

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

#### 8 CFR Parts 103 and 214

[DHS No. ICEB–2008–0004]

RIN 1653–AA54

#### Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F or M Nonimmigrant Students

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

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Homeland Security (DHS) is proposing to amend the Student and Exchange Visitor Program (SEVP) school certification petition fee and the application fee for nonimmigrants seeking to become academic (F visa) or vocational (M visa) students, or exchange visitors (J visa). This proposed rule would adjust the fees for schools seeking to admit F or M students; adjust the fees paid by individual F, M or J nonimmigrants; implement mandatory review of fees collected by SEVP; set the fee for submitting a school certification petition at \$1700, plus \$655 for each site; set the fee for each F or M student at \$200; for most J exchange visitors at \$180; and for exchange visitors seeking admission as au pairs, camp counselors, and summer work/travel program participants at \$35. DHS proposes to make this rule effective at the beginning of fiscal year 2009, on October 1, 2008.

DHS proposes also to establish oversight and recertification of schools for attendance by F or M students. The proposed rule would establish procedures for schools to submit their recertification petitions, add a provision allowing a school to voluntarily withdraw from its certification, and clarify procedures for school operation

with regard to F or M students during recertification and following a denial of recertification or a withdrawal of certification. Further, the proposed rule would remove obsolete provisions used prior to implementation of the Student and Exchange Visitor Information System (SEVIS), a Web-enabled database that provides current information on F, M and J nonimmigrants in the United States.

**DATES:** Comments must be submitted on or before June 20, 2008.

**ADDRESSES:** You may submit comments, which must be identified by DHS docket number ICEB–2008–0004, using one of the following methods:

*Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Office of Policy, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, 425 I St., NW., Room 7257, Washington, DC 20536.

*Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail. Contact telephone number is (202) 514–8693.

*Facsimile:* Comments may be submitted by facsimile at (866) 466–5370.

**FOR FURTHER INFORMATION CONTACT:** Louis Farrell, Director, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, Department of Homeland Security; Chester Arthur Building, 425 I St., NW., Suite 6034, Washington, DC 20536; telephone number (202) 305–2346. This is not a toll-free number. Program information can be found at <http://www.ice.gov/sevis/>.

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ABC	Activity-based Costing
CBP	U.S. Customs and Border Protection
CEU	Compliance Enforcement Unit
CFO	Chief Financial Officer
DHS	Department of Homeland Security
DOS	Department of State
DSO	Designated school official
EBSVERA	Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173; May 14, 2002
FASAB	Federal Accounting Standards Advisory Board
HSPD–2	Homeland Security Presidential Directive—2
ICE	U.S. Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996

INA Immigration and Nationality Act of 1952  
 INS Immigration and Naturalization Service  
 IRM Information Resources Management  
 IT information technology  
 NAICS North American Industry Classification System  
 NOIW Notice of Intent to Withdraw  
 OMB Office of Management and Budget  
 PDSO Principal designated school official  
 RFA Regulatory Flexibility Act  
 RFE Request for evidence  
 SBA Small Business Administration  
 SCB School Certification Branch  
 SEVIS Student and Exchange Visitor Information System  
 SEVP Student and Exchange Visitor Program  
 SFFAS FASAB Statement of Federal Financial Accounting Standard No 4: Managerial Cost Accounting Concepts and Standards for the Federal Government  
 SSA Social Security Administration  
 UMRA Unfunded Mandates Reform Act of 1995  
 USCIS U.S. Citizenship and Immigration Services

## I. Public Participation

Interested persons are invited to comment on this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS invites comments related to the potential economic, environmental, or Federalism effects that might result from this proposed rule. Comments that will most assist DHS will reference a specific portion of this proposed rule and preamble by the identification number at the heading of the specific section being addressed. The reason for any recommended change should be explained. Data, information, and the authority that supports the recommended change should be included.

DHS has entered into the docket for this rulemaking the SEVP Fee Study, and Initial Regulatory Flexibility Act Analysis: Impact on Small Schools of the Change in Fees for Certification and Institution of Recertification by the Student and Exchange Visitor Program.

DHS welcomes comments on the information and analyses in these supporting documents. The budget methodology software used in computing the SEVIS fees is a commercial product licensed to SEVP, which may be accessed on-site by appointment by calling (202) 305-2346.

*Instructions:* All submissions received must include the agency name and Department of Homeland Security Docket No. ICEB-2008-0004. All comments received (including any personal information provided) will be posted without change to <http://www.regulations.gov>. See **ADDRESSES**, above, for methods to submit comments.

Mailed submissions may be paper, disk, or CD-ROM.

Comments may be viewed online at <http://www.regulations.gov>, or in person at U.S. Immigration and Customs Enforcement, Department of Homeland Security, 425 I St., NW., Room 7257, Washington, DC 20536, by appointment.

## II. Background

### A. Student and Exchange Visitor Program Legal Authority and Requirements

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 into the United States in nonimmigrant status to attend an academic or language training school (F visa). 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 into the United States in nonimmigrant status to attend a vocational education school (M visa). 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 or M students. 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 sponsored by the Department of State (DOS).

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C, 110 Stat. 3009-546 (September 30, 1996), authorized the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, M, or J nonimmigrants during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable. IIRIRA further authorized DHS to certify schools participating in F or M student enrollment.

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, 115 Stat. 272 (October 26, 2001), provided that alien date of entry and port of entry information be collected. On October 30, 2001, the President issued Homeland Security Presidential Directive No. 2 (HSPD-2) requiring DHS to conduct periodic, ongoing recertification of all schools certified to accept F or M students. 37 Weekly Comp. Pres. Docs. 1570, 1571-72 (October 29, 2001).

The Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Public Law 107-173, 116 Stat. 543 (May 14, 2002), 8 U.S.C. 1762, provided for DHS to recertify all schools approved for attendance by F or M students within two years of enactment. Further, EBSVERA provided that DHS conduct an additional recertification of these schools every two years thereafter. Data collection requirements for SEVP certification, oversight and recertification of schools authorized to enroll F or M students are not specified in legislation, but are enumerated by regulation. 8 CFR 214.3, 214.4.

This proposed rule would amend DHS regulations governing certification, oversight and recertification of schools by SEVP for attendance by F or M students. The proposed rule would establish procedures for schools to submit their recertification petitions, add a provision allowing a school to voluntarily withdraw from its certification, clarify procedures for school operation with regard to F or M students during recertification and following a withdrawal of certification, and remove obsolete provisions used prior to implementation of SEVIS. The proposed rule would adjust the SEVP certification fee and student application fee (I-901 SEVIS fee) to reflect existing operating costs, program requirements, and planned enhancements.

### B. Student and Exchange Visitor Information System

SEVP administers SEVIS, a Web-based data entry, collection and reporting system. SEVIS provides authorized users access to reliable information on F, M and J nonimmigrants, and their dependents. DHS, DOS, and other government agencies, as well as SEVP-certified schools and DOS-designated exchange visitor programs, use SEVIS data.

Awareness of the information flow for F and M students is critical to understanding the use of SEVIS. A nonimmigrant must apply to an SEVP-certified school and be accepted for enrollment. From the information provided by the nonimmigrant, the school enters student information into SEVIS and issues a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. The nonimmigrant must submit an approved Form I-20 when applying for an F or M visa.

Similarly, a nonimmigrant must apply to a DOS-designated exchange visitor program and be accepted for enrollment as a basis for applying for a J exchange visitor visa. From the information provided by the nonimmigrant, the

exchange visitor program enters exchange visitor information into SEVIS and issues a Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. The nonimmigrant must submit an approved Form DS-2019 when applying for a J visa.

U.S. Customs and Border Protection (CBP) inspectors will enter data into DHS systems related to the F, M or J admission to the United States. These systems interface with SEVIS, providing SEVP with these data.

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

The SEVIS database enables DHS and DOS to efficiently administer their approval (i.e., certification and designation, respectively) and oversight processes of schools and programs wishing to benefit from enrolling nonimmigrants. SEVIS assists law enforcement agencies in tracking and monitoring F, M and J nonimmigrant status and apprehending violators before they can potentially endanger the national security of the United States. SEVIS assists government benefit and service providers to better serve their F, M and J nonimmigrant applicants. Finally, SEVIS enables schools and exchange visitor programs to instantaneously transmit electronic information and changes in required information on F, M and J nonimmigrants to U.S. Immigration and Customs Enforcement (ICE) and DOS throughout their stay in the United States. These include required notifications, reports, and updates to personal data.

SEVIS data are used continually to qualify individuals applying for F, M and J status and to facilitate port of entry screening by CBP; to process benefit applications; to monitor nonimmigrant status maintenance; and, as needed, to facilitate timely removal.

### C. Development of SEVP

On July 1, 2002, selected schools that had been previously approved to enroll F and M students began to receive preliminary certification in SEVIS. After September 25, 2002, all schools became eligible to petition for certification in SEVIS. By February 15, 2003, schools were required to be certified in SEVIS in order to be authorized to issue initial Forms I-20. As of August 1, 2003, schools and exchange visitor programs were required to enter all F, M and J nonimmigrant data into SEVIS.

As of February 1, 2008, SEVIS contained 1,016,029 active records on F, M, and J students and exchange visitor.

More than 9,000 schools are currently SEVP-certified; more than 1,400 exchange visitor programs are DOS-designated.

SEVP levies two fees to recoup the cost of DHS and DOS program operations and services, as well as to maintain and enhance SEVIS. The fees include: The I-901 SEVIS fee for the registration of student and exchange visitor information in SEVIS, and the Certification Fee for schools and school systems to accept nonimmigrant students participating in the F and M visa programs.

On July 1, 2004, DHS promulgated a final rule that required the collection of information relating to F, M and J nonimmigrants and providing for the collection of the required fee to defray cost. 69 FR 39814. That rule provided for the collection of a fee to be paid by foreign citizens seeking nonimmigrant status as F or M students or J exchange visitors.

HSPD-2 requires DHS to conduct ongoing oversight and periodic recertification of all schools certified to accept F and/or M students. On September 25, 2002, the Department of Justice published an interim rule that implemented the certification process for schools to receive authorization to enroll F or M nonimmigrant students in SEVIS, including the fees charged for this service and the accompanying site visit. 67 FR 60107. This certification process includes an ongoing commitment by schools to maintain current and accurate records in SEVIS on their F and M students, as well as on their own operations.

Congress required DHS to recertify all schools approved for attendance by F or M students within two years of the passage of EBSVERA. EBSVERA section 502(a), 8 U.S.C. 1762(a). Congress also required that schools be recertified every two years to confirm that the schools remain eligible for certification and are in compliance with recordkeeping, retention and reporting requirements.

Funding for recertification will be provided by a portion of the I-901 SEVIS fee levied on F and M students.

In establishing the recertification process, SEVP conducted a detailed business process analysis to document the recertification business process; developed standard operating processes for recertification; developed cycle time measurements of the proposed processes; and estimated the level of effort required to conduct compliance reviews of certified schools. Based on this analysis, SEVP developed the projected cost for recertification.

## III. Adjustment of SEVP Fees

### A. Rationale for New Fee Schedule

The proposed amended fees are driven by two factors: The need to comply with statutory and regulatory requirements that SEVP review its fee structure every two years to ensure that the cost of the services that are provided are fully captured by fees assessed on those receiving the services; and the need to enhance SEVP capability to achieve its legislative goals to support national security and counter immigration fraud through the development and implementation of critical system and programmatic enhancements.

This proposed rule would establish a fee structure that incorporates the added cost of school recertification into the I-901 SEVIS fee that is paid by applicants for F and M status, allowing SEVP to capture the entire cost for activities related to recertification. The proposed rule would allow SEVP to fully fund activities and institute critical near-term program and system enhancements in a manner that fairly allocates cost and acknowledges defined performance goals.

### B. SEVP Funding Authority

The Secretary is authorized to collect fees for SEVP from prospective F and M students and J exchange visitors. IIRIRA section 641(e)(1), as amended, 8 U.S.C. 1372(e)(1). Fees for specific classes of aliens were statutorily limited, but the Secretary was authorized to revise those fees. IIRIRA section 641(e)(4)(A), (g)(2), as amended, 8 U.S.C. 1372(e)(4)(A), (g)(2). These fees are deposited as offsetting receipts into the Immigration Examinations Fee Account and are available to the Secretary until expended for the purposes of the program. IIRIRA section 641(e)(4)(B), 8 U.S.C. 1372(e)(4)(B).

The Immigration Examination Fee Account, under INA section 286(m), 8 U.S.C. 1356(m), provides that the Secretary may collect fees at a level that would ensure recovery of the full costs of providing adjudication services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants:

Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary] in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, \* \* \*: Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without

charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Under this authority, user fees are employed, not only for the benefit of the payer of the fee and any collateral benefit resulting to the public, but also provide a benefit to certain others, particularly asylum applicants and refugees and others whose fees are waived. The fees proposed in this rule would not fund any support for asylum applicants or refugees, but would support specific sets of reduced fee and fee-exempt exchange visitors.

The Secretary is required to certify schools for participation in SEVIS and authorization to enroll F and M students. INA section 101(a)(15)(F)(i), (M)(i), 8 U.S.C. 1101(a)(15)(F)(i), (M)(i). The Secretary charges a fee for this adjudication and approval under the Immigration Examinations Fee Account. INA section 286(m), 8 U.S.C. 1356(m).

The Secretary is also required to review and recertify schools biennially. EBSVERA section 502(a), 8 U.S.C. 1762(a). The Secretary must charge a fee for this service under the Immigration Examinations Fee Account. INA section 286(m), 8 U.S.C. 1356(m). The Secretary would recover the costs of recertification in this proposed rule from the students who are benefited by the recertification.

In developing fees and fee rules, DHS looks to a range of governmental accounting provisions. The Office of Management and Budget (OMB) Circular A-25, User Charges (revised), section 6, 58 FR 38142 (July 15, 1993) defines "full cost" to include all direct and indirect cost to any part of the Federal government for providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of: direct and indirect personnel cost; physical overhead; consulting and other indirect cost; management and supervisory cost; enforcement; information collection and research; and establishment of standards and regulation, including any required environmental impact statements.

OMB Circular A-11, Preparation, Submission and Execution of the Budget, section 31.12, July 2, 2007, directs agencies to develop user charge estimates based on the full cost recovery policy set forth in OMB Circular A-25, User Charges (budget formulation and execution policy regarding user fees).

The Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for

the Federal Government, July 31, 1995, provides the standards regarding managerial cost accounting and full cost. SFFAS No. 4 defines "full cost" to include "direct and indirect costs that contribute to the output, regardless of funding sources." FASAB identifies various classifications of cost to be included and recommends various methods of cost assignment to identify full cost. Activity-based costing (ABC) is highlighted as a costing methodology useful to determine full cost within an agency.

The Chief Financial Officers Act of 1990, 31 U.S.C. 901-903, requires each agency's Chief Financial Officer (CFO) to "review, on a biennial basis, the fees, royalties, rents and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect cost incurred by it in providing those services and things of value." 31 U.S.C. 902(a)(8).

This proposed rule reflects the recommendations made by the CFO. This proposed rule proposes increased funding that supports new initiatives critical to improving homeland security; funds operations to comply with statutory requirements to implement school recertification, and reflects the implementation of specific cost allocation methods to segment program cost to the appropriate fee, either F and M students or schools, to ensure compliance with the legal framework for fee setting.

#### C. SEVP Baseline Costs and Fees

SEVP certifies schools to enroll F and M students; administers, maintains, and develops SEVIS; collects fees from F and M students, J exchange visitors, and schools; adjudicates certification appeals; and provides overall guidance to schools regarding program enrollment and compliance, as well as the use of SEVIS. These activities are funded solely through the collection of fees.

The I-901 SEVIS fee, collected from students and exchange visitors, funds: the operation of SEVP; the cost of administering, maintaining, and developing SEVIS; the cost of school recertification; and all activities related to individual and organizational compliance issues within the jurisdiction of SEVP. Individual and organizational compliance includes funding the cost of investigations of compliance issues related to schools participating in SEVP and exchange visitor programs, as well as F, M, or J nonimmigrants where potential threats to national security are identified, where immigration violation or fraud is suspected, or both.

The Certification Fee is paid by schools that petition for the authority to issue Forms I-20 to prospective nonimmigrant students for the purpose of enrolling them in F or M visa status. These monies fund the base internal cost for SEVP to process and adjudicate the initial school certification petition (Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Student).

SEVP expects to receive and Congress has approved expenditure for \$56.2 million in student and certification fees in FY 2008. Budget of the United States, FY2008, Appendix: Detailed Budget Estimates, at 459 (2007); Pub. L. 110-161, Div. E, 121 Stat. 1844 (2007). SEVP has requested \$119.58 million in expenditure authority for FY 2009. Budget of the United States, FY2009, Appendix: Detailed Budget Estimates, at 490 (2008).

The I-901 SEVIS fee and school certification fee were initially set when they were established in 2002 and have not been adjusted since that time.

#### D. Methodology

SEVP captured and allocated cost utilizing an ABC approach to define full cost, outline the sources of SEVP cost and define the fees. The ABC approach also provides detailed information on the cost and activities allocated to each fee.

##### 1. Activity-Based Costing Approach

SEVP used BusinessObjects Metify ABM Solo Edition, version 3.0.1, build 1277, ABC modeling software to determine the full cost associated with updating and maintaining SEVIS to collect and maintain information on F, M, and J nonimmigrants; certifying schools; overseeing school compliance; recertifying schools; adjudicating appeals; investigating suspected violations of immigration law and other potential threats to national security by F, M, or J nonimmigrants; providing outreach and education to users; and performing regulatory and policy analysis. The model was also used to identify management and overhead cost associated with the program.

ABC is a business management methodology that relates inputs (cost) and outputs (products and services) by quantifying how work is performed in an organization (activities). The ABC methodology provides a way for fee-funded organizations to trace the cost of the provided services and to calculate an appropriate fee for the service, based on the cost of activities that are associated with the services for which the fee is levied.

Using the ABC methodology, SEVP identified and defined the activities needed to support SEVP functions, to include those of current and future initiatives; captured the full resource cost and apportioned it to the appropriate activity; and assigned the cost to the appropriate fee category, based on the nature of the activity.

SEVP used an independent contractor and commercially available ABC software to compute the fees. The structure of the software was tailored to SEVP needs for continual and real-time fee review and cost management.

2. Full Cost

A critical element in building the ABC model for SEVP was to identify the sources and cost for all elements of the program. Legislative and regulatory guidance requires that the SEVP fees recoup the full cost of providing its resources and services, including, but not limited to, an appropriate share of: direct and indirect personnel cost, including salaries and fringe benefits, such as medical insurance and retirement; retirement cost, including all (funded or unfunded) accrued cost not covered by employee contributions, as

specified in OMB Circular A-11; overhead, consulting, and other indirect cost, including material and supply cost, utilities, insurance, travel, as well as rents or imputed rents on land, buildings, and equipment; management and supervisory cost; and cost of enforcement, collection, research, establishment of standards, and regulation.

To the extent applicable, SEVP used the cost accounting concepts and standards recommended in the FASAB "Statement of Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government" (1996). FASAB Standard Number 4 sets the following five standards as fundamental elements of managerial cost accounting: accumulate and report cost of activities on a regular basis for management information purposes; define responsibility segments and report the cost of each segment's outputs; report the full cost of outputs (full cost includes resources that directly or indirectly contribute to the output and supporting services within the entity and from other entities); include full-

cost, inter-entity cost, significant and material items provided by all Federal entities; and use appropriate costing methodologies to accumulate and assign cost to output.

3. Cost Basis for SEVP Fees Based on Current Services

The FY 2009 budget provides the cost basis for the fees. The FY 2009 budget reflects the required revenue to sustain current initiatives and to fund program enhancements: the implementation of SEVIS II, enhanced enforcement capability, the expansion of school liaison activity, and recertification.

Determining the projected cost for the current efforts involved routine U.S. budget projection methodology. The U.S. budget establishes the current services of the program and projects the mandatory and inflation-based adjustments necessary to maintain current services. The budget adjusts the current services to include enhancements to reflect program policy decisions. Table 1 reflects the fiscal year 2007 final budget, the FY 2008 President's request, and the FY 2009 program budget.

TABLE 1.—STUDENT AND EXCHANGE VISITOR PROGRAM SUMMARY OF REQUIREMENTS BY ORGANIZATION AND PROGRAM CATEGORY

[Dollars in thousands]

Organization	2007 spend plan	2008 spend plan	2009 spend plan	2008–2009 change
SEVP Management .....	6,785	2,586	8,639	6,053
School Certification Branch .....	1,320	1,519	3,330	1,811
Information Technology Branch .....	1,060	1,194	1,276	82
SEVP Liaison Branch .....	365	684	4,737	4,053
Policy Branch .....	251	618	647	29
Mission Support Branch .....	480	667	757	90
Office of the Principal Legal Advisor .....	113	157	176	19
<b>Total .....</b>	<b>10,374</b>	<b>7,425</b>	<b>19,562</b>	<b>12,137</b>
<b>Contractors</b>	<b>7,991</b>	<b>12,954</b>	<b>9,063</b>	<b>(3,891)</b>
<b>Program Expenses</b>				
CEU .....	12,256	12,682	44,597	31,915
SEVIS II* .....			25,100	25,100
Office of the Chief Information Officer .....	2,003	2,162	2,465	303
SEVIS (IRM) .....	17,683	16,235	13,593	(2,642)
DOS .....	509	470	511	41
SEVIS Security .....	672	698	500	(198)
Department of the Treasury .....	2,857	3,526	3,689	163
<b>Total, SEVP .....</b>	<b>54,345</b>	<b>56,153</b>	<b>119,580</b>	<b>63,427</b>
<b>Carry-forward</b>				
SEVIS II .....		12,500		(12,500)
CEU .....		5,600		(5,600)
<b>Total Carry-forward .....</b>		<b>18,100</b>		<b>(18,100)</b>
<b>Total, SEVP .....</b>	<b>54,345</b>	<b>74,253</b>	<b>119,580</b>	<b>45,327</b>
Full Time Equivalent Personnel .....	121	135	274	139

The program budget funds are expended to support personnel costs, required travel to support the program,

and for other objects, which are reflected in Table 2.

TABLE 2.—STUDENT AND EXCHANGE VISITOR PROGRAM SUMMARY OF REQUIREMENTS BY PROGRAM AND OBJECT CLASS  
[Dollars in thousands]

Object classes	2007 End of Year budget	2008 President's budget	2009 President's re- quest	2008–2009 Change
Total Full-Time Equivalent personnel compensation .....	7,239	7,479	24,239	16,760
Other personnel compensation .....	81	84	254	170
Benefits .....	3,511	3,628	7,841	4,213
Travel .....	448	463	1,437	974
Transportation of materiel .....	10	10	17	7
General Services Administration rent .....	10	10	17	7
Other rent .....	235	243	406	163
Communications, rent & misc. charges .....	609	629	1,084	455
Advisory & Assistance Services .....	7,468	7,763	13,958	6,195
Other services .....	7,471	7,719	10,623	2,904
Purchase from Government Accounts .....	509	526	907	381
Operations & maintenance of equipment .....	16,460	17,006	20,116	4,110
Supplies & Materials .....	645	667	1,150	483
Equipment .....	9,438	9,751	37,098	29,347
Land & Structures .....	215	222	383	161
<b>Total, SEVP .....</b>	<b>54,349</b>	<b>56,200</b>	<b>119,530</b>	<b>66,380</b>
Full Time equivalents .....	121	135	261	126

#### 4. Enhancements

In developing this proposed rule, SEVP reviewed its recent costs and conducted a comprehensive feasibility study that identified goals for services and projected future workload analyses, allocating costs to specific services. Specifically, the increased fees described in this proposed rule would fund: development of SEVIS II, the next generation of critical systems infrastructure; acquisition of additional Compliance Enforcement Unit (CEU) personnel; implementation of recertification and improved oversight; and additions to outreach and liaison activities with the academic community.

##### a. SEVIS II

SEVIS became fully operational in February of 2003. It is a Web-enabled database that gives schools and program sponsors the capability to transmit information and event notifications about F, M and J nonimmigrants electronically to DHS and DOS throughout their nonimmigrant stay in the United States.

Today, SEVIS has evolved well beyond its original, limited purpose as a tracking tool. SEVIS is a critical national security component, a primary resource for conducting counterterrorism and/or counterintelligence threat analysis by the law enforcement and intelligence communities. These national security

attributes were not fully envisioned or initially developed into the original design of SEVIS. Two primary law enforcement/intelligence users of SEVIS are the Foreign Terrorist Tracking Task Force and the CEU.

These new demands, along with ongoing concerns of the school and exchange visitor sponsor communities, have been accommodated by the creation of software updates and enhancements. The number of system revisions that were made total in the thousands. While SEVIS has adapted through upgrades and patches, SEVIS end-users still face limitations in searching, sorting, and exporting data, as well as in producing needed management reports. Data integrity concerns (due to time lags, system constraints, and/or system design limitations) continue to impact all SEVIS users.

SEVP began a comprehensive feasibility study in January 2007 to determine and compare the viability of two options: to continue with SEVIS as it is currently, relying on upgrades; or, to develop a next generation system. Through intensive discussion with stakeholders, this study identified vulnerabilities of the existing SEVIS database and, additionally, identified the need to shift the focus from the original intent of SEVIS to simply track documents to the more useful tracking of individuals. Tracking individuals presents a paradigm shift, both in the focus and use of SEVIS. Stakeholders

indicated that the current design infrastructure creates a high probability of an individual having numerous distinct and unassociated records within the system, making it almost impossible to comprehensively track all activities associated with a single individual.

Stakeholders stated that the current SEVIS configuration presented national security vulnerabilities that could not be eliminated by simply altering or upgrading the current system and echoed the need for a new system. SEVIS II, the next generation of software, is necessary to more adequately perform and sustain mission-critical functions that evolved in the use of SEVIS, but for which the system was not designed.

Building on the guidance provided by the feasibility study, detailed requirements working sessions were conducted with both external (i.e., schools and programs) and internal (i.e., Federal law enforcement and intelligence communities) stakeholders. The purpose of these working sessions was to gain more precision and detail for SEVIS II that would: convert from a system that is centered on paper forms to a real-time, automated system that is person-centric, incorporating electronic forms (i.e., e-forms); greatly enhance the ability to search the system, increase efficiency, and decrease risk of user error; employ the Fingerprint Identification Number as the biometric identifier to accurately and rapidly

match records to specific aliens (i.e., one alien, one record); and use the current DHS enterprise architecture structure to create a system that integrates well with existing systems throughout the government and that is open, flexible, and scalable. Such interoperability with other government systems would better provide critical, real-time national security information and enhance the capability beyond that of SEVIS I to determine changes of academic majors and identify academic courses that are of national security interest.

While the mission for each stakeholder group varies, the participants of the SEVIS II functional workshops agreed unanimously in the prioritization of design elements, including development of the unique identifier to make student lifecycle information readily accessible by searching under a single identification. Additionally, U.S. Citizenship and Immigration Service's (USCIS's) Enumeration Service would increase the capability to share SEVIS data and improve analytical capabilities throughout the immigration and law enforcement community. Event driven workflow would reduce the probability that students and exchange visitors who are associated with "at risk" activities would be overlooked, and would enhance the current SEVIS I capability to determine when changes of academic majors might be of national security interest. Data management would provide the ability for end-users to extract required information from a single source. Finally, the use of electronic forms would create real-time availability for all specified roles and permissions, reducing the potential for nonimmigrants to perpetrate fraudulent activity.

The proposed system, planned for implementation in FY2009, would greatly enhance the capability of DHS to identify and reduce national security threats; reduce the possibility for errors or abuses of status by prospective and approved F, M and J nonimmigrants, as well as their schools and programs; and better provide updated, correct, real-time information to academic, law enforcement, and other government users. SEVIS II would be the main repository of record.

SEVP projects that the cost for developing and deploying SEVIS II would be \$40.9 million. SEVP would incur \$15.3 million of that cost in FY 2007 and FY 2008. To complete the systems development and to transition and migrate data from SEVIS I to SEVIS II, SEVP would need \$25.6 million in FY 2009.

