SEVIS, see CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*, by (name redacted).

The rule does *not* amend existing NSEERS registration procedures at ports of entry, including the fingerprinting, photographing, and registering of covered aliens. According to DHS:

Special registration of aliens at [ports of entry] has, consistent with the program's intent, provided important law enforcement benefits, which have included the identification of a number of alien terrorists and criminals.

The rule also does not change the general requirement that NSEERS registrants report their departure upon leaving the United States.

## **Legislation in the 107<sup>th</sup> Congress**

Alien registration and reporting provisions were included in legislation in the 107<sup>th</sup> Congress. The Enhanced Border Security and Visa Entry Reform Act of 2002, as enacted by the 107<sup>th</sup> Congress, directs the General Accounting Office to conduct a study of the feasibility and utility of requiring nonimmigrants in the United States to submit a current address and, where applicable, the name and address of an employer every year. The study is due by May 2003.<sup>43</sup> As discussed above, a similar address reporting requirement existed until 1981.

An immigration reform measure, the "Securing America's Future through Enforcement Reform Act of 2002" (H.R. 5013), would have amended the INA to expand existing registration requirements.<sup>44</sup> In addition to the current requirement that aliens who are in the United States for 30 days or longer and are unregistered apply for registration and be fingerprinted by day 30, it would have required subsequent registrations on the part of LPRs every year and on the part of other aliens every 3 months. With respect to address reporting, the bill would have retained the current requirement that aliens notify the Attorney General of a change of address within 10 days and would have preserved the Attorney General's authority to require, upon 10 days notice, that the natives of any foreign state report their current addresses. Among its other registration-related provisions, H.R. 5013 would have directed the Attorney General to establish an information technology system for the collection, compilation, and maintenance of registration information. H.R. 5013 was referred to the House Judiciary Committee and its Subcommittee on Immigration, Border Security, and Claims, but saw no further action.

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<sup>43</sup> P.L. 107-173, §602, May 14, 2002.

<sup>44</sup> The registration provisions are in §303 of H.R. 5013.

## Legislation in the 108<sup>th</sup> Congress

In the 108<sup>th</sup> Congress, the Senate agreed to an alien registration-related amendment (S.Amdt. 54) by unanimous consent during its consideration of the FY2003 Consolidated Appropriations Resolution (H.J.Res. 2). S.Amdt. 54, which was sponsored by Senator Jon Kyl with bipartisan cosponsorship, sought to make funding available for an entry-exit system. It also provided that no funds appropriated by the act would be available for any expenses related to NSEERS and directed the Attorney General to provide the Appropriations Committees with NSEERS-related documents and materials. The Senate passed an amended version of H.J.Res. 2, which included S.Amdt. 54, on January 23, 2003.<sup>45</sup> The version of H.J.Res. 2 passed by the House on January 8, 2003, did not include language on NSEERS. The final version of H.J.Res. 2, signed into law on February 20, 2003 as P.L. 108-7, did not eliminate funding for NSEERS. It did, however, include language requiring the Attorney General, in consultation with the Secretary of DHS, to provide the Appropriations Committees by March 1, 2003, with the NSEERS-related documents and materials described in the Senate amendment.

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<sup>45</sup> For the text and floor consideration of S.Amdt. 54, see *Congressional Record*, daily edition, vol. 149, Jan. 22, 2003, pp. S1350-S1352. No references to NSEERS were made during Senate consideration of the amendment.



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