



BILLING CODE: 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[DHS Docket No. ICEB-2011-0005]

RIN 1653-AA63

Adjustments to Limitations on Designated School Official Assignment and Study by F-2 and M-2 Nonimmigrants

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security proposes to amend its regulations under the Student and Exchange Visitor Program to improve management of international student programs and increase opportunities for study by spouses and children of nonimmigrant students. The proposed rule would grant school officials more flexibility in determining the number of designated school officials to nominate for the oversight of campuses. The rule also would provide greater incentive for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students with F-1 or M-1 nonimmigrant status to enroll in study at an SEVP-certified school so long as any study remains less than a full course of study. F-2 and M-2 spouses and children remain prohibited, however, from engaging in a full course of study unless they apply for, and DHS approves, a change of nonimmigrant status to a nonimmigrant status authorizing such study.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or reach the Mail or Hand Delivery/Courier address listed below in **ADDRESSES** by that date.

ADDRESSES: You may submit comments, identified by DHS Docket No. ICEB-2011-0005, using any one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Student and Exchange Visitor Program, c/o Katherine Westerlund, Policy Chief (Acting), U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW., Stop 5600, Washington, DC 20536-5600.
- Hand Delivery/Courier: Student and Exchange Visitor Program, c/o Katherine Westerlund, Policy Chief (Acting), 2450 Crystal Drive, Century Tower 9th Floor; Arlington, VA 22202, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. Contact telephone number (703) 603-3400.

To avoid duplication, please use only one of these three methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, telephone 703-603-3400, e-mail: SEVP@dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (ICEB-2011-0005), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "ICEB-2011-0005" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the mailing address, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, and click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “ICEB-2011-0005”, click “Search” and then click “Open Docket Folder” in the “Actions” column. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting the Student and Exchange Visitor Program using the **FOR FURTHER INFORMATION CONTACT** information above. Please be aware that anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

II. Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOS	Department of State
DSO	Designated school official
FR	Federal Register
HSPD-2	Homeland Security Presidential Directive No. 2
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act of 1952, as amended
INS	Legacy Immigration and Naturalization Service

IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
OMB	Office of Management and Budget
PDSO	Principal designated school official
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
§	Section symbol
U.S.C.	United States Code
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

III. Background

A. The Student and Exchange Visitor Program

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), operates the Student and Exchange Visitor Program (SEVP), which serves as the central liaison between the U.S. educational community and U.S.

Government organizations that have an interest in information regarding students in F, J and M nonimmigrant status. SEVP manages and oversees significant elements of the process by which educational institutions interact with F, J and M nonimmigrants to provide information about their immigration status to the U.S. Government. ICE uses the Student and Exchange Visitor Information System (SEVIS) to track and monitor schools, participants and sponsors in exchange visitor programs, and F, J and M nonimmigrants, as well as their accompanying spouses and children, while they are in the United States and participating in the United States educational system.

ICE derives its authority to manage these programs from several sources. Under section 101(a)(15)(F)(i) of the Immigration and Nationality Act of 1952, as amended (INA), 8 U.S.C. 1101(a)(15)(F)(i), a foreign student may be admitted to the United States in nonimmigrant status to attend an academic school or language training program (F visa). Similarly, under section 101(a)(15)(M)(i) of the INA, 8 U.S.C. 1101(a)(15)(M)(i),

a foreign student may be admitted to the United States in nonimmigrant status to attend a vocational or other recognized nonacademic institution (M visa). Under section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), a foreign citizen may be admitted into the United States in nonimmigrant status as an exchange visitor (J visa) in an exchange program designated by the Department of State (DOS). An F or M student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of F and/or M students. See 8 U.S.C. 1372; 8 CFR 214.3.

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (codified at 8 U.S.C. 1372), authorized the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, J or M nonimmigrants during the course of their stay in the United States, using electronic reporting technology where practicable. Section 641 of IIRIRA further authorized the Secretary of Homeland Security to certify schools to participate in F or M student enrollment.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, 115 Stat. 272 (USA PATRIOT Act), as amended, provides for the collection of alien date of entry and port of entry information for aliens whose information is collected under 8 U.S.C. 1372. Following the USA PATRIOT Act, the President issued Homeland Security Presidential Directive No. 2 (HSPD-2), requiring the Secretary of Homeland Security to conduct periodic, ongoing reviews of schools certified to accept F, J and/or M nonimmigrants to include checks for compliance with recordkeeping and reporting requirements, and

authorizing termination of institutions that fail to comply. See 37 Weekly Comp. Pres. Docs. 1570, 1571-72 (Oct. 29, 2001).