#### b. Additional CEU Personnel

SEVP and SEVIS were initiated in the post-9/11 era, when the necessity for a fully functioning monitoring system was made apparent by the identification of many of the involved terrorists with misuse or abuse of nonimmigrant status. The immigration system was again challenged five years later, when eleven Egyptian students scheduled to attend a summer program, failed to report to the school under which they were admitted. Fortunately, in this instance, nothing developed from subsequent investigation to indicate that a terrorist attack had been intended. However, had the intent been to create a national threat, the availability of SEVIS, the training of the respective school officials, and the involvement of CEU personnel worked to reasonably ensure that such a threat would not have succeeded. All eleven of these nonimmigrants were located within days of their failure to properly report and detained. A dedicated compliance enforcement program that includes criminal investigative efforts has been and continues to be employed to ensure the success of SEVP.

The CEU is able to investigate only the highest priority leads identified by analysis of SEVIS data at present. Additional CEU personnel would be used to investigate administrative and criminal violations related to individual students and SEVP-certified schools. To the extent that adequate resources are allocated and employed for this purpose, increased CEU staffing levels would reduce the vulnerability of the United States to future terrorist attacks and the exploitation of the student and exchange visitor programs.

Compliance enforcement program and criminal investigative efforts are helping to ensure the success of SEVP. The goal of ICE compliance efforts is to achieve 100% compliance with F, M, and J nonimmigrant regulations, to ensure that the institutions responsible for participating in these programs are in compliance, and to prohibit any abuse of SEVIS for criminal purposes. By ensuring the integrity of SEVIS through consistent and expanded enforcement efforts, the viability of the F, M, and J student and exchange visitor programs within the United States would be maintained.

The current number of enforcement positions funded by SEVP fees is inadequate. Accordingly, ICE does not have the needed personnel to resolve all of the national security priority leads generated in SEVIS that the CEU refers to its field offices. ICE does not receive appropriated funds for these purposes

and has utilized I-901 SEVIS fees for these costs. The number of additional positions required to conduct SEVP enforcement was calculated using data gathered from compliance enforcement statistics from June 2003, to the present. The resource projection took into account the average time required to complete a compliance investigation and the average number of priority leads referred to ICE field offices annually. The cases used for these projections include administrative investigations of F, M and J status violators, as well as criminal investigations into individuals and organizations that have sought to exploit SEVIS for illicit purposes.

ICE resource projections indicate the need to hire additional Special Agents to conduct these investigations. ICE has determined that 121 special agents are required. Based on established workforce management ratios, additional Supervisory Special Agents, Investigative Assistants, Intelligence Research Specialists, and Program Managers are also required to support the additional Special Agent positions. CEU collects detailed data during the course of investigations that capture the amount of time needed and personnel utilized when pursuing an SEVP-related investigation. CEU also collects data on each type of investigation. Using the historical data for SEVP-related investigations, CEU projected the need for 155 new positions, including logistical support, as follows: 75 additional special agents to investigate potential SEVP student and exchange visitor violators; 46 special agents to conduct criminal investigations of schools and programs; 10 supervisory special agents in the field; 10 investigative assistants and 10 intelligence research specialists to support field investigations; and 4 special agent program managers for headquarters.

#### c. Recertification

The EBSVERA provided that DHS conduct a recertification of SEVP-certified schools every two years. SEVP recertification is a review of a school previously SEVP-certified to affirm that the school remains eligible and is complying with regulatory recordkeeping, retention, reporting and other requirements. The purpose, focus, and process of recertification are addressed in section IV of this proposed rule.

The cost of recertification is incorporated in the I-901 SEVIS fee. To project the cost for recertification in FY 2009 and FY 2010, SEVP conducted a bottom-up analysis using cycle time and business process analysis. It forecast

assumptions to project the total workload capacity needed for recertification and the resulting resource requirements.

d. School Liaison Activity

School liaison positions, originally proposed in the initial fee rule in 2004, were not developed. SEVP did not designate specific, co-located staff for this function but has instead relied upon its headquarters staff to conduct an aggressive outreach program, coupled with targeted training opportunities, to inform and educate its stakeholders. This approach can be credited for the high degree of compliance that was achieved by the schools that were randomly selected to participate in the data validation study conducted by SEVP in 2006. That study was recently given national acclaim by DHS as a benchmark for providing customer service.

In 2005–06, the Department of Education listed 4,216 schools of higher education as eligible to issue diplomas to students. By 2005, 86% or 3,657 of these schools were also SEVP-certified. As market saturation is reached in this

category, new petitioners for SEVP certification are typically small schools. Since 2005, 80% of new petitions for SEVP certification were from schools that meet the Small Business Administration (SBA) definition of “small business”. Such schools often enroll fewer F and/or M students. Consequently, school officials at such schools often have fewer training resources and opportunities to practice SEVIS skills and knowledge.

Moving forward in its planning for recertification and out-of-cycle reviews, SEVP is committed to assuring that those schools which apply for certification are given the resources and tools to remain compliant. Should out-of-cycle and recertification reviews reveal anomalies in either student or school records, SEVP would identify solutions and work with the affected schools to enhance their knowledge of SEVP regulations and their ability to work within the SEVIS environment.

An expanded liaison function would give SEVP the resources to continue providing stakeholders with high caliber information and educational materials, plus opportunities to enhance ongoing

and future initiatives, such as recertification and the implementation of SEVIS II. Increased resources would be used, specifically, to work with those SEVP-certified schools that are identified during out-of-cycle reviews with reporting anomalies. Training and increased oversight, targeted to ensure the school’s compliance and continued certification, would foster SEVP-school liaison and promote interaction.

The projected cost for expanding school liaison activity is equivalent to adding 64 new personnel positions.

E. Summary of the Full Cost Information for FY 2009

The total cost projection for FY 2009 is \$119,580,000. Table 3 sets out the projected current services for SEVP and supporting CEU personnel in FY 2009 (\$56.9 million). These costs are direct extensions of the FY 2007 costs that are supported by the current fees. Table 3 also summarizes the enhancements for SEVIS II, additional CEU law enforcement and supporting personnel, the recertification process, and school liaison activities.

TABLE 3.—FY 2009 SEVP COST BY INITIATIVE

Program cost by initiative	FY 2009 budgeted cost (millions)
<b>Program Base:</b>	
SEVP (current operational level) .....	\$35.23
CEU (current operational level) .....	21.67
Subtotal .....	56.90
<b>Enhancements:</b>	
SEVIS II .....	25.60
Additional CEU Personnel .....	26.78
Recertification .....	3.24
School Liaison .....	7.06
Subtotal .....	62.68
Total .....	119.58

1. Fee Allocation

The purpose of the ABC methodology is to be able trace cost to organizational elements, as well as to be able to identify all cost components associated with the goods and services offered. For fee-based organizations such as SEVP, this allows the assignment of cost to one or more fees.

SEVP defined two fee categories: the I–901 SEVIS fee and the Certification fee.

SEVP considered the creation of additional fee categories in deciding how to apportion fees. For example, SEVP considered charging a separate I–901 SEVIS Fee to F, M, and J

dependents. SEVP also examined various tiered fee structures. SEVP considered assigning some specific costs (e.g., Form I–515 processing, data fixes, and appeals) to separate fees. The ABC fee model allowed SEVP to evaluate these scenarios. ICE opted for a fee structure with fewer fees and, as a consequence, lower overhead (based on the increased cost of collecting fees, combined with the marginal impact on the two fees).

I–901 SEVIS Fee. Recovers the systems cost for SEVIS and a portion of the SEVP administrative cost, including the cost of recertification (recovers the full cost to process school recertification

applications, including compliance cost directly related to the application process, as well as a portion of SEVP administrative cost), program compliance and enforcement. The fee would be apportioned between three categories—full fee of \$200 for F and M students, reduced fee of \$180 for most J participants (excluding the costs for recertification) and the further reduced fee of \$35 for certain J program participants. Government-sponsored J program participants are fee-exempt by law.

Certification Fee. Recovers the full cost to process initial school



certification applications and a portion of SEVP administrative cost.

2. SEVP FY 2009 Cost Model Results

Tables 4 and 5 show the summary of SEVP FY 2009 cost by source of cost and by program cost by initiative. Tables 4 and 5 provide summary level model results. Those interested in accessing the model to see more detailed information can contact SEVP at (202) 305-2346 to make an appointment. The ABC modeling

software is a commercial product licensed to SEVP.

TABLE 4.—TOTAL SEVP FY 2009 COST BY FEE CATEGORY

SEVP ABC model output category	FY 2009 budgeted cost (millions)
I-901 SEVIS fee .....	\$117.91
Certification .....	1.67
Total .....	119.58

Table 5 shows a more detailed cost breakdown. The numbers are shown in thousands, rather than millions, of dollars due to the level of detail. There are three levels for some costs: process, activity, and sub-activity. Other costs have only two levels of detail. To simplify the presentation, the numbers are rounded to the nearest thousand. These numbers are not rounded in the costing model.

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY  
[\$ in thousands]

Process	Activity	Sub-activity	I-901 SEVIS fee	School certification fee
Direct Assignment .....	Pass through cost—Site Visit Contracts		.....	543
Compliance Enforcement .....	CEU Operations .....	Access SEVIS data for investigative leads.	442	.....
		Analyze SEVIS data to identify potential status violators pursuant to the INA.	3,136	.....
	CEU Programs .....	Assign viable leads to ICE Special Agent in Charge offices for further investigation and enforcement action if required.	249	.....
		Determine quality of SEVIS lead .....	634	.....
		Act as a liaison with the law enforcement and intelligence communities concerning SEVIS data and provide expertise in dealing with student investigations and enforcement.	100	.....
		Assess vulnerabilities in SEVIS that can be exploited to misuse the system or otherwise violate law.	292	.....
		Perform alien flight student program duties.	100	.....
		Perform budget formulation duties .....	100	.....
		Perform school certification and regulatory compliance.	82	18
		Provide enforcement related training to field personnel with respect to the use of SEVIS.	50	.....
		Provide input to policy and regulatory changes affecting enforcement and national security.	292	.....
		Provide programmatic oversight .....	100	.....
		Perform Fraud Investigations (I-17) ...	11,256	.....
Perform Student Investigations (I-901)	31,595	.....		
CEU Liaison .....	Coordinate SEVIS data to enhance field investigations		9	.....
	Interface with schools to provide initial contact prior to CEU involvement		9	.....
	Provide liaison support to CEU for other SEVP leads		9	.....
Case Resolution Unit: Resolve Issues for Fee Payments.	Provide liaison support to CEU regarding possible leads from SEVIS		36	.....
	Access Government Lockbox queues		13	.....
	Administer SEVIS FMJ fee e-mail		104	.....
	Answer phone queries on I-901 SEVIS fee payment issues		29	.....
	Process credit card charge backs		7	.....
	Process fee payment transfer requests		2	.....
	Process refund requests		27	.....
	Process returned checks		0	.....
	Work with U.S. Bank and Treasury to enhance I-901 system		13	.....
	Work with U.S. Bank Government Lockbox to resolve fee payment issues		2	.....
Department of State .....	Develop exchange visitor policy and regulations		102	.....
	Monitor complaints		102	.....
	Perform exchange visitor program redesignations		102	.....
	Receive review and determine status of exchange visitor program applications		102	.....
	Review change of status applications		102	.....
I-515 Operations .....	Close out I-515 case		100	.....

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY—Continued  
[\$ in thousands]

Process	Activity	Sub-activity	I-901 SEVIS fee	School certification fee
	Coordinate with external organizations		45	.....
	Document and research I-515 case		94	.....
	Provide I-515 program management		165	.....
Information Technology .....	Maintain and update SEVIS .....	Coordinate and monitor system performance.	1,124	.....
		Identify and define new system requirements.	2,175	.....
		Manage system security .....	1,803	.....
		Modify and enhance SEVIS interface and functionality (design and development).	31,420	.....
		Monitor and manage Help Desk Team performance.	443	.....
		Provide system testing and release readiness reviews.	719	.....
		Resolve errors in system data .....	888	.....
	Other IT Support .....	Administer SEVIS Toolbox .....	98	4
		Liaison with Chief Information Officer other system owners, the Federal Bureau of Investigation, etc.	754	32
		Manage IT contracts .....	136	.....
		Perform ad hoc IT projects .....	820	35
		Perform procurement activities .....	39	2
		Provide general IT support to SEVP office.	43	2
	Provide Help Desk Support .....	Contact customer to convey ticket resolution.	270	.....
		Document ticket resolution and provide daily and weekly statuses.	140	.....
		Handle ticket escalations .....	140	.....
		Log initial help desk ticket .....	1,062	.....
		Perform research to resolve ticket .....	2,159	.....
Policy and Planning .....	Policy development and analysis .....	Develop strategic plan .....	66	.....
		Draft implement and support plans and procedures.	110	.....
		Maintain forms .....	21	.....
		Perform record retention and disposition.	15	.....
		Prepare and update policies procedures, frequently asked questions, regulations, and Fact Sheets.	354	.....
		Provide guidance on SEVP policy issues.	338	.....
		Provide liaison support to SEVP internal and external stakeholders, to include teleconferences and working groups.	139	.....
		Provide review and answers to SEVIS source e-mail site and inquiries.	122	.....
		Publish rules and FR notices .....	234	.....
		Respond and comment on pending legislation.	110	.....
	Provide Liaison Support to Federal partners.	Coordinate Federal partner/SEVP interactions with other government organizations.	29	.....
		Coordinate Federal partner/SEVP interactions with other government organizations.	77	.....
		Coordinate policies and procedures with Federal partners.	119	.....
	Provide Social Security Administration (SSA) Liaison Support.	Provide SSA Liaison Support .....	7	.....
Program Analysis .....	Analyze SEVP/SEVIS data and processes		211	9
	Collect data for analysis and reporting		151	6
	Prepare reports		118	5

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY—Continued  
 [\$ in thousands]

