

program and will also include the funds to hire SEVIS Liaison Officers and other ICE officers to ensure compliance with the SEVIS requirements.

DATES: Written comments must be submitted on or before December 26, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference ICE No. 2297-03 on your correspondence. Comments may also be submitted electronically to DHS at rfs.regs@dhs.gov. When submitting comments electronically, you must include ICE No. 2297-03 in the subject box. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jill Drury, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 800 K Street, NW, Room 1000, Washington, DC 20536, telephone (202) 514-1988.

SUPPLEMENTARY INFORMATION:

Background

Who Are F, J, and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of different classes of nonimmigrants, who are foreign nationals seeking temporary admission to the United States.

The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification. Some classifications permit the nonimmigrant's spouse and qualifying child(ren) to accompany the nonimmigrant to the United States, or to join the nonimmigrant here. To qualify, a child must be unmarried and under the age of 21.

F-1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are foreign students coming to the United States to pursue a full course of study in DHS-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, or in language training programs in the United States. For the purposes of this rule, the term "school" refers to all of these types of DHS-approved institutions. An F-2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F-1 student.

J-1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been

selected by a sponsor designated by the United States Department of State (DOS) (formerly the United States Information Agency [USIA]) to participate in an exchange visitor program in the United States. The J-1 classification includes aliens who are participating in programs under which they will receive graduate medical education or training. A J-2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J-1 exchange visitor.

M-1 nonimmigrants, as defined in section 101(a)(15)(M) of the Act, are foreign nationals pursuing a full course of study at a DHS-approved vocational or other recognized nonacademic institution (other than in language training programs) in the United States. The term "school" also encompasses those institutions attended by M-1 students for the purposes of this rule. An M-2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M-1 student.

On November 2, 2002, Congress passed the Border Commuter Student Act of 2002, Pub. L. (107-274), which created new F-3 and M-3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico who continue to reside in their home country while commuting to the United States to attend an approved F or M school. Such border commuter students are not subject to the existing requirement for F-1 and M-1 students to be pursuing a full course of study, and are specifically permitted to engage in either full-time or part-time studies. DHS recently adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to make the necessary conforming amendments in response to the new legislation. In this proposed rule, DHS merely notes that the new F-3 and M-3 students will be subject to the same rules regarding the collection of the fee as for F-1 and M-1 students.

Why Is DHS Proposing This Rule?

This rule is necessary to implement section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 8 U.S.C. 1372, (regarding the program to collect information relating to nonimmigrant foreign students and other exchange program participants) and provides for the collection of the required fee to defray the costs of this program. Section 641 of IIRIRA requires DHS to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors

during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable.

DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement. The substantive requirements and procedures for SEVIS have been promulgated in separate rulemaking proceedings. *See* 67 FR 34862 (May 16, 2002) (proposed rule implementing SEVIS); 67 FR 44343 (July 1, 2002) (interim rule for schools to apply for preliminary enrollment in SEVIS); 67 FR 60107 (Sept. 25, 2002) (interim rule for certification of schools applying for enrollment in SEVIS); 67 FR 76256 (Dec. 11, 2002) (DHS's final rule implementing SEVIS); 67 FR 76307 (Dec. 12, 2002) (DOS interim rule implementing SEVIS).

In accordance with section 641(e) of IIRIRA, as amended, 8 U.S.C. 1372(e), which directs that this information collection system be self-funded by aliens in those visa classifications, DHS proposes to set the amount of the fee and outline the regulatory provisions associated with such a fee.

What Does This Rule Propose To do?

Based partly on a fee study of the costs of implementing SEVIS conducted in 2002, and upon the costs of ensuring compliance with the program, this rule proposes to set the regular fee at \$100. Section 641(e)(3) of IIRIRA provides that aliens applying for a J-1 visa as a participant in an exchange program sponsored by the Federal Government are exempt from the fee. Under section 641(e) of IIRIRA, as amended by section 110 of the Making Appropriations for the Government of the District of Columbia and Other Activities Chargeable in Whole or in Part Against the Revenues of Said District of Columbia for the Fiscal Year Ending September 30, 2001 and for Other Purposes, Pub. L. 106-553 dated December 21, 2000, aliens who are applying for a J-1 visa as an au pair, camp counselor, or participant in a summer work travel program are subject to a reduced fee of not more than \$35. DHS is also proposing in this rule that dependent aliens (F-2, J-2, and M-2) are exempt from paying a fee in connection with that status.

Aliens who are subject to the fee will pay the fee prior to being granted an F-1, F-3, J-1, M-1 or M-3 nonimmigrant visa (or, for aliens who are exempt from the visa requirement under section 212(d)(4) of the Act, prior to their admission to the United States). Similarly, aliens already in the United States who apply for a change of status