Thereafter, section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543 (codified at 8 U.S.C. 1762), directed the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1372 and INA section 101(a)(15)(F), (J) and (M), 8 U.S.C. 1101(a)(15)(F), (J) and (M), of all schools¹ approved for attendance by F, J and/or M students within two years of enactment, and every two years thereafter. Accordingly, and as directed by the Secretary, ICE carries out the Department's ongoing obligation to collect data from, certify, review, and recertify schools enrolling F, J and/or M students. The specific data collection requirements associated with these obligations are specified in part in legislation, see 8 U.S.C. 1372(c), and more comprehensively in regulations governing SEVP found at 8 CFR 214.3.

B. Student and Exchange Visitor Information System

ICE's SEVP carries out its programmatic responsibilities through SEVIS, a Web-based data entry, collection and reporting system. SEVIS provides authorized users access to reliable information on F, J and M nonimmigrants. DHS, DOS, and other government agencies, as well as SEVP-certified schools and DOS-designated exchange visitor programs, use SEVIS data to monitor nonimmigrants for the duration of their authorized period of stay in the United States while in F, J, or M nonimmigrant status.

¹ DHS oversees compliance of schools approved for attendance by J nonimmigrants; however, section 502(b) of this the Enhanced Border Security and Visa Entry Reform Act of 2002 assigns oversight of exchange visitor sponsors to the Secretary of State.

ICE requires certified schools and exchange visitor programs to regularly update information on their approved F, J and M nonimmigrants after the nonimmigrants' admission and during their stay in the United States.

SEVIS data are used to verify the continued eligibility of individuals applying for F, J and M nonimmigrant status, to facilitate port of entry screening by U.S. Customs and Border Protection, as well as to assist in the processing of immigration benefit applications, monitoring of nonimmigrant status maintenance and, as needed, facilitating timely removal.

As of October 1, 2012, SEVIS contained active records for the 1,275,285 F and M student or J exchange visitors in the United States on that date. As April 1, 2012, SEVP-certified schools numbered 9,888, and DOS had designated 1,426 sponsors for exchange visitor programs.

C. Importance of International Students to the United States

On September 16, 2011, Secretary of Homeland Security Janet Napolitano announced a "Study in the States" initiative to encourage the best and the brightest international students to study in the United States. The initiative established the DHS Office of Academic Engagement to focus on enhancing coordination between federal agencies dealing with U.S. student visa and exchange visitor programs; expanding and enhancing public engagement with the student, academic, and business communities; and improving current programs for international students and exchange visitors, as well as related programs for international students who have completed their course of study.² In

² See <http://studyinthestates.dhs.gov>.

cooperation with the DHS Office of Academic Engagement, ICE has analyzed and identified problem areas and considered possible solutions, and is now pursuing regulatory improvements to address some of the issues identified through ongoing stakeholder engagement.

This rulemaking was initiated in support of Secretary Napolitano's initiative, and reflects the Department's commitment to enhancing and improving the Nation's nonimmigrant student programs. The proposed rule will improve the capability of schools enrolling F and M students to assist their students in maintaining nonimmigrant status and to provide necessary oversight on behalf of the U.S. Government. The rule will increase the attractiveness of studying in the United States for foreign students by broadening study opportunities for their spouses and improving quality of life for visiting families.

IV. Discussion of Proposed Rule

A. Removing the Limit on DSO Nominations

Designated school officials (DSOs) are essential to making nonimmigrant study in the United States attractive to international students and a successful experience overall. DSOs are regularly employed members of a school administration who are located at the school and generally serve as the main point of contact within the school for F and M students and their spouses and children. See 8 CFR 214.3(l)(1). Consistent with DHS's authorities and responsibilities discussed above, DHS charges DSOs with the responsibility of acting as liaisons to nonimmigrant students on behalf of the schools that employ the DSOs and on behalf of the U.S. Government. Significantly, DSOs are responsible for making information and documents relating to F-1 and M-1

nonimmigrant students, including academic transcripts, available to DHS for the Department to fulfill its statutory responsibilities. 8 CFR 214.3(g).