Process	Activity	Sub-activity	I-901 SEVIS fee	School certification fee		
Resource Management .....	Manage Financial Resources .....	Formulate and execute budget .....	198	8		
		Manage financial systems (Travel Manager, Federal Financial Management System, Electronic System for Personnel).	84	4		
		Manage travel/purchase card .....	70	3		
		Perform Contracting Officer's Technical Representative duties.	34	1		
		Perform revenue analysis .....	68	3		
		Prepare and monitor 5-year spend plans.	102	4		
		Prepare and respond to audit requests.	28	1		
		Prepare bi-annual fee review .....	128	5		
		Provide program logistics .....	32	1		
		Manage Personnel Resources .....	Manage payroll issues .....	106	4	
			Manage position description .....	95	4	
			Perform personnel actions (SF-521) ..	3	0	
			Prepare and execute hiring plans .....	160	7	
			Provide Human Resources Division and Security relevant personnel data.	46	2	
			Pass through cost—Treasury Fee Collection.	3,689	.....	
		School Certification and Recertification	Perform initial school certification .....	Perform certification—approvals .....	.....	307
				Perform certification—denials .....	.....	388
			Perform other School Group activities	Monitor school compliance .....	3,060	.....
				Process and adjudicate appeals .....	992	212
Process and adjudicate motions .....	45			10		
Process and adjudicate petition updates.	791			.....		
Perform school recertifications .....	Perform recertification—approvals .....		1,114	.....		
	Perform recertification—denials .....		1,010	.....		
	Perform student notifications .....		640	.....		
	Withdraw schools from SEVIS .....		539	.....		
School Liaison .....	Develop Liaison Program Implement Liaison Program Perform school liaison functions		383	.....		
			402	.....		
			1,946	.....		
SEVP Administrative Support .....	Answer the main telephone line Liaison with service providers for copier maintenance, DHL/FedEx mail, cell phones, blackberries, etc. Maintain SEVP supplies and materials Manage executive correspondence Process time and attendance/travel vouchers Provide administrative support for special projects		82	3		
			30	1		
			66	3		
			88	4		
			25	1		
			132	6		
			156	7		
SEVP Management .....	Coordinate with internal and external stakeholders Oversee process improvements Provide program oversight		160	7		
			476	20		
Training and Outreach .....	Develop and deliver SEVIS training ....	Deliver training .....	2,126	.....		
		Develop training plans based on requirements.	236	.....		
		Develop training requirements for designated school officials, responsible officers, immigration inspectors, DOS, etc.	203	.....		
		Develop and implement .....	Attend and prepare conferences/workshops related to the SEVIS community.	1,147	.....	
		SEVIS communication strategy .....	Contact and educate student organizations, associations, embassies, Congressional staffers, etc.	236	.....	
			Develop and provide rollout plans .....	77	.....	
			Facilitate SEVIS problem resolution ...	132	.....	
			Monitor and enhance SEVIS source Web-site.	248	.....	
			Prepare and distribute quarterly newsletter.	129	.....	

TABLE 5.—SEVP ACTIVITY COST BY FEE CATEGORY—Continued  
[\$ in thousands]

Process	Activity	Sub-activity	I-901 SEVIS fee	School certification fee
		Provide Webinars .....	129	.....
		Respond to Public Affairs and Congressional Inquiries.	210	.....
Total .....	.....	.....	117,907	1,673

3. Fee Calculations

The cost model provides detailed cost information by activity and a summary cost for each, giving the aggregate fee cost by category. Next, SEVP projected the total number of fee payments of each type for FY 2009 and determined the fee-recoverable budget—the full cost of the service minus any offsets. Offsets include such costs as pass through cost for contractors or appropriated funding.

SEVP selected a forecasting approach to determine the total number of expected fee payments for each fee.

a. I-901 SEVIS Fee

To calculate a fee amount for the I-901 SEVIS Fee, SEVP estimated the number of fee payments expected in FY 2009 for each of the four fee payment levels: fee-exempt, reduced fee, full fee for J participants (excluding the cost for recertification of F and M certified schools), and full fee for F and M students (including recertification costs).

The legislation exempted government-sponsored J-1 exchange visitors from the fee payment when the fee was initially provided for in section 641 of IIRIRA. All other F, M and J nonimmigrants were to pay \$100. An additional modification was made by Congress establishing the reduced fee of \$35 for au pairs, camp counselors, or participants in a summer work travel program. Public Law 106-553, App. B, sec. 110, 114 Stat. 2762, 2762A-51, 2762A-68 (Dec. 21, 2000). IIRIRA also provided for revising the fee once the program to collect information was expanded to include all F, M, and J nonimmigrants, to take into account the actual cost of carrying out the program. As a result, SEVP needed to forecast the number of prospective F, M and J nonimmigrants in FY 2009, with a breakout of J exchange visitors by exchange visitor category.

After determining the number of expected I-901 SEVIS fee payments in FY 2009, SEVP calculated the I-901 SEVIS fee.

There are only two complete years of I-901 SEVIS fee payment data available

for projecting the fee demand. Because these data are not sufficient to make a reliable projection of future demand with any degree of statistical accuracy, SEVP developed a surrogate for historical I-901 SEVIS fee payment data, based on visa issuance data from DOS.

While the number of F, M and J nonimmigrant visas issued does not equal the number of I-901 SEVIS fee payments, there is a correlation between the two numbers. Table 6 reflects the change in the numbers of visas issued to provide the trend data needed to project the growth in I-901 SEVIS fee payments.

TABLE 6.—F, M, AND J VISA ISSUANCE DATA 1997–2006 ISSUED VISAS\*

Fiscal year	Total	Growth rate** (percent)
1997 .....	453,156	.....
1998 .....	450,531	-0.6
1999 .....	480,131	6.6
2000 .....	526,997	9.8
2001 .....	560,500	6.4
2002 .....	485,276	-13.4
2003 .....	473,719	-2.4
2004 .....	478,219	0.9
2005 .....	518,873	8.5
2006 .....	591,050	13.9

\* Does not include dependent visa holders, as they are not subject to payment of the I-901 SEVIS fee.

\*\* Growth rate rounded to nearest tenth of a percent.

As indicated in Table 6, the level of visa issuances varied greatly over the past ten years. The impact of the terrorist attacks of 9/11 and the aftermath had a significant impact on the number of visas issued. Other factors that impact the number of visas issued include: strategies employed by other countries to retain/attract international students; economic growth rate changes in source countries; changing populations in source countries; new programs and schools; globalization; program marketing; and foreign currency exchange rates. This high degree of variation in the historical data, combined with the variables

impacting demand for visas, called for a simplified forecasting methodology.

Consequently, SEVP selected a three-year moving average of prior year growth rates in visa issuance data as the method to forecast program demand. A moving average is the arithmetic average of a certain number (n) of the most recent observations. When a new observation is added, the oldest observation is dropped. Moving averages, in smoothing out short-term fluctuations, highlight longer-term trends or cycles. A three-year moving average is more representative of latest changes in demand than of the average of all years; moderates extremes, while still matching overall trends; is slow to react to sharp changes—trailing measure; and is based on historical data of visa issuances rather than econometric forecasts of prospective students and exchange visitors.

SEVP evaluated alternative forecasting methods, including average growth rate, linear regression, and second degree polynomial regression. SEVP rejected these methods due to inaccuracy, poor fit as measured by the r-squared statistic, and the projection of unsustainable, sub-exponential growth, respectively. SEVP selected a three-year moving average because it best exhibited the characteristics of a balanced method between accuracy and conservatism, considering the limitations of the underlying data. As a trailing measure, a moving average is a conservative method and is, therefore, especially suitable for use in fee setting because it mitigates risk to the cash flow and subsequent solvency of SEVP. A three-year moving average, reflected in Table 7, places a balanced mix of emphasis on recent and historical data and still contains enough data points to smooth out some variability in the underlying data. SEVP determined that this method was the best fit, based on the deficiencies of other statistical methods and a qualitative evaluation of how well this method achieved the objectives of accuracy and conservatism.

TABLE 7.—HISTORICAL THREE-YEAR MOVING AVERAGE

Fiscal year	Issued visas (primary)	3-Year moving average	Growth rate (percent)	3-Year moving average by rate (percent)
1997	453,156			
1998	450,531			
1999	480,131			
2000	526,997	485,886	9.8	5.3
2001	560,500	522,543	6.4	7.6
2002	485,276	524,258	-13.4	0.9
2003	473,719	506,498	-2.4	-3.1
2004	478,219	479,071	0.9	-5.0
2005	518,873	490,270	8.5	2.4
2006	591,050	529,381	13.9	7.8

Once the three-year moving average was used to forecast issued visas, SEVP converted these values to payment estimates by multiplying by the ratio of historical payments to issued visas, as reflected in Table 8. This rate was developed by comparing the historical payments in FY 2005–FY 2007 to the F–1, M–1, and J–1 visas issued during the same time period. In addition to the overall I–901 SEVIS fee payment rate, the study also determined the proportion of payments between \$0, \$35, \$180, and \$200 fee payments. This proportion was developed based on the

profile of F and M students and J exchange visitors that currently have active records in SEVIS.

TABLE 8.—I–901 SEVIS FEE PAYMENT FORECAST FY 2009–2010

I–901 Payment sub-type	FY 2009
Full Payments (\$200), F/M ...	395,915
Full Payment (\$180), J .....	180,950
Subsidized (\$35) .....	221,223
No Payment (\$0) .....	34,384
<b>Total .....</b>	<b>832,472</b>

The ABC model calculated a total I–901 SEVIS fee cost (including the cost of recertification) of \$117,907 for FY 2009. This is offset by subtracting the payment made to the Department of the Treasury for expedited delivery of receipts for payment of I–901 SEVIS fees. (SEVP already recovers this cost through a direct payment of \$30 paid by individuals who choose expedited delivery. Thus, SEVP must subtract this cost from the full budget to avoid collecting twice for the same service, as reflected in Table 9.)

TABLE 9.—FY 2009 I–901 FEE RECOVERABLE BUDGET

	Total budget	Offsets	Fee-recoverable
FY 2009 Budget .....	\$117,907,380	\$1,828,464	\$116,084,916

To arrive at the final proposed fees, rounding was applied to the result of the fee algorithm. 8 CFR 103.7(b). Rounding results in a fee of \$200 for F and M students and \$180 for those J exchange visitors subject to the full fee.

b. Certification Fee

The demand pattern for school certification is difficult to predict. The historical data include the mass enrollment of schools into SEVIS in 2002 and 2003. While there is some continued demand for SEVP-certification from new schools, the demand has slowed; most potential

participants have either already become certified or decided not to enroll F or M students. A higher fee may deter some schools from applying for certification. Given the difficulties in making the projection, SEVP elected to use a moving three-year average with the historical data from FY 2004 to FY 2006, illustrated in Table 10.

TABLE 10.—THREE-YEAR MOVING AVERAGE OF THE NUMBER OF SCHOOL CERTIFICATION APPLICATIONS PROCESSED

Fiscal year	Approved	Denied	Total	3-Year moving average
2002	1,636	297	1,933	
2003	5,367	976	6,343	
2004	745	135	880	3,052
2005	491	89	580	2,601
2006	536	97	633	* 698

\* Rounded to 700.

The total fee category budget is taken directly from the FY 2009 SEVP ABC model, reflected in Table 11. The figures

under the offsets heading are from site-visit contracts that are priced separately from the certification fee. The cost is

treated as pass-through cost (i.e., paid by the petitioning school).

TABLE 11.—FY 2009 CERTIFICATION FEE RECOVERABLE BUDGET

Fee category	Units	Total budget	Offsets	Fee-recoverable
Certification .....	700	\$1,672,630	\$543,000	\$1,129,630

School certification fees are calculated by dividing the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount from schools of \$1,613 each. To arrive at the final proposed fee, rounding was applied to the result of the fee algorithm. This results in a Certification Fee of \$1,700 per school.

#### c. Recertification Cost

As with the other fees, determining the fee amount to be incorporated in the I-901 SEVIS fee associated with recertification requires determining the full cost of recertification and the number of schools that would choose to recertify.

Number of Schools Expected to Recertify. As a new requirement, there is no program history to provide any insight into the level of participation in the school recertification program. In addition, due to the mass-enrollment of schools in 2002 and 2003 during the initial rollout of SEVIS and the biennial review requirement, as established in EBSVERA, most certified schools would be required to petition at the onset of recertification. As such, SEVP intends to schedule the recertification workload over a two-year period in order to smooth program demand and avoid the associated cyclical variation in workload and resource requirements.

As part of the procedure to establish the recertification workflow, SEVP conducted business process analysis to document the recertification business process, developed standard operating procedures for recertification, developed cycle-time measurements of the proposed processes, and estimated the level of effort required to conduct compliance reviews of certified schools. To accomplish this, SEVP collected cycle-time samples or cycle-time estimates from activity subject matter experts and validated these estimates through SEVP management.

Given the nature of initiating a new program, SEVP management developed notional estimates to forecast program demand. SEVP management made several assumptions as the basis of their estimates. First, SEVP assumed that not all schools would elect to recertify and that schools with extremely low student participation rates were more likely to elect to withdraw from the program,

rather than assume the administrative burden of recertification. SEVP analyzed the number of schools in the SEVIS database that had F and/or M students attending their school. Of all the schools in SEVIS, 33% had no F and/or M students enrolled and 55% had less than five F and/or M students enrolled.

Based on this information, combined with knowledge and experience about currently certified schools, SEVP developed a notional estimate that 73% of certified schools would elect to recertify. This estimate was validated and accepted by SEVP management as part of the business process analysis and served as an assumption in the formulation of the FY 2009 proposed budget for recertification, as captured in the SEVP ABC model. SEVP used the same notional 73% estimate that was used to formulate the budget request as an input to the methodology used to develop the forecast for program demand for recertification:

SEVP determined the total number of participating schools in the program. This number reflects a snapshot in time, as the total number of program participants fluctuates with new schools being certified and other schools withdrawing from certification. At the time of this analysis, SEVIS contained 8,967 certified schools.

SEVP divided the total number of schools in half because, while schools are required to be recertified every two years, the recertification workload will be spread over two years during the first cycle of recertification to better distribute the labor and program resource demand.

SEVP multiplied the number of eligible schools (from Step 2) by the anticipated recertification participation rate of 73%. This step reduced the recertification-eligible schools to the subset of schools that SEVP believes would actually elect to undergo the recertification process and represents the total number of expected recertification petitions in FY 2009. This reduction reflects the elimination of most schools that do not enroll F and/or M students at present, but have enrolled small numbers of F and/or M students in the past. SEVP expects that such schools would not elect to continue SEVP certification.

Based on this calculation, SEVP forecasts that 3,250 schools would elect

to recertify in FY 2009. A similar number of schools are expected to petition for recertification in FY 2010, the second year of the fee adjustment cycle.

