

assistance to their prospective students or exchange visitors if they choose to do so. The students and exchange visitors impacted by this rule are not considered small entities as that term is defined in 5 U.S.C. 601(6).

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 by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. This rule levies a fee in the amount of \$100 on nonimmigrant students and exchange visitors and a fee in the amount of \$35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review. In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs.

The costs to the public that this rule imposes are primarily the fees that must be paid by nonimmigrant students and exchange visitors that will be processed through the SEVIS system and admitted to the United States. DHS is required by section 641 of Public Law 104-208 to collect a fee to recover the cost of collecting student information electronically. On December 21, 1999, a

fee of \$95 was proposed in the **Federal Register** to support the SEVIS (64 FR 71323). After careful evaluation of the costs to design, develop, and maintain the statutorily mandated information collection system, DHS is now proposing a fee of \$100 for nonimmigrant students and exchange visitors, and \$35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States. The fees imposed under this proposed rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program as well as provide for the resources necessary to ensure compliance with the regulations.

As discussed previously in the introductory section of this rule, approximately 362,400 F-1 students are expected to enter the United States in Fiscal Year 2004. Another 312,400 J-1 exchange visitors are also expected to enter the United States. Based upon historical trends, it is further estimated that as many as 10% may subsequently violate the terms of their non-immigrant status each year. However, in an effort to compensate for the possible inaccuracies of earlier systems and data the estimated number of violators has been reduced to 5%. Using this percentage, DHS estimates 33,750 foreign students and exchange visitors might be subject to enforcement actions on an annual basis although no actual measure of the number of student and exchange visitors who have violated their immigration status has ever been conducted. In addition to the personnel, system operations and maintenance, and training costs that these fees will support, and while remaining within the initial \$100 statutory limitation on the fee amount, DHS has recalculated the fee to cover the costs of 61 SEVIS liaison officers and 182 other ICE officers in the field. Based upon estimates of the total foreign student population and estimates of the total man-hours that will be needed to ensure compliance with the SEVIS requirements, DHS has estimated that this number of officers will constitute approximately 60% of the personnel resources needed for compliance efforts.

The costs to DHS of either not assessing the fees under this rule or assessing the fees at a lesser amount would be the inability to continue to implement and operate the SEVIS system, if no fees were imposed, or at a minimum, a more limited ability to ensure compliance with by foreign students and exchange visitors with the requirements of the SEVIS system.

Additionally, if the fees are not imposed or are imposed at a lesser amount the public could incur the intangible cost of reduced security as a result of a more limited ability to ensure compliance. The imposition of this fee also shifts the burden of funding program operating and compliance efforts to the population actually utilizing the SEVIS system. If the fees are not imposed or are imposed at a lesser amount, the general public, rather than the population of SEVIS users, would be responsible for bearing the cost of program implementation and conformity; this would be explicitly contrary to the directive of section 641 of Public Law 104-208, to collect a fee to recover the costs of SEVIS to the government.

The costs of this rule, the fees imposed on foreign students and exchange visitors, are outweighed by the overall benefits to the public that SEVIS provides. SEVIS is a vital tool in furthering the protection of the public by: (1) Enhancing the process by which foreign students and exchange visitors gain admission to the United States; and (2) increasing the ability of DHS to track and monitor foreign students and exchange visitors in order to ensure that they arrive in the United States, show up and register at the school or exchange program, and properly maintain their status during their stay as valued guests in this country.

In addition, DHS will collect the fee directly from the student or exchange visitor, rather than placing the burden on the school or exchange program to collect and remit the fee. Thus, this will lessen the burden on schools and exchange programs who will no longer need to take part in the collection of the fee, although they are free to offer assistance to their prospective students or exchange visitors if they choose to do so.

SEVIS provides a proper balance between openness to international students and exchange visitors and the security obtained by enforcing the law. Balanced against the costs and the requirements to collect information electronically, the burden imposed by this regulation appears to DHS to be justified by the benefits.

Executive Order 13132

This rule 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