ICE regulations at 8 CFR 214.3(l)(1)(iii) currently limit to ten (10) the maximum number of DSOs that each certified school may have at each campus at any one time, which includes up to nine DSOs and one Principal Designated School Official (PDSO). This limit was established by the former Immigration and Naturalization Service (INS) in 2002 in order to control access to SEVIS. At the time, however, the INS noted that once SEVIS was fully operational, it might reconsider the numerical limits on the number of DSOs. See 67 FR 76256, 76260. Since SEVIS is now fully operational and equipped to appropriately control access to SEVIS, ICE seeks to revisit the DSO limitation in this proposed rulemaking.

To date, SEVP has certified nearly 10,000 schools with approximately 30,500 DSOs. While the average SEVP-certified school has fewer than three DSOs, SEVP recognizes that F and M students often cluster at schools within states that attract a large percentage of nonimmigrant student attendance within the United States. As such, schools in the seven states with the greatest F and M student enrollment currently represent 55 percent of the overall F and M nonimmigrant enrollment in the United States.³ This has raised concerns within the U.S. educational community that the current DSO limit of ten per campus is too constraining, particularly in schools where F and M students are heavily concentrated or where campuses are in dispersed geographic

³ See SEVP, Student and Exchange Visitor Information System, General Summary Quarterly Review for the quarter ending Mar. 31, 2012 (Apr. 2, 2012), available at http://www.ice.gov/doclib/sevis/pdf/quarterly_rpt.pdf.

locations. The Homeland Security Academic Advisory Council (HSAAC) -- an advisory committee composed of prominent university and academic association presidents, which advises the Secretary and senior DHS leadership on academic and international student issues -- included in its September 20, 2012 recommendations to DHS a recommendation to increase the number of DSOs allowed per school or eliminating the current limit of 10 DSOs per school. Upon review, SEVP has concluded that, in many circumstances, the elimination of a DSO limit may improve the capability of DSOs to meet their liaison, reporting and oversight responsibilities, as required by 8 CFR 214.3(g).

Accordingly, DHS proposes to eliminate the maximum limit of DSOs in favor of a more flexible approach. The proposed rule would not set a maximum number of permissible DSOs, but instead would allow school officials to nominate an appropriate number of DSOs for SEVP approval based upon the specific needs of the school. This proposed rule would not alter SEVP's current authority to approve or reject a DSO or PDSO nomination. See 214.3(l)(2). The proposed rule also would maintain SEVP's authority to withdraw a previous DSO or PDSO designation by a school of an individual. Id. In addition, SEVP would not permit DSO-level access to SEVIS prior to SEVP approval of a DSO nomination because that access would undermine the nomination process and open the SEVIS program to possible misuse. The proposed rule codifies this limitation. See proposed 8 CFR 214.3(l)(1)(iii).

The proposed flexibility in nominating DSOs will permit schools to better meet students' needs as well as the Department's reporting and other school certification requirements.

B. Study by F-2 and M-2 Spouses and Children

This rulemaking also proposes to amend the benefits allowable for the accompanying spouse and children (hereafter referred to as F-2 or M-2 nonimmigrants) of an F-1 or M-1 student. Prior to January 1, 2003, there was no restriction on the classes or course of study that an F-2 or M-2 spouse or child could undertake.

On May 16, 2002, the former INS proposed to prohibit full time study by F-2 and M-2 spouses and to restrict such study by F-2 and M-2 children to prevent an alien who should be properly classified as an F-1 or M-1 nonimmigrant from coming to the United States as an F-2 or M-2 nonimmigrant and, without adhering to other legal requirements, attending school full time. 67 FR 34862, 34871. The INS proposed to permit avocational and recreational study for F-2 and M-2 spouses and children and, recognizing that education is one of the chief tasks of childhood, to permit F-2 and M-2 children to be enrolled full time in elementary through secondary school (kindergarten through twelfth grade). Id. The INS believed it unreasonable to assume that Congress would intend that a bona fide nonimmigrant student could bring his or her children to the United States but not be able to provide for their primary and secondary education. Id.; see also 67 FR 76256, 76266. The INS further proposed that if an F-2 or M-2 spouse wanted to enroll full time in a full course of study, the F-2 or M-2 spouse should apply for and obtain a change of his or her nonimmigrant classification to that of an F-1, J-1, or M-1 nonimmigrant. Id.

The INS finalized these rules on December 11, 2002. 67 FR 76256, codified at 8 CFR 214.2(f)(15)(ii) and 8 CFR 214.2(m)(17)(ii). In the final rule, the INS noted that commenters suggested the INS remove the language “avocational or recreational” from the types of study that may be permitted by F-2 and M-2 dependents, as DSOs may have

difficulty determining what study is avocational or recreational and what is not. In response to the comments, the INS clarified that if a student engages in study to pursue a hobby or if the study is that of an occasional, casual, or recreational nature, such study may be considered as avocational or recreational. 67 FR at 76266.