I-17 Recertification Forecast Validation Analysis. Given the notional estimates used in the formulation of the recertification budget and subsequent recertification petition forecast, SEVP conducted a separate analysis to create a demand model for determining the probability that a school would recertify. The number of schools recertifying is derived by determining the probability of recertification for each currently certified school in SEVIS as of May 2007.<sup>1</sup> The most important criterion used in determining whether a school would petition to recertify is whether or not it currently enrolls F and/or M students. The schools are divided into two groups. The first is schools that have never enrolled an F or M student (1,386 schools) and the second group is those that have had a least one F or M student or that created initial records for future enrollments (7,576).

The demand for each year was determined by adding the probability of recertification for all schools. For example, one school with a 90% probability of recertifying and another school with a 10% probability of recertifying count as one probable certification. All schools had a probability factor between zero and one.

Demand Calculation for Zero-Student Schools. In determining the probability that a school that has never enrolled an F or M student would recertify, SEVP assumes that the more years a school has been certified, but does not enroll F and/or M students, the less likely it is that the school would recertify.

Demand Calculation for Schools with F and/or M Students. In determining the demand for recertification for a school with an enrolled F/M student population, three student population factors were considered. The student population factors considered: F/M student population for 2006 (or 2007 if the number was larger); F/M student population as a percentage of the total

<sup>1</sup> The number of schools in SEVIS varies as schools are added and withdrawn. The total number of schools for a specific analysis will differ from that of another analysis where data was extracted at a different time.

student population; and growth of F/M student population over the last two years. SEVP elected to use the notional estimate of a 73% recertification rate as the recertification petition forecast for the FY 2009 fee analysis.

Once the number of schools expected to recertify was established, the next step was to determine the appropriate recertification fee-recoverable budget for FY 2009, based on the capacity needed to certify this number of schools. Because there are no offsets, the recertification fee-recoverable budget is \$5,332,690. To arrive at the final proposed fee, rounding was applied to the result of the fee algorithm. This resulted in a fee-recoverable recertification fee amount of \$20 per F and M student, which is charged within the I-901 SEVIS fee.

4. Calculation of Site-Visit Cost

The cost of site visits for SEVP certification is a function of the number of locations listed on the school's Form I-17 petition, each of which must be visited. The current basic cost per site visit location for initial certification is \$350. The proposed fee amount is \$655 per location. The site visit fee is based on existing contracts that run from FY 2009 through FY 2011. Schools must pay the amount they calculate on the payment Web site, <https://www.pay.gov/paygov/> at the time they submit their petition.

5. Proposed Fee Levels

The full I-901 SEVIS fee for F and M students is increased from \$100 to \$200. The full I-901 SEVIS fee for most J exchange visitors is increased from \$100 to \$180. SEVP has not adjusted these fees since its inception in 2004. The I-901 SEVIS fee for special J-visa

categories (au pair, camp counselor and summer work travel) remains at the previous \$35 level, set in IIRIRA. IIRIRA also exempts government-sponsored exchange visitors in the G-1 programs.

The Certification Fee is increased from \$230 to \$1,700. This fee was set in 2002, prior to the reorganization of the Immigration and Naturalization Service (INS) into DHS. This is the base fee for certification and does not include the site visit fee.

The site visit cost for SEVP certification is priced separately as a pass-through charge to recover the associated contract cost. While this contract cost is in the cost model, it was subtracted from the Certification Fee calculations. All schools applying for SEVP certification would pay the site visit fee.

The proposed program fee schedule for SEVP in FY 2009 is shown in Table 12:

TABLE 12.—FY 2009 SEVP PROGRAM FEES

Category	Amount
I-901 SEVIS Fees:	
• I-901 Primary F/M visa holders (Full payment) .....	\$200
• I-901 Primary J visa holders (Full payment) .....	190
• I-901 Special J-visa Categories (Subsidized payment) .....	35
• I-901 Government Visitor (G-1) (No payment) .....	0
I-17 School Fee:	
• Certification Fee .....	1,700
• Site visit fee for initial certification (base fee to be multiplied by number of locations cited on the Form I-17) .....	655

Table 13 reflects the break even analysis based on the proposed fee

schedule and the proportional fee volumes (rounded) required to generate

sufficient revenue to offset proposed program costs.

TABLE 13.—PROJECTED REVENUE

Fee	Amount	Forecasted volume	Revenue
I-901 F/M full .....	\$200	392,284	\$78,456,822
I-901 J full .....	180	179,291	32,272,295
I-901 partial .....	35	219,194	7,671,797
I-901 Subtotal .....		790,769	118,400,914
Certification Fee .....	1,700	694	1,179,087
Grand Total .....		791,463	119,580,001

F. Impact on Applicants

ICE recognizes that this proposed rule may have an impact on F, M, and J nonimmigrants, as well as the programs and schools seeking to become either SEVP-certified or recertified. The current school certification fee is based on the historical INS cost, determined prior to the inception of SEVIS. It reflects circumstances and work processes that were entirely different from those used today.

The current student fees are based on a fee analysis performed when SEVP was first established. The cost calculations were established on the basis of projected workload volumes and processes. In addition, Congress appropriated SEVP \$30 million to develop SEVIS. Consequently, neither the cost for system development nor the cost of recertification was reflected in the earlier I-901 SEVIS fee.

The new fee analysis proposes fees that would: Recover the full cost of SEVP operations with fee-generated revenue; align the fees with currently planned costs and processes that have been redesigned and refined as the program has gained experience and maturity; and take advantage of more detailed and accurate data sources and improved management tools to align resources and workload. In addition, the

new fees reflect the development of a newly engineered database.

SEVP is mandated to review its fee structure at least every two years. *See* 31 U.S.C. 902(a)(8); OMB Circular A-25. Future fee rules would combine historic data with more recent experience, which would generate cost adjustments that would reflect new efficiencies, activity changes, amended security measures, or legislation developed in response to global developments. Although prediction of future fee adjustments is speculative, the historically long development of an intervening fee schedule, as well as the development costs that are necessarily included in this fee adjustment, suggests that future biennial fee adjustments would not be as substantial as the adjustments proposed in this rule.

#### **IV. Procedures for Certification, Out-of-Cycle Review and Recertification of Schools**

DHS is proposing to recertify all schools approved for attendance by F and M students every two years, pursuant to Title V, section 502 of EBSVERA and HSPD-2. DHS would establish procedures for review of each SEVP-certified school every two years. In addition, SEVP would conduct “out-of-cycle” reviews whenever it determines that clarification or investigation of school performance or eligibility is necessary. Certification, under this proposed rule, is a continuous, on-going process. From initial certification, SEVP continually oversees school compliance with recordkeeping, retention and reporting requirements. SEVP can identify deviations from reporting requirements by schools and take appropriate action through SEVIS and other resources.

Recertification is, in effect, a “report card” given to a school every two years to verify achievement of required standards in the period since the previous certification. The focus of oversight and recertification is past performance, coupled with a review to ensure that the educational institution maintains the basic eligibility required for certification.

Performance is monitored through SEVIS, DHS records, submissions from the school, and on-site reviews, when warranted. SEVP would require schools, as appropriate, to make corrections immediately, rather than wait for formal recertification. SEVP would review the school’s compliance with Federal regulations and SEVP guidance.

A summary of proposed rule changes and explanation for the changes follows.

#### *A. Filing a Petition for SEVP Certification, Out-of-Cycle Review or Recertification*

##### 1. General Requirements

Petition filings related to school adjudications are now submitted to SEVP through SEVIS, rather than the USCIS district director. This change was a result of the transfer of school adjudications from USCIS to ICE. The requirement for a separate petition to be filed by school systems or schools with campuses overlapping USCIS district boundaries has been deleted.

##### 2. School Systems

The term “school system” is clarified to refer to groups of inter-related schools providing instruction to public school grade levels 9–12 and private school levels kindergarten through 12.

##### 3. Petition Submission Requirements

Document submission requirements for petitions are clarified with respect to the need for providing paper copies of the Form I-17 with original signatures of all school officials entered on the form. More importantly, the scope of responsibility that a school official assumes in signing the Form I-17 is more clearly stated and the consequences of willful misstatement are established.

##### 4. Eligibility

School eligibility criteria for SEVP certification are transferred from their present location in 8 CFR 214.3 to a position directly following the listing of types of schools that may be approved for SEVP certification. This repositioning is intended to provide a concise statement for prospective petitioners in their suitability assessment for becoming certified.

#### *B. Interview of Petitioner*

SEVP may conduct “in-person” interviews with the petitioner or the petitioner’s representative as part of adjudication. SEVP proposes to expand this option to include telephone interviews, recognizing a telephone interview as having the same legal impact as testimony given in physical presence.

#### *C. Notices and Communications*

SEVP relies on procedures in 8 CFR 103.2 to give notices to schools to support the administration of the petition adjudication process. This is a USCIS-specific regulation; some terms and officials identified in the regulation do not pertain to ICE. This proposed rule identifies respective ICE counterparts that must be substituted for

the SEVP application. SEVP has also expanded the use of these notices to include the compliance considerations of oversight, out-of-cycle review and recertification.

All notices from SEVP to schools related to certification, oversight, recertification, denial, appeals and withdrawal, as well as requests for evidence (RFEs) are generated and transmitted through SEVIS by e-mail. The date of service is reduced to the date of notice transmission by eliminating the delay of traditional mailing. All SEVP-certified schools are responsible for maintaining the accuracy of designated school official (DSO) information in SEVIS. Since notices are sent to all DSOs, SEVP would not recognize non-receipt of notification as grounds for appeal of a denial or withdrawal of a school. Schools are required to ensure that their spam filters do not block reception of SEVP notices. The term, “in writing” is expanded to include the option for electronic signatures to support movement toward a paperless environment.

The proposed rule would require that any change in school information in SEVIS must be updated and identifies the circumstances when changes that must be reported might occur.

A Notice of Intent to Withdraw (NOIW) is sent to a school 30 days prior to the school’s certification expiration date as notification that a complete petition for recertification has not been received and advising the school that it would be automatically withdrawn on the certification expiration date if a completed petition has not been received. This notice ensures adequate due process before the benefit to enroll F and M students is removed. During an out-of-cycle review, an NOIW advises a school that SEVP has identified a compliance issue and is allowing the school an opportunity to correct any misperception by SEVP.

Notices of Denial, Automatic Withdrawal and Withdrawal are sent to advise schools of the date of the decision, appeal rights (if any), and the responsibilities for school operations until the SEVIS access termination date.

A Notice of SEVIS Access Termination Date informs a school of the date when all F and/or M students at a school which has been withdrawn from SEVP certification or denied recertification must complete transfer to another SEVP-certified school or depart the United States to remain in compliance with their status obligations. By the SEVIS access termination date, the denied or withdrawn school must have either



released the SEVP records of their F and M students or completed them. On this date, the school can no longer gain access to SEVIS for any updates, and all student records of the school's remaining in Active status are terminated. In most instances, this date would not be sent until appeals options have been exhausted and the decision to withdraw or deny has been upheld.

#### *D. Recordkeeping, Retention and Reporting Requirements*

*Student records.* The record retention period for student records is extended from one to three years beyond a student's program completion, including denial of reinstatement. This is to support review of recordkeeping compliance during the school's recertification. The proposed rule is clarified to ensure that the school continues to maintain the same recordkeeping and reporting obligations during a pending reinstatement as when the student is in status. School recordkeeping for F or M students, beyond information entered into SEVIS, is clarified to include that information generally recognized as contained in a school transcript. Schools must be able to provide transcripts or access to an equivalent tracking system. Information on coursework must be compiled and recorded within the term the courses are taken and graded. These clarifications articulate the intent of existing regulation and enable SEVP to better monitor student progress in his or her program, as well as participation.

*Reporting Changes in Student and School Information.* The proposed rule would clarify that, other than immediate updates of changes in school information following approval of a petition for SEVP certification or recertification, changes in any other information must be entered in SEVIS within 21 days of their occurrence. The standard had not been previously identified.

The proposed rule further clarifies that the terms "program start date" (used in SEVIS) and "report date" (used on Forms I-20) for initial students are interchangeable. It then goes to identify accepted considerations that can be taken by a DSO in determining the actual date. This clarification is necessary to ensure that nonimmigrants do not have excessive time in the United States before being required to report to their programs.

A requirement is established to update the program completion date in SEVIS when student performance indicates that the date already in SEVIS is no longer accurate. This is necessary to reduce the opportunity for

inappropriate student overstays beyond actual program completion and is consistent with the requirement for timely recording of student information related to course enrollment and completion.

#### *E. SEVP Certification, Recertification, Out-of-Cycle Review and Oversight*

##### 1. Certification

The proposed rule would establish a requirement that an on-line fee to petition must be filed before the petition would be adjudicated. The proposed rule updates fees for the certification petition and for site visits, as discussed above.

The proposed rule would set time requirements for conduct of the site visit following the date SEVP contacts the school for that purpose. The proposed rule would establish that failure by the school to comply with this requirement would result in the petition being denied for abandonment. The proposed rule would require knowledge proficiency standards for those persons identified as DSOs. The inability of personnel to demonstrate reasonable knowledge and competence of DSO requirements and responsibilities could be cause for petition denial.

##### 2. Recertification

The proposed rule would specify the sections of 8 CFR 214.3 related to eligibility and compliance that would be examined during recertification. Following a distribution of certification expiration dates by SEVP in the first cycle of recertification to enable leveling of the workload, all subsequent petitions for recertification would be tied to exactly two years from the certification expiration date in the first recertification cycle. Delays in petition filing, adjudication and appeals (if any) would not impact a school's next certification expiration date. Schools should file as early as possible in the recertification eligibility period to preclude unnecessary processing delays in adjudication.

The timeline for filing is established. A school must submit a complete package before adjudication would begin, and SEVP would confirm with the school when a complete petition has been received. SEVP urges schools to submit their complete petition packages at least 12 weeks before their certification expiration date to allow SEVP adequate time to verify and confirm with the school that they filed their recertification petition package properly. Complete and timely filing is viewed by SEVP as a reflection on the

DSOs' qualification for continued certification.

A school that has not filed a complete petition for SEVP recertification by its certification expiration date would be given immediate automatic withdrawal from certification.

##### 3. School Recertification Process

SEVP would consider a range of factors in conducting recertification analyses. Indications of substandard performance and/or anomalies in SEVIS or from other sources since the previous certification may cause increased scrutiny. Analysis of a school may be modified if the school falls into special interest categories for enforcement.

The proposed rule establishes a school's responsibility for the actions of its employees (e.g., DSOs), whether or not they are currently employed at the time of recertification. The principal designated school official (PDSO) at a school is presumed to exercise oversight of all DSOs.

Few schools would receive an on-site review during SEVP recertification. On-site review in recertification is distinguished from an on-site visit given during initial certification. The purposes of an on-site visit include confirmation of a school's eligibility for SEVP certification, promoting basic competencies for DSOs, and providing outreach to better familiarize the school with the roles and responsibilities that come with the benefit of SEVP certification.

The purpose of an on-site review is, generally, to address compliance. While a few random on-site reviews may be conducted to maintain a performance baseline for all schools or to explore potential performance benchmarks, the primary reason an on-site review is conducted is to resolve questions or concerns about school performance.

##### 4. Out-of-Cycle Review

The term "out-of-cycle" review is introduced in the proposed rule to replace the term "periodic" review, which implied a review at regular intervals. Out-of-cycle review can be conducted at any time and would be conducted when the level of concern warrants.

The proposed rule now specifies some types of changes to school information in SEVIS that would warrant an out-of-cycle review. In most instances, these reviews are limited to phone e-mail contact to gather details and confirm school eligibility for continued SEVP certification. Incomplete or ambiguous responses, coupled with other performance indicators, might lead to further investigation.

A school may be requested to electronically update all school information in SEVIS and/or provide SEVP with supporting documentation for the update at any time. The filing must be within 10 business days of the request.

On-site review in out-of-cycle review may be conducted for the same reasons as during recertification. A school undergoing out-of-cycle review that does not support an on-site review within 30 days of being contacted by SEVP would have its SEVP certification withdrawn.

The Notice of Continued Approval, advising of a positive determination to an out-of-cycle review, would have no impact on a school's established certification expiration date for recertification. An out-of-cycle review, generally, would be issue-oriented, while recertification entails an overall, more comprehensive review of school performance.

#### 5. Voluntary Withdrawal of Certification

The proposed rule establishes procedures for a school to withdraw from its SEVP certification, addressing options for future petitioning to certify and the impact of previous performance on adjudication of future petitions. SEVP seeks to facilitate withdrawal of schools that it determines are not suitable for the continued enrollment of F and/or M students. If it subsequently elects to petition for SEVP certification, a school's past performance would be considered in the adjudication.

#### *F. Designated School Officials*

Only the PDSO of the main campus is authorized to submit a Form I-17 for recertification. SEVP may also designate certain functions in SEVIS for use by the PDSO only.

#### *G. Denial or Withdrawal of SEVP Certification or Recertification Procedures*

The proposed rule is updated, in accordance with EBSVERA, to recognize that future petitions for SEVP certification by schools that have been withdrawn on notice would be accepted at the discretion of the Director of SEVP. Reasons that a school might be no longer entitled to SEVP certification are clarified and expanded.

#### 1. Automatic Withdrawal

The proposed rule establishes re-petitioning criteria for schools that have been automatically withdrawn. Automatic withdrawal is viewed by SEVP as essentially an administrative action. New petitions for SEVP certification are, consequently, accepted

from schools that have been automatically withdrawn without restriction. However, schools that have been previously SEVP-certified would be subject to consideration of past performance in the adjudication of any new petition. The proposed rule identifies circumstances when automatic withdrawal would be implemented.

#### 2. Withdrawal on Notice

The proposed rule clarifies existing text and gives a school that files an appeal of a withdrawal on notice the choice to request a telephone interview in support of its response to an NOIW.

#### 3. Operations at a School When SEVP Certification Is Withdrawn or Recertification Denied

The proposed rule establishes the legal requirements and necessary procedures for such schools in the interim between receipt of a Notice of Denial or Withdrawal of SEVP Certification through the SEVIS access termination date. It prescribes actions that DSOs must take on behalf of their F or M students to protect and avoid wrongful termination of their visa status. The proposed rule describes the SEVIS access termination date and the parameters by which it is determined. The proposed rule recognizes the responsibility and liability that SEVP-certified schools have for their F and M students, and identifies the SEVIS access termination date as the date when school responsibility is relinquished and liability for these students is removed.

### **V. Statutory and Regulatory Requirements**

#### *A. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (RFA; 5 U.S.C. 601(6)), ICE examined the impact of this proposed rule on small entities. The "Regulatory Flexibility Act Analysis: Impact on Small Schools of the Change in Fees for Certification and Institution of Recertification by the Student and Exchange Visitor Program," located in the docket, provides details of how the analysis was conducted and detailed information on the results.

As described above, under INA section 186(m)-(n), 8 U.S.C. 1356(m)-(n), SEVP is authorized to collect fees to support the costs of certification and recertification from those entities that benefit from the certification/recertification process. Initial certification is viewed as a benefit to the school. Recertification is viewed as a benefit to F and M students. Recovery

of the full cost of all operations is essential because SEVP receives no appropriated funds and is fully dependent on fees to meet operating expenses and newly identified requirements.

A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business, per the Small Business Act (15 U.S.C. 632)); a small, not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). This analysis focuses on small schools. SEVP used the North American Industry Classification System (NAICS) for the Educational Sector<sup>2</sup> combined with the Small Business Administration (SBA) definition of small entities for all schools except public high schools.

The RFA and SBA guidance requires each agency to make its own determination of significant impact, given the characteristics of the regulated population and the given rule. Among the things the agency considers when determining the impact of a rule are: the possibilities of long-term insolvency; short-term insolvency; disproportional burden, based on whether or not the regulations place the small entities at a significant competitive disadvantage; and inefficiency, based on whether the social cost imposed on small entities outweighs the social benefit of regulating them.

Establishing a cut-off level for significant impact on this population is difficult. Many schools are non-profit or public. Privately owned schools often operate with modest profit margins. Profits go back into the school for expansion of the school or the facilities in most cases.

Certification and recertification are voluntary. In addition, schools with no F and/or M students and no concrete plans to enroll any, in particular, have little motive to recertify.

Another factor is that SEVP cannot certify or recertify schools that are under-funded or financially unstable. The certification regulations require that a school "possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses." Regulations require that schools be established and recognized

<sup>2</sup> The Educational Services sector comprises establishments that provide instruction and training in a wide variety of subjects. This instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers. These establishments may be privately owned and operated for profit or not for profit, or they may be publicly owned and operated. They may also offer food and accommodation services to their students.

institutions of learning prior to becoming SEVP-certified. This eliminates marginal and start-up schools from the population of schools that can seek certification.

SEVP examined the entire range of potential impacts on schools and did an in-depth analysis of the small schools at two levels—"3% and over" and "5% and over," meaning that the certification fee is "3% and over" or "5% and over" of the total earnings of the school in tuition collected from their F and/or M students. Detailed results of this examination are in the "Regulatory Flexibility Act Analysis: Impact on Small Schools of the Change in Fee for Certification and Institution of Recertification by the Student and

Exchange Visitor Program," located in the docket.

SEVP conducted the analysis of the potential impact of the proposed Certification Fee in accordance with the RFA using data drawn from SEVIS in May 2007. At that time, there were 8,961 SEVP-certified schools. This number may differ from other analyses as the number of certified schools fluctuates with SEVP continually adding newly certified schools and schools withdrawing from certification.

All SEVP-certified schools self-report average enrollment and average tuition cost for students. SEVP did not need to use publicly available information or use sampling, therefore, to gather data on the finances of the schools. The reported number of students and the tuition cost per student were used to

estimate annual total tuition income. The tuition cost per student was determined by the data in the school's Form I-17, available in SEVIS, and the tuition cost reported for F and/or M students.

In some cases, the data supplied by a school for the average cost to students appeared erroneous. In these instances, the cost was updated using the school's published tuition rate from its Web site or the amount of tuition shown in the records of individual F and/or M students at that school.

SEVP found that 46% of schools in SEVIS meet the SBA definition of a small entity. Table 14 provides a list of schools by type and SBA NAICS code as well as the percent of large and small schools in that category.

TABLE 14.—PERCENT OF SEVP-CERTIFIED SCHOOLS BY TYPE AND SBA NAICS CODES

Type of school	Description	NAICS codes	Percent of large schools	Percent of small schools
Arts .....	Schools clearly identifiable as giving instruction in the fine arts; a mix of F and M schools.	611610	1.1	0.8
Flight .....	Schools that offer only flight training and other related technical training	611512	0.4	3.5
English Language .....	Schools that offer English language instruction only .....	611630	4.4	3.1
English Language and Other .....	Schools that offer English language instruction and other courses, such as test preparation.	611630 611691 611430	1.3	0.5
Seminary .....	Schools with seminary or theology in the name. Most issue a degree ....	.....	1.5	3.8
Other Private Academic .....	F schools that do not fall into another category. Includes Bible schools, nursing schools, etc. that do not issue a degree.	611410 611420 611430	1.0	3.0
Private K-12 .....	Private elementary, middle and secondary schools .....	611110	20.1	44.4
Public HS .....	Public high schools .....	611110	5.0	14.4
Technical Vocational .....	M schools that do not fall into another category (diverse group that includes schools of horseshoeing, beauty schools, culinary arts schools, non-degree medical instruction, and computer technical training).	611210 611410 611420 611430 611511 611519	5.1	13.5
University or College .....	Schools that issue one of the following degrees: associates, bachelors, masters, and Ph.D. These schools may also offer programs of study in the other areas listed.	611310 611210	60.1	12.9

Twenty-nine SEVP-certified schools have not registered any F or M students. Nearly 25 percent of SEVP-certified schools have five or fewer F and or M students enrolled. Most have not had more than five since the inception of SEVP. SEVP does not expect these schools to recertify.

The resulting profile was used to project the expected characteristics for the 700 new schools expected to certify annually. This analysis indicated that approximately 82% of the schools seeking certification in the future would be small schools. Table 16 provides the projected number of schools at each level of impact.

TABLE 16.—PROJECTED NUMBER OF SMALL SCHOOLS EXPECTED TO CERTIFY BY LEVEL OF IMPACT

Level of impact	Projected number of small schools
Under 0.5% .....	469
0.5% to under 1% .....	59
1% to under 2% .....	29
2% to under 3% .....	7
3% to under 4% .....	1
4% to under 5% .....	5
5% to under 6% .....	1
6% to under 7% .....	2
7% to under 8% .....	0
10% to under 11% .....	0
12% to under 13% .....	1
23% to under 24% .....	1

Of the 574 small schools expected to apply for certification, SEVP projects that about 10 schools may be impacted by 3% or more. That is, the certification fee is 3% or more of the total earnings of the school in tuition collected by their F and/or M students. That represents about 1.7% of the small school certification applicants. SEVP expects that four small schools (0.7%) would be impacted by 5% or more.

The category most impacted would be "Other Private Academic" schools. Of the 16 schools of this type, SEVP projects, as illustrated in Table 17, two would be impacted by 3% and over and none would be impacted by 5% and over.

TABLE 17.—SUMMARY OF THE IMPACT OF THE CERTIFICATION FEE ON SMALL SCHOOLS

	Percent of small schools impacted 3% and over	Percent of small schools impacted 5% and over
Certification Fee	1.7	0.7

SEVP did not make a determination of substantial numbers, as the percentage of schools impacted by the fees is so low that it does not appear substantial.

SEVP considered four alternatives to the proposed Certification Fee in this proposed rule. The need for fees to recover the operating costs of SEVP was inherent in all of the alternatives. Three were rejected for the reasons given. Option 2 was chosen. SEVP seeks comments on the alternatives considered and any significant alternatives not considered.

*Option 1:* Do not charge a fee to cover the costs of certification and recertification. SEVP does not consider a “no charge” option to be viable. There are only two sources of income available to SEVP: fee income or appropriated funds. Congress mandated that ICE/SEVP certify schools that wish to enroll F or M students and recertify those schools every two years. It is unlikely that Congress would appropriate operating funds for a program that has the authority to collect fees from the entities that derive direct benefits from it.

*Option 2:* Allocate some or all costs to the I-901 SEVIS fee. One alternative was to assign all costs to the fee charged to F, M and J nonimmigrants. This would spread the fee-recoverable cost of the program against a larger population. The I-901 SEVIS fee is authorized by the Illegal Immigration Reform and Responsibility Act of 2002 (IIRIRA, 8 U.S.C. 1372). SEVP considers availability of certified schools that F and M students can attend as a benefit to students. Initial certification constitutes a potential benefit to the petitioning schools, however, under INA section 286(m), 8 U.S.C. 1356(m), SEVP opted to collect a fee from schools filing a certification petition, but to pass the cost of recertification to the nonimmigrants being benefited for these reasons.

*Option 3:* Apportion recertification fees by number of F and/or M students enrolled. SEVP would assess a Recertification Fee based on the number of F and/or M students enrolled at a school during the previous two years in this scenario. The advantages of this

load-based scenario include: lower fees for schools with fewer F and/or M students and the scenario may deter schools from issuing Forms I-20 to marginally qualified students. The disadvantages of this scenario include: the schools with large enrollments would pay a disproportionate part of the cost of recertification because the cost for oversight and recertification does not vary directly with the number of students; the number of students would have to be calculated; a school would not be able to predict its fee from year to year; a process for resolving billing disputes would be needed; and SEVP would need to create a fee collection system that creates an invoice to the school.

SEVP rejected this option because assessing and collecting the fee would require building a payment process that captured the needed data, generated invoices, and tracked invoice payment. The cost to build and operate a fee payment system of this complexity could increase the overall program costs. It would also make it more difficult for SEVP-certified schools to budget for the recertification.

*Option 4:* Charge a variable recertification fee based on the risk profile for the school. Schools would be put into a risk category based on the student profile. SEVP would need to develop a methodology to assign a risk factor for each type of school. For example, schools that enroll grades K-12 deal with a lower risk population, so their risk is reduced. For these K-12 schools the risk factor might be 75%, whereas a high-risk group might have a factor of 125%. The fees would be adjusted so that schools in a higher risk category would pay higher fees.