DHS maintains the long-standing view that an F-2 or M-2 nonimmigrant who wishes to engage in a full course of study in the United States, other than elementary or secondary school study (kindergarten through twelfth grade), should apply for and obtain approval to change his or her nonimmigrant classification to F-1, J-1, or M-1. See 8 CFR 214.2(f)(15)(ii). DHS recognizes, however, that the United States is engaged in a global competition to attract the best and brightest international students to study in our schools. Access of F-2 or M-2 nonimmigrants (totaling approximately 83,932 individuals as of June 2012) to education while in the United States in many instances would enhance the quality of life for these visiting families. The existing limitations on study to F-2 or M-2 nonimmigrant education potentially deter high quality F-1 and M-1 students from studying in the United States.⁴

Accordingly, DHS proposes to relax its prohibition on F-2 and M-2 nonimmigrant study by permitting F-2 and M-2 nonimmigrant spouses and children to engage in study in the United States at SEVP-certified schools that does not amount to a full course of study. Under the proposed rule, F-2 and M-2 nonimmigrants would be permitted to

⁴ See Letter of April 13, 2011 from NAFSA: Association of International Educators to DHS General Counsel Ivan Fong, available in the federal rulemaking docket for this rulemaking at www.regulations.gov, requesting that DHS eliminate the limitation on study by F-2 spouses to only “avocational or recreational” study because the limitation “severely restricts the opportunities for F-2 dependents, such as spouses of F-1 students, to make productive use of their time in the United States.”

enroll in less than a “full course of study,” as defined at 8 CFR 214.2(f)(6)(i)(A) through (D) and 8 CFR 214.2(m)(9)(i)-(iv), at an SEVP-certified school and in study described in 8 CFR 214.2(f)(6)(i)(A) through (D) and 8 CFR 214.2(m)(9)(i)-(iv).⁵ As a point of clarification, although 8 CFR 214.2(f)(6)(i)(B) and 8 CFR 214.2(m)(9)(i) define full course of study at an undergraduate college or university (F nonimmigrants) or at a community college or junior college (M nonimmigrants) to include lesser course loads if needed to complete a course of study during a current term, this proposed rule would view such study as authorized for F-2 or M-2 nonimmigrants. Over time, such enrollment in less than a full course of study could lead to attainment of a degree, certificate or other credential. To maintain valid F-2 or M-2 status, however, the F-2 or M-2 nonimmigrant would not be permitted at any time to enroll in a total number of credit hours that would amount to a “full course of study,” as defined by regulation.

In addition, the proposed change would limit F-2 and M-2 study, other than avocational or recreational study, to SEVP-certified schools. This requirement would make it more likely that the educational program pursued by the F-2 or M-2 nonimmigrant is a bona fide program and that studies at the school are unlikely to raise national security concerns, in light of their successful completion of the SEVP certification process. Under the proposed rule, the F-2 or M-2 nonimmigrants could still participate full-time in avocational or recreational study (i.e., hobbies and recreational

⁵ As a general matter, a full course of study for an F-1 academic student in an undergraduate program is 12 credit hours per academic term. Similarly, a full course of study for an M-1 vocational student consists of 12 credit hours per academic term at a community college or junior college. For other types of academic or vocational study, the term “full course of study” is defined in terms of “clock hours” per week depending on the specific program. See 8 CFR 214.2(f)(6)(i)(A)-(D) and 8 CFR 214.2(m)(9)(i)-(iv).

studies). If an F-2 or M-2 nonimmigrant wanted to enroll in a full course of academic study, however, he or she would need to apply for and obtain approval to change his or her nonimmigrant classification to F-1, J-1 or M-1. Similarly, as noted, the proposed rule would not change existing regulations allowing full-time study by children in elementary or secondary school (kindergarten through twelfth grade).