The advantages would be: schools with classes of students that pose a lower risk would pay a smaller fee; types of schools with past performance indicating a higher risk would pay a higher fee; and the fee would be predictable.

The disadvantages would be: the rationale for the fee structure is complex and would need to be supported by a full analysis; any rationale for assessing risk would be controversial; the fee would be higher than that in the current version of the rule for many small schools; and some schools highly in compliance with SEVP requirements would be penalized for the poor performance of other schools in that group, as schools would be grouped by type.

SEVP rejected this alternative due to the inherent complexity and difficulty in making fair risk assessments for entire groups of schools.

SEVP believes that, based on this analysis, the option it chose for this proposed rule is the most appropriate option and that this proposed rule, once final, would not have a significant economic impact on a substantial number of small entities. SEVP welcomes comments on that conclusion. 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 SEVP 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? Does it meet the SBA criteria for a small entity? If not, what criteria should SEVP use to properly identify small schools? Indicate the type of school, using one of those listed in this analysis or a more complete description. Please describe the type and extent of the impact on the commenter’s school. Please describe any recommended alternative method of assessing the Certification Fee or the institution of recertification that would mitigate the impact on a small school or comment upon the alternatives presented in the “Regulatory Flexibility Act Analysis,” located in the docket.

SEVP may certify in the final rule that this action does not have a significant economic impact on a substantial number of small entities if comments received do not demonstrate that the rule would cause a substantial number of small entities to incur significant direct costs.

#### B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken by an agency before “promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, Local and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” 2 U.S.C. 1532(a). This rulemaking is not a “Federal mandate,” as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of an SEVP certification fee by individuals, Local governments or other private sector entities is (to the extent it could be termed an enforceable duty) one that arises from participation in a voluntary Federal program (i.e., applying for status as F-1, F-3, M-1, or M-3 students or as J-1 exchange visitor in the United States or seeking approval from the United

States for attendance by certain aliens seeking status as F-1, F-3, M-1 students). 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major rule, as defined by 5 U.S.C. 804, for purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Act of 1996, Public Law 104-121. This rulemaking would not result in an annual effect on the economy of more than \$100 million; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866: Regulatory Review

This proposed rule is not considered by DHS to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, since it would not have an annual effect on the United States' economy of \$100 million. The implementation of this proposed rule would provide ICE SEVP with additional fee revenue of \$58,538 million in FY 2009 and \$62,581 million in FY 2010. It is however, a significant rulemaking and has been reviewed by OMB.

E. Executive Order 13132, Federalism

This rulemaking would not have substantial direct effects on the States, or on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Consequently, DHS has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement, in accordance with section 6 of Executive Order 13132.

F. Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

All Departments are required to submit to OMB for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995,

Public Law 104-13, 109 Stat. 163 (1995), 44 U.S.C. 3501, et seq. Schools will be using SEVIS to petition for recertification. The recertification process requires schools to input data in SEVIS, print the Form I-17 and sign the form. The electronic data captured for the Form I-17 have been previously approved for use by the Office of Management and Budget (OMB) as one component of the data that are captured in SEVIS. The OMB Control Number for this collection is 1615-0066 (changed to 1653-0038). With the implementation of SEVIS under 67 FR 60107 (September 25, 2002), most schools enrolled in SEVIS were petitioning for DHS recertification, rather than initial certification (i.e., enrolling F or M nonimmigrant students for the first time). The workload for both certification and recertification was included under OMB 1615-0066.

The changes to the fees would require changes to SEVIS and the I-901 software to reflect the updated fee amounts, as these systems generate the pertinent petition and application forms. ICE SEVP would submit a revision to OMB with respect to any changes to existing information collection approvals.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

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

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1372; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7(b)(1) is amended by revising the entries for Forms I-17, I-290B, and I-901 in the listing of fees, to read as follows:

§ 103.7 Fees.

\* \* \* \* \*

(b) \* \* \*
(1) \* \* \*

\* \* \* \* \*

Form I-17. \$1,700 plus \$655 per location listed on the Form I-17B for filing a petition for school certification.

\* \* \* \* \*

Form I-290B. \$585 (the fee will be the same when an appeal is taken from the denial of a petition with one or more multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision), for filing an appeal from any decision under the immigration laws (except those related to either Form I-17 SEVP certification or recertification) in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction.

\* \* \* \* \*

Form I-901. \$200 for remittance of the I-901 SEVIS fee levied on F and M students. \$180 for remittance of the I-901 SEVIS fee levied on most J exchange visitors. \$35 for remittance of the I-901 SEVIS fee levied for J-1 au pairs, camp counselors, and participants in a summer work/travel program. There is no I-901 SEVIS fee remittance obligation for J exchange visitors in government sponsored programs.

\* \* \* \* \*

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301-1305, 1356, 1372, 1379, 1731-32; section 643, Pub. L. 104-208, 110 Stat. 3009-708; 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, 8 CFR part 2.

- 4. Section 214.3 is amended by:
a. Revising paragraph (a)(1);
b. Adding paragraph (a)(3);
c. Revising the first sentence in paragraph (b) introductory text;
d. Revising the first sentence in paragraph (c);
e. Revising paragraphs (d), (e), and (f);
f. Revising paragraph (g)(1);
g. Removing paragraph (g)(2);
h. Redesignating paragraphs (g)(3) and (g)(4) as paragraphs (g)(2) and (g)(3) respectively;
i. Revising newly designated paragraph (g)(2) heading, and by revising newly designated paragraphs (g)(2)(i), (g)(2)(ii) introductory text, (g)(2)(ii)(E), and (g)(2)(iii)(C);
j. Adding paragraph (g)(2)(iii)(D);

- k. Revising paragraph (h);  
 l. Revising paragraph (i);  
 m. Revising the introductory text of paragraph (k);  
 n. Revising paragraph (l)(1)(ii); and by  
 o. Revising paragraph (l)(2).

The revisions and additions read as follows:

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

(a) \* \* \*

(1) *General.* A school or school system seeking initial or continued authorization for attendance by nonimmigrant students under sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act, or both, must file a petition for certification or recertification with the Student and Exchange Visitor Program (SEVP), using the Student and Exchange Visitor Information System (SEVIS), in accordance with the procedures at paragraph (h) of this section. The petition must state whether the school or school system is seeking certification for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act or both. The petition must identify by name and address each location of the school that is included in the petition for certification or recertification, specifically including any physical location in which a nonimmigrant can attend classes through the school (i.e., campus, extension campuses, satellite campuses, etc.).

(i) *School systems.* A school system, as used in this section, means public school (grades 9–12) or private school (grades kindergarten–12). A petition by a school system must include a list of the names and addresses of those schools included in the petition with the supporting documents.

(ii) *Submission requirements.* Certification and recertification petitions require that a complete Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, including supplements A and B and bearing original signatures, be included with the school's submission of supporting documentation. In submitting the Form I–17, a school certifies that the designated school officials (DSOs) signing the form have read and understand DHS regulations relating to: nonimmigrant students at 8 CFR 214.1, 214.2(f), and/or 214.2(m); change of nonimmigrant classification for students at 8 CFR 248; school certification and recertification under this section; withdrawal of school certification under this section and 8 CFR 214.4; that both the school and its DSOs intend to comply with these regulations at all times; and that, to the

best of its knowledge, the school is eligible for SEVP certification. Willful misstatements constitute perjury (18 U.S.C. 1621).

\* \* \* \* \*

(3) *Eligibility.* (i) The petitioner, to be eligible for certification, must establish at the time of filing that it:

(A) Is a bona fide school;  
 (B) Is an established institution of learning or other recognized place of study;

(C) Possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and  
 (D) Is, in fact, engaged in instruction in those courses.

(ii) The petitioner, to be eligible for recertification, must establish at the time of filing that it:

(A) Remains eligible for certification in accordance with paragraph (a)(3)(i) of this section;

(B) Has complied during its previous period of certification with recordkeeping, retention, and reporting requirements and all other requirements of paragraphs (g), (j), (k), and (l) of this section.

(b) \* \* \* Institutions petitioning for certification or recertification must submit certain supporting documents as follows, pursuant to sections 101(a)(15)(F) and (M) of the Act. \* \* \*

\* \* \* \* \*

(c) \* \* \* If the petitioner is a vocational, business, or language school, or American institution of research recognized as such by the Secretary of Homeland Security, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character. \* \* \*

(d) *Interview of petitioner.* The petitioner or an authorized representative of the petitioner may be required to appear in person before or be interviewed by telephone by a DHS representative prior to the adjudication of a petition for certification or recertification. The interview will be conducted under oath.

(e) *Notices to schools related to certification or recertification petitions or to out-of-cycle review—(1) General.* All notices from SEVP to schools or school systems related to school certification, recertification, or out-of-cycle review will be issued in accordance with the procedures at 8 CFR 103.2(b)(1), (4)–(16), (18) and (19), with the exception that all procedures will be conducted by SEVP, the SEVP Director, and the Assistant Secretary, ICE, as appropriate, and except as

provided in this section. All notices related to the collection of evidence, testimony, and appearance pertaining to petitions for recertification encompass compliance with the recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as to eligibility. Notices will be generated and transmitted through SEVIS and/or by e-mail. The date of service is the date of transmission of the e-mail notice. DSOs must maintain current contact information, including current e-mail addresses, at all times. Failure of a school to receive SEVP notices due to inaccurate DSO e-mail addresses in SEVIS or blockages of the school's e-mail system caused by spam denial is not grounds for appeal of a denial or withdrawal. The term “in writing” means either a paper copy bearing original signatures or an electronic copy bearing electronic signatures.

(2) *SEVP approval notification and SEVIS updating by certified schools.* SEVP will notify the petitioner by updating SEVIS to reflect approval of the petition and by e-mail upon approval of a certification or recertification petition. The certification or recertification is valid only for the type of program and nonimmigrant classification specified in the certification or recertification approval notice. The certification or recertification must be recertified every two years and may be subject to out-of-cycle review at any time. Approval may be withdrawn in accordance with 8 CFR 214.4.

(3) *Modifications to Form I–17 while a school is SEVP-certified.* Any modification made by an SEVP-certified school on the Form I–17 at any time after certification and for the duration of a school's authorization to enroll F and/or M students must be reported to SEVP and will be processed by SEVP in accordance with the provisions of paragraphs (f)(1), (g)(2) and (h)(3)(i) of this section.

(4) *Notice of Intent to Withdraw (NOIW) SEVP certification—(i) Automatic withdrawal.* SEVP will serve the school with an NOIW 30 days prior to a school's SEVP certification expiration date if the school has not submitted to SEVP a completed recertification petition, in accordance with paragraph (h)(2) of this section. The school will be automatically withdrawn immediately, in accordance with 8 CFR 214.4(a)(3), if it has not submitted a completed recertification petition by the school's certification expiration date.

(ii) *Withdrawal on notice.* SEVP will issue an NOIW, in accordance with 8

CFR 214.4(b), if SEVP determines that a school reviewed out-of-cycle has failed to sustain eligibility or has failed to comply with the recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section. When a school fails to file an answer to an NOIW within the 30-day period, SEVP will withdraw the school's certification and notify the DSOs of the decision, in accordance with 8 CFR 214.4(d). Such withdrawal of certification may not be appealed.

(5) *Notice of Denial.* A Notice of Denial will be sent to a school when SEVP denies a petition for initial certification or recertification. The notice will address appeals options. Schools denied recertification must comply with 8 CFR 214.4(i).

(6) *Notice of Automatic Withdrawal.* Schools that relinquish SEVP certification for any of the reasons cited in 8 CFR 214.4(a)(3) will be served a Notice of Automatic Withdrawal.

(7) *Notice of Withdrawal.* A school found to be ineligible for continued SEVP certification as a result of an out-of-cycle review will receive a Notice of Withdrawal. Schools withdrawn must comply with 8 CFR 214.4(i).

(8) *Notice of SEVIS Access Termination Date.* The Notice of SEVIS Access Termination Date gives the official date for the school's denial or withdrawal to be final and SEVIS access to be terminated. In most situations, SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld, in accordance with 8 CFR 214.4(i)(3). The school will no longer be able to access SEVIS and SEVP will automatically terminate any remaining Active SEVIS records for that school on that date.

(f) *Adjudication of a petition for SEVP certification or recertification.* (1) *Approval.* The school is required to immediately report through SEVIS any change to its school information upon approval of a petition for SEVP certification or recertification. Modification to school information listed in paragraph (h)(3) of this section will require a determination of continued eligibility for certification. The certification is valid only for the type of program and student specified in the approval notice. The certification may be withdrawn in accordance with the provisions of 8 CFR 214.4, is subject to review at any time, and will be reviewed every 2 years.

(2) *Denial.* The petitioner will be notified of the reasons for the denial and appeal rights, in accordance with the

provisions of 8 CFR part 103 and 8 CFR 214.4, if SEVP denies a petition for certification or recertification.

(g) \* \* \*

(1) *Student records.* An SEVP-certified school must keep records containing certain specific information and documents relating to each F-1 or M-1 student to whom it has issued a Form I-20, while the student is attending the school and until the school notifies SEVP, in accordance with the requirements of paragraphs (g)(1) and (2) of this section, that the student is not pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least three years after the student is no longer pursuing a full course of study. The school must maintain records on the student in accordance with paragraphs (g)(1) and (2) of this section if a school recommends reinstatement for a student who is out of status. The school must maintain records on the student for three years from the date of the denial if the reinstatement is denied. The DSO must make the information and documents required by this paragraph available, including academic transcripts, and must furnish them to DHS representatives upon request. Schools must maintain and be able to provide an academic transcript or other routinely maintained student records that reflect the total, unabridged academic history of the student at the institution, in accordance with paragraph (g)(1)(iv) of this section. All courses must be recorded in the academic period in which the course was taken and graded. The information and documents that the school must keep on each student are as follows:

(i) Identification of the school, to include name and full address.

(ii) Identification of the student, to include name while in attendance, date and place of birth, country of citizenship, school's student identification number.

(iii) Current address where the student and his or her dependents physically reside. In the event the student or his or her dependents cannot receive mail at such physical residence, the school must provide a mailing address in SEVIS. If the mailing address and the physical address are not the same, the school must maintain a record of both mailing and physical addresses and provide the physical location of residence of the student and his or her dependents to DHS upon request.