This proposed rule would not change the record keeping and reporting responsibilities of DSOs with regard to F-2 or M-2 nonimmigrants to DHS. DSOs at the school the F-1 or M-1 student attends currently have reporting responsibility for maintaining F-2 or M-2 nonimmigrant personal information in SEVIS. See 8 CFR 214.3(g)(1). In addition, to facilitate maintenance of F or M nonimmigrant status and processing of future applications for U.S. immigration benefits, F and M nonimmigrants are encouraged to retain personal copies of the information supplied for admission, visas, passports, entry, and benefit-related documents indefinitely.⁶ Similarly, under this proposed rule, DHS recommends an F-2 or M-2 nonimmigrant should separately maintain (i.e., obtain and retain) his or her academic records. Maintenance of these records is essential to verify whether or not the enrollment is a full course of study and protects the F-2 or M-2 nonimmigrant's ability to prove maintenance of status and eligibility to apply for a change of status at a future time, should that be desired, while not adding to the reporting responsibilities of DSOs. As F and M nonimmigrants already

⁶ ICE encourages retention of these records in the Supporting Statement for SEVIS, OMB No. 1653-0038, Question 7(d). Additionally, recordkeeping by F and M nonimmigrants is encouraged in existing regulation, in particular for the Form I-20, Certificate of Eligibility for Nonimmigrant Student (F-1 or M-1) Status. *See* 8 CFR 214.2(f)(2) and 214.2(m)(2). Moreover, nonimmigrant students may wish to retain a copy of the Form I-901, Fee Remittance for Certain F, J, and M Nonimmigrants, as proof of payment. *See generally* 8 CFR 214.13(g)(3).

are encouraged to keep a number of immigration-related records, the suggested additional maintenance of academic records in an already existing file of immigration records would impose minimal marginal cost. However, DHS requests comment on the burden of storing this additional record. This proposed rule would not extend F-2 or M-2 nonimmigrants' access to any other nonimmigrant benefits beyond those specifically identified in regulations applicable to F-2 or M-2 nonimmigrants. See 8 CFR 214.2(f)(15) and 8 CFR 214.2(m)(17).

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Executive Orders 13563 and 12866: Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a “significant regulatory action,” although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation.

1. Summary

The proposed rule would eliminate the limit on the number of DSOs a school may have and establish eligibility for F-2 and M-2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. If a particular school does not wish to add additional DSOs, this rule would impose no additional costs on that school. Based on feedback from the SEVP-certified schools, however, DHS believes up to 88 schools may choose to take advantage of this flexibility and designate additional DSOs. These SEVP-certified schools would incur costs related to current DHS DSO training and documentation requirements. DHS estimates the total 10-year discounted cost of allowing additional DSOs to be approximately \$127,000 at a seven percent discount rate and approximately \$150,000 at a three percent discount rate. Regarding the provision of the rule that would establish eligibility for less than a full course of study by F-2 and M-2 nonimmigrants, DHS is once again providing additional flexibilities. As this rule would not require the F-2 or M-2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements, DHS does not believe there are any costs associated with establishing eligibility for F-2 and M-2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools.

2. Designated School Officials

The only anticipated costs for SEVP-certified schools to increase the number of DSOs above the current limit of ten per school or campus derive from the existing requirements for the training and reporting to DHS of additional DSOs. DHS anticipates the number of schools that will avail themselves of this added flexibility will be relatively small. As of April 2012, there are 9,888 SEVP-certified schools (18,733 campuses), with approximately 30,500 total DSOs, and an average of 3.08 DSOs per school. However,

there are only 88 SEVP-certified schools that currently employ the maximum number of DSOs.

DHS is unable to estimate with precision the number of additional DSOs schools may choose to add. While some of the 88 SEVP-certified schools that currently employ the maximum number of DSOs may not add any additional DSOs, others may add several additional DSOs. DHS's best estimate is that these 88 SEVP-certified schools will on average designate three additional DSOs, for a total of 264 additional DSOs. DHS estimates that current training and documentation requirements for a DSO to begin his or her position equate to seven hours total in the first year. DHS does not track wages paid to DSOs; however, according to the U.S. Department of Labor, Bureau of Labor Statistics, the average wage rate for the occupation "Office and Administrative Support Workers, All Other"⁷ is estimated to be \$15.67 per hour.⁸ DHS welcomes public comments as to whether there is any additional training beyond the already identified 7 hours, that may be required as a result of this proposed rule, and also whether the average wage rate used to calculate the costs for DSOs is reasonable. When the costs for employee benefits such as paid leave and health insurance are included, the full cost to the employer for an hour of DSO time is estimated at \$21.94.⁹ Therefore, the estimated burden hour cost as a result of designating 264 additional DSOs is estimated at \$40,545

⁷ The existing Paperwork Reduction Act control number OMB No. 1653-0038 for SEVIS uses the occupation "Office and Administrative Support Workers, All Other" as a proxy for DSO employment.

⁸ May 2010 Occupational Employment and Wage Estimates, National Cross-Industry Estimates, "43-9799 Office and Administrative Support Workers, All Other*," Hourly Mean "H-mean," Retrieved Mar. 12, 2012, from http://www.bls.gov/oes/oes_dl.htm.

⁹ Employer Costs for Employee Compensation, Dec. 2010, Retrieved Mar. 12, 2012, from http://www.bls.gov/news.release/archives/ecec_03092011.pdf. Calculated by dividing total private employer compensation costs of 27.75 per hour by average private sector wage and salary costs of \$19.64 per hour (yields a benefits multiplier of approximately 1.4 X wages).

in the first year (7 hours X 264 DSOs X \$21.94). On a per school basis, DHS expects these SEVP-certified schools to incur an average of \$460 dollars in costs in the initial year (7 hours X 3 new DSOs per school X \$21.94). DHS notes that there are no recurrent annual training requirements mandated by DHS for DSOs once they have been approved as a DSO.

After the initial year, DHS expects the SEVP-certified schools that designate additional DSOs to incur costs for replacements, as these 264 new DSOs experience normal turnover. Based on information from the Bureau of Labor Statistics, we estimate an average annual turnover rate of approximately 36 percent.¹⁰ Based on our estimate of 264 additional DSOs as a result of this rulemaking, we expect these schools will designate 95 replacement DSOs annually (264 DSOs X 36% annual turnover) in order to maintain these 264 additional DSOs. As current training and documentation requirements are estimated at seven hours per DSO, these SEVP-certified schools would incur total additional costs of \$14,590 annually (7 hours X 95 replacement DSOs X \$21.94) after the initial year. On a per school basis, DHS expects these schools to incur an average of \$165 dollars of recurring costs related to turnover after the initial year (7 hours X 3 new DSOs per school X 36% annual turnover X \$21.94).

This rule will address concerns within the U.S. education community that the current DSO limit of 10 is too constraining. For example, allowing schools to request additional staff able to handle DSO responsibilities will increase flexibility in school

¹⁰ Job Openings and Labor Turnover – Jan. 2011, page 5, Retrieved Mar. 12, 2012 from http://www.bls.gov/news.release/archives/jolts_03112011.pdf reported that for 2010, annual total separations were 35.7 percent of employment.

offices and enable them to better manage their programs. This flexibility is particularly important in schools where F and M nonimmigrants are heavily concentrated or where instructional sites are in dispersed geographic locations. It will also assist schools in coping with seasonal surges in data entry requirements (e.g., start of school year reporting).

3. F-2 and M-2 Nonimmigrants

As of June 2012, SEVIS records indicate that there are 83,354 F-2 nonimmigrants in the United States, consisting of approximately 54 percent spouses and 46 percent children. Though both spouses and children may participate in study that is less than a full course of study at SEVP-certified schools under the proposed rule, DHS assumes that spouses are more likely to avail themselves of this opportunity because most children are likely to be enrolled full-time in elementary or secondary education (kindergarten through twelfth grade). Though there may be exceptions to this assumption, for example, a child in high school taking a college course, the majority of F-2 nonimmigrants benefitting from this provision are likely to be spouses. DHS only uses this assumption to assist in estimating the number of F-2 nonimmigrants likely to benefit from the proposed rule, which could be as high as 45,011 ($83,354 \times 54\%$), if 100 percent of F-2 spouses participate, but is likely to be lower as DHS does not expect that all F-2 spouses would take advantage of the opportunity. DHS requests comment on these assumptions and estimates. DHS does not believe there are any direct costs associated with establishing eligibility for F-2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools. The rule would not require the F-2 nonimmigrant to submit

any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements.

As of June 2012, SEVIS records indicate that there are 578 M-2 nonimmigrants in the United States. Pursuant to this rulemaking, these M-2 spouses and children would be eligible to take advantage of the option to participate in study that is less than a full course of study at SEVP-certified schools. Approximately 39 percent of M-2 nonimmigrants are spouses and 61 percent are children. Again, DHS assumes that spouses would comprise the majority of M-2 nonimmigrants to benefit from this provision. This number could be as high as 225 M-2 nonimmigrants ($578 \times 39\%$), but is likely to be lower as DHS does not expect that all M-2 spouses would take advantage of the opportunity. DHS requests comment on these assumptions and estimates. Under the same procedures governing F-2 nonimmigrants, the M-2 nonimmigrants would not be required to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements.

The rule would provide greater incentive for international students to study in the United States by permitting accompanying spouses and children of academic and vocational nonimmigrant students in F-1 or M-1 status to enroll in study at a SEVP-certified school if not a full course of study. DHS recognizes that the United States is engaged in a global competition to attract the best and brightest international students to study in our schools. The ability of F-2 or M-2 nonimmigrants to have access to education while in the United States is in many instances central to maintaining a satisfactory quality of life for these visiting families.

3. Conclusion

The proposed rule would eliminate the limit on the number of DSOs a school may have and establish eligibility for F-2 and M-2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. If a particular school does not wish to add additional DSOs, this rule would impose no additional costs on that school. DHS believes up to 88 schools may choose to take advantage of this flexibility and designate additional DSOs. These SEVP-certified schools would incur costs related to current DHS DSO training and documentation requirements; DHS estimates the total 10-year discounted cost to be approximately \$127,000 at a seven percent discount rate and approximately \$150,000 at a three percent discount rate. DHS does not believe there are any costs associated with establishing eligibility for F-2 and M-2 nonimmigrants to engage in less than full courses of study at SEVP-certified schools as this rule would not require the F-2 or M-2 nonimmigrant to submit any new documentation or fees to SEVIS or the SEVP-certified school to comply with any DHS requirements.

The table below summarizes the total costs and benefits of the proposed rule to allow additional DSOs at schools and permit accompanying spouses and children of nonimmigrant students of F-1 or M-1 status to enroll in study at a SEVP-certified school if not a full course of study. We welcome public comments that specifically address the nature and extent of any potential economic impacts of the proposed amendments that we may not have identified.

	DSOs	F-2 and M-2 Nonimmigrants	Total Rulemaking
10-Year Cost, Discounted at 7%	\$127,000	\$0	\$127,000
Monetized Benefits	N/A	N/A	N/A

Non-monetized Benefits	Increased flexibility in school offices to enable them to better manage their programs.	Greater incentive for international students to study in the U.S.	
Net Benefits	N/A	N/A	N/A

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule would eliminate the limit on the number of DSOs a school may nominate and permits F-2 and M-2 nonimmigrants to engage in less than a full course of study at SEVP-certified schools. Although some of the schools impacted by these proposed changes may be considered as small entities as that term is defined in 5 U.S.C. 601(6), the effect of this rule would be to benefit those schools by expanding their ability to nominate DSOs and to enroll F-2 and M-2 nonimmigrants for less than a full course of study.

In the subsection above, DHS has discussed the costs and benefits of this rule. The purpose of this rule is to provide additional regulatory flexibilities, not impose costly mandates on small entities. DHS again notes that the decision by schools to avail themselves of additional DSOs or F-2 or M-2 nonimmigrants who wish to pursue less than a full course of study is an entirely voluntary one and schools will do so only if the benefits to them outweigh the potential costs. In particular, removing the limit on the number of DSOs a school may designate allows schools the flexibility to better cope with

seasonal surges in data entry requirements due to start of school year reporting.

Accordingly, DHS certifies this rule will not have a significant economic impact on a substantial number of small entities.

DHS, however, welcomes comments on these conclusions. Members of the public should please submit a comment, as described in this proposed rule under “Public Participation,” if they think that their business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it. It would be helpful if commenters provide DHS with as much of the following information as possible. Is the commenter's school currently SEVP-certified? If not, does the school plan to seek certification? Please describe the type and extent of the direct impact on the commenter's school. Please describe any recommended alternative measures that would mitigate the impact on a small school.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the SEVP at the FOR FURTHER INFORMATION contact information above. The Department will not retaliate against small entities that question or complain about this rule or any policy or action of the SEVP.

D. Collection of Information

This information collection is covered under the existing Paperwork Reduction

Act control number OMB No. 1653-0038 for the Student and Exchange Visitor Information System (SEVIS). This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

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 (adjusted for inflation) 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.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order, because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials,

performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

U.S. Department of Homeland Security Management Directive (MD) 023-01 establishes procedures that the Department and its components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR Parts 1500–1508. CEQ regulations allow federal agencies to establish categories of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023-01 lists the Categorical Exclusions that the Department has found to have no such effect. MD 023-01 app. A tbl.1.

For an action to be categorically excluded, MD 023-01 requires the action to satisfy each of the following three conditions:

- (1) The entire action clearly fits within one or more of the Categorical Exclusions;
- (2) The action is not a piece of a larger action; and
- (3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023-01 app. A § 3.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023-01 requires the administrative record to reflect consideration of these conditions. MD 023-01 app. A § 3.B.

Here, the proposed rule would amend 8 CFR parts 214.2 and 214.3 relating to the U.S. Immigration and Customs Enforcement Student and Exchange Visitor Program. This proposed rule would remove the regulatory cap of ten designated school officials per campus participating in the SEVP and would permit certain dependents to enroll in less than a full course of study at SEVP-certified schools.

ICE has analyzed this proposed rule under MD 023-01. ICE has made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule clearly fits within the Categorical Exclusion found in MD 023-01, Appendix A, Table 1, number A3(d): “Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.” This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

ICE seeks any comments or information that may lead to the discovery of any significant environmental effects from this proposed rule.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

For the reasons discussed in the preamble, DHS proposes to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 214 — NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec.643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

2. In § 214.2 revise paragraph (f)(15)(ii) and paragraph (m)(17)(ii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(15) * * *

(i) * * *

(ii) Study.

(A) F-2 post-secondary/vocational study.

(1) Authorized Study at SEVP-Certified Schools. An F-2 spouse or F-2 child may enroll in less than a full course of study, as defined in 8 CFR 214.2(f)(6)(i)(A)-(D) and 8 CFR 214.2(m)(9)(i)-(iv), in any course of study described in 8 CFR 214.2(f)(6)(i)(A)-(D) or 214.2(m)(9)(i)-(iv) at an SEVP-certified school. Notwithstanding 8 CFR 214.2(f)(6)(i)(B) and 8 CFR 214.2(m)(9)(i), study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the F-2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An F-2 spouse or F-2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraphs (9) and (10) of this subsection.

(2) Full Course of Study. Subject to paragraph (f)(15)(ii)(B) and (18), an F-2 spouse and child may engage in a full course of study only by applying for and obtaining a change of status to F-1, M-1 or J-1 nonimmigrant status, as appropriate, before beginning a full course of study. However, an F-2 spouse and child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) F-2 elementary or secondary study. An F-2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An F-2 spouse and child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (f)(15)(ii)(A)(2) or (B) of this section.

* * * * *

(m) * * *

(17) * * *

(i) * * *

(ii) Study.

(A) M-2 post-secondary/vocational study.

(1) Authorized Study at SEVP-Certified Schools. An M-2 spouse or M-2 child may enroll in less than a full course of study, as defined in 8 CFR 214.2(f)(6)(i)(A)-(D) or 214.2(m)(9)(i)-(v), in any course of study described in 8 CFR 214.2(m)(9)(i)-(v) at an SEVP-certified school. Notwithstanding 8 CFR 214.2(f)(6)(i)(B) and 8 CFR 214.2(m)(9)(i), study at an undergraduate college or university or at a community college or junior college is not a full course of study solely because the M-2 nonimmigrant is engaging in a lesser course load to complete a course of study during the current term. An M-2 spouse or M-2 child enrolled in less than a full course of study is not eligible to engage in employment pursuant to paragraph (14) of this subsection.

(2) Full Course of Study. Subject to paragraph (m)(17)(ii)(B), an M-2 spouse and child may engage in a full course of study only by applying for and obtaining a change of status to F-1, M-1, or J-1 status, as appropriate, before beginning a full course of study. However, an M-2 spouse and M-2 child may engage in study that is avocational or recreational in nature, up to and including on a full-time basis.

(B) M-2 elementary or secondary study. An M-2 child may engage in full-time study, including any full course of study, in any elementary or secondary school (kindergarten through twelfth grade).

(C) An M-2 spouse or child violates his or her nonimmigrant status by enrolling in any study except as provided in paragraph (m)(17)(ii)(A) or (B) of this section.

* * * * *

3. Revise section 214.3 paragraph (l)(1)(iii) to read as follows:

§214.3 Approval of schools for enrollment of F and M nonimmigrants.

(l) ***

(1) * * *

(i) * * *

(ii) * * *

(iii) School officials may nominate as many DSOs in addition to PDSOs as they determine necessary to adequately provide recommendations to F and/or M students enrolled at the school regarding maintenance of nonimmigrant status and to support timely and complete recordkeeping and reporting to DHS, as required by this section. School officials must not permit a DSO or PDSO nominee access to SEVIS until DHS approves the nomination.

* * * * *

Rand Beers,
Acting Secretary of Homeland Security.

[FR Doc. 2013-27898 Filed 11/20/2013 at
8:45 am; Publication Date: 11/21/2013]