(iv) Record of coursework. Identify the student's degree program and field of study. For each course, give the periods of enrollment, course

identification code and course title; the number of credits or contact hours, and the grade; the number of credits or clock hours, and for credit hour courses the credit unit; the term unit (semester hour, quarter hour, etc.). Include the date of withdrawal if the student withdrew from a course. Show the grade point average for each session or term. Show the cumulative credits or clock hours and cumulative grade point average. Narrative evaluation will be accepted in lieu of grades when the school uses no other type of grading.

(v) Record of transfer credit or clock hours accepted. Type of hours, course identification, grades.

(vi) Academic status. Include the effective date or period if suspended, dismissed, placed on probation, or withdrawn.

(vii) Whether the student has been certified for practical training, and the beginning and end dates of certification.

(viii) Statement of graduation (if applicable). Title of degree or credential received, date conferred, program of study or major.

(ix) Termination date and reason.

(x) The documents referred to in paragraph (k) of this section.

(xi) Date of last entry into the United States; most recent Form I-94 number and date of issue.

**Note to paragraph (g)(1):** A DHS officer may request any or all of the above data on any individual student or class of students upon notice. This notice will be in writing if requested by the school. The school will have three work days to respond to any request for information concerning an individual student, and ten work days to respond to any request for information concerning a class of students. The school will respond orally on the same day the request for information is made if DHS requests information on a student who is being held in custody, and DHS will provide a written notification that the request was made after the fact, if the school so desires. DHS will first attempt to gain information concerning a class of students from DHS record systems.

(2) *Reporting changes in student and school information.* (i) Schools must update SEVIS with the current information within 21 days of a change in any of the information contained in paragraphs (f)(1) and (h)(3) of this section.

(ii) Schools are also required to report within 21 days any change of the information contained in paragraph (g)(1) or the occurrence of the following events:

\* \* \* \* \*

(E) Any other notification request not covered by paragraph (g)(1) of this section made by DHS with respect to the current status of the student.

(iii) \* \* \*

(C) *The start date of the student's next session, term, semester, trimester, or quarter.* For initial students, the start date is the "program start date" or "report date." (These terms are used interchangeably.) The DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes when determining the report date on the Form I-20. Such required activities may include, but are not limited to, research projects and orientation sessions. The DSO may not, however, indicate a report date more than 30 days prior to the start of classes. The next session start date is the start of classes for continuing students.

(D) *Adjustment to the program completion date.* Any factors that influence the student's progress toward program completion must be reflected by making an adjustment updating the program completion date.

\* \* \* \* \*

(h) *SEVP certification, recertification, out-of-cycle review, and oversight of schools—(1) Certification.* A school seeking SEVP certification for attendance by nonimmigrants under section 101(a)(15)(F)(i) or 101(a)(15)(m)(i) of the Act must use SEVIS to file an electronic petition (which compiles the data for the Form I-17) and must submit the nonrefundable certification petition fee on-line.

(i) *Filing a petition.* The school must access the SEVP Web site at <http://www.ice.gov/sevis> to file a certification petition in SEVIS. The school will be issued a temporary ID and password in order to access SEVIS to complete and submit an electronic Form I-17. The school must submit online the nonrefundable certification petition fee of \$1,700, and the mandatory site visit fee of \$655. The school must pay the \$655 site visit cost for each additional school or campus listed on Form I-17B.

(ii) *Site visit, petition adjudication and school notification.* SEVP will conduct a site visit for each petitioning school and its additional schools or campuses. SEVP will contact the school to arrange the site visit. The school must comply with and complete the visit within 30 days after the date SEVP contacts the school to arrange the visit, or the petition for certification will be denied as abandoned. DSOs and school officials that have signed the school's Form I-17 petition must be able to demonstrate to DHS representatives how they obtain access to the regulations cited in the certification as

part of the site visit. Paper or electronic access is acceptable. DSOs must be able to extract pertinent citations within the regulations related to their requirements and responsibilities. SEVP will issue a notice of approval and SEVIS will be updated to reflect the school's certification if SEVP approves the school's certification petition.

(iii) *Certification denial.* SEVP will issue a notice of denial in accordance with paragraph (f)(2) of this section if a school's petition for certification is denied.

(2) *Recertification.* Schools are required to file a completed petition for SEVP recertification before the school's certification expiration date, which is two years from the date of their previous SEVP certification or recertification expiration date, except for the first recertification cycle after publication of the recertification rule. SEVP will review a petitioning school's compliance with the recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as continued eligibility for certification, pursuant to paragraph (a)(3) of this section.

(i) *Filing of petition for recertification.* Schools must submit a completed Form I-17 (including supplements A and B) using SEVIS, and submit a paper copy of the Form I-17 bearing original signatures of all officials. SEVP will notify all DSOs of a previously certified school 180 days prior to the school's certification expiration date that the school may submit a petition for recertification. A school may file its recertification petition at any time after receipt of this notification. A school must submit a complete recertification petition package, as outlined in the submission guidelines, by its certification expiration date. SEVP will send a notice of confirmation of complete filing or rejection to the school upon receipt of any filing of a petition for recertification.

(A) Notice of confirmation assures a school of uninterrupted access to SEVIS while SEVP adjudicates the school's petition for recertification. A school that has complied with the petition submission requirements will continue to have SEVIS access after its certification expiration date while the adjudication for recertification is pending. The school is required to comply with all regulatory, recordkeeping, retention and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section during the period the petition is pending.

(B) Notice of rejection informs a school that it must take prompt corrective action in regard to its recertification petition prior to its certification expiration date to ensure that its SEVIS access will not be terminated and its petition for recertification will be accepted for adjudication.

(ii) *Consequence of failure to petition.* SEVP will issue an NOIW to the school 30 days prior to a school's certification expiration date. SEVP will no longer accept a petition for recertification from the school and will immediately withdraw the school's certification if the school does not petition for recertification, abandons its petition, or does not submit a complete recertification petition package by the certification expiration date, in accordance with the automatic withdrawal criteria in 8 CFR 214.4(a)(3). The school must comply with 8 CFR 214.4(i) upon withdrawal.

(iii) *School recertification process—*  
(A) *General.* School recertification reaffirms the petitioning school's eligibility for SEVP certification and the school's compliance with recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section since its previous certification.

(B) *Compliance.* Assessment by SEVP of a school petitioning for recertification will focus primarily on overall school compliance, but may also include examination of individual DSO compliance as data and circumstances warrant. Past performance of these individuals, whether or not they continue to serve as principal designated school officials (PDSOs) or DSOs, will be considered in any petition for recertification of the school.

(C) *On-site review for recertification.* All schools are subject to on-site review, at the discretion of SEVP, in conjunction with recertification. The school must comply with and complete an on-site review within 30 days of the notification by a DHS representative of a school that it has been selected for an on-site review for recertification, or the petition for recertification will be denied as abandoned, resulting in the school's withdrawal from SEVIS.

(iv) *Recertification approval.* SEVP will issue a notice of approval if a school's petition for recertification is approved. The date of the subsequent recertification review will be two years after the school's certification expiration date from this petition cycle.

(v) *Recertification denial.* SEVP will issue a notice of denial if a school's petition for recertification is denied, in accordance with 8 CFR 103.3.



(vi) *Adjustment of certification expiration date.* Schools eligible for recertification before [Insert date 180 days from date of publication of the final rule in the **Federal Register**] will, at a minimum, have their certification expiration date extended to [Insert date 180 days from the date of publication of the final rule in the **Federal Register**]. SEVP may extend the certification expiration date beyond this date during the first cycle of recertification.

(3) *Out-of-cycle review and oversight of SEVP-certified schools.* (i) SEVP will determine if out-of-cycle review is required upon receipt in SEVIS of any changes from an SEVP-certified school to its Form I-17 information. The Form I-17 information that requires out-of-cycle review when changed includes:

- (A) Approval for attendance of students (F/M/both);
- (B) Name of school system; name of main campus;
- (C) Mailing address of the school;
- (D) Location of the school;
- (E) School type;
- (F) Public/private school indicator;
- (G) Private school owner name;
- (H) The school is engaged in;
- (I) The school operates under the following Federal, State, Local or other authorization;
- (J) The school has been approved by the following national, regional, or state accrediting association or agency;
- (K) Areas of study;
- (L) Degrees available from the school;
- (M) If the school is engaged in elementary or secondary education;
- (N) If the school is engaged in higher education;
- (O) If the school is engaged in vocational or technical education;
- (P) If the school is engaged in English language training;
- (Q) Adding or deleting campuses;
- (R) Campus name;
- (S) Campus mailing address; and
- (T) Campus location address.

(ii) SEVP may request a school to electronically update all Form I-17 fields in SEVIS and provide SEVP with documentation supporting the update. The school must complete such updates in SEVIS and submit the supporting documentation to SEVP within 10 business days of the request from SEVP.

(iii) SEVP may review a school's certification at any time to verify the school's compliance with the recordkeeping, retention, reporting and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section to verify the school's continued eligibility for SEVP certification pursuant to paragraph (a)(3) of this section. SEVP may initiate remedial action with the school, as appropriate, and may initiate

withdrawal proceedings against the school pursuant to 8 CFR 214.4(b) if noncompliance or ineligibility of a school is identified.

(iv) *On-site review.* SEVP-certified schools are subject to on-site review at any time. SEVP will initiate withdrawal proceedings against the school, pursuant to 8 CFR 214.4(b), if a certified school selected for on-site review prior to its certification expiration date fails to comply with and complete the review within 30 days of the date SEVP contacted the school to arrange the review.

(v) *Notice of Continued Eligibility.* SEVP will issue the school a notice of continued eligibility if, upon completion of an out-of-cycle review, SEVP determines that the school remains eligible for certification. Such notice will not change the school's previously-determined certification expiration date unless specifically notified by SEVP.

(vi) *Withdrawal of certification.* SEVP will institute withdrawal proceedings in accordance with 8 CFR 214.4(b) if, upon completion of an out-of-cycle review, SEVP determines that a school or its programs are no longer eligible for certification.

(vii) *Voluntary withdrawal.* A school can voluntarily withdraw from SEVP certification at any time or in lieu of complying with an out-of-cycle review or request. Failure of a school to comply with an out-of-cycle review or request by SEVP will be treated as a voluntary withdrawal. A school must initiate voluntary withdrawal by sending a request for withdrawal on official school letterhead to SEVP.

(i) *Administration of student regulations.* DHS officials may conduct out-of-cycle, on-site reviews on the campuses of SEVP-certified schools to determine whether nonimmigrant students on those campuses are complying with DHS regulations pertaining to them, including the requirement that each maintains a valid passport. DHS officers will take appropriate action regarding violations of the regulations by nonimmigrant students.

(k) *Issuance of Certificate of Eligibility.* A DSO of an SEVP-certified school must sign any completed Form I-20 issued for either a prospective or continuing student or a dependent. A Form I-20 issued by a certified school system must state which school within the system the student will attend. Only a DSO of an SEVP-certified school may issue a Form I-20 to a prospective student and his or her dependents, and

only after the following conditions are met:

\* \* \* \* \*

(l) \* \* \*

(1) \* \* \*

(ii) Each campus must have one PDSO. The PDSO is responsible for updating SEVIS to reflect the addition or deletion of any DSO on his or her associated campus. SEVP will use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations, as well as any system alerts generated by SEVIS. SEVP may also designate certain functions in SEVIS for use by the PDSO only. The PDSO of the main campus is the only DSO authorized to submit a Form I-17 for recertification. The PDSO and DSO will share the same responsibilities in all other respects.

\* \* \* \* \*

(2) *Name, title, and sample signature.* Petitions for SEVP certification, review and recertification must include the names, titles, and sample signatures of designated officials. An SEVP-certified school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name, title and e-mail address of any new official within 21 days of the change. Any changes to the PDSO or DSO must be made by the PDSO within 21 days of the change. DHS may, at its discretion, reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.

\* \* \* \* \*

5. Section 214.4 is amended by:
- a. Revising the section heading;
  - b. Revising paragraph (a)(1);
  - c. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4) respectively;
  - d. Adding a new paragraph (a)(2);
  - e. Revising newly designated paragraph (a)(3);
  - f. Revising paragraph (b);
  - g. Revising paragraph (g); and by
  - h. Adding paragraph (i).
- The revisions and addition read as follows:

**§ 214.4 Denial of certification, denial of recertification or withdrawal of SEVP certification.**

(a) \* \* \*

(1) *Denial of certification.* The petitioning school will be notified of the reasons and appeal rights if a petition for certification is denied, in accordance with the provisions of 8 CFR 103.3. A petitioning school denied certification may file a new petition for certification at any time.

(2) *Denial of recertification or withdrawal on notice.* The school must

wait at least one calendar year from the date of denial of recertification or withdrawal on notice before being eligible to petition again for SEVP certification if a school's petition for recertification is denied by SEVP pursuant to 8 CFR 214.3(h)(3)(v), or its certification withdrawn on notice pursuant to paragraph (b) of this section. Eligibility to re-petition will be at the discretion of the Director of SEVP. A school or school system's SEVP certification for the attendance of nonimmigrant students, pursuant to sections 101(a)(15)(F)(i) and/or 101(a)(15)(M)(i) of the Immigration and Nationality Act, will be withdrawn on notice subsequent to out-of-cycle review, or recertification denied, if the school or school system is determined to no longer be entitled to certification for any valid and substantive reason including, but not limited to, the following:

- (i) Failure to comply with 8 CFR 214.3(g)(1) without a subpoena.
- (ii) Failure to comply with 8 CFR 214.3(g)(2).
- (iii) Failure of a DSO to notify SEVP of the attendance of an F-1 transfer student as required by 8 CFR 214.2(f)(8)(ii).
- (iv) Failure of a DSO to identify on the Form I-20 which school within the system the student must attend, in compliance with 8 CFR 214.3(k).
- (v) Willful issuance by a DSO of a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training.
- (vi) Conduct on the part of a DSO that does not comply with the regulations.
- (vii) The designation of a DSO of an individual who does not meet the requirements of 8 CFR 214.3(l)(1).
- (viii) Failure to provide SEVP paper copies of the school's Form I-17 bearing the names, titles, and signatures of DSOs as required by 8 CFR 214.3(l)(2).
- (ix) Failure to submit statements of DSOs as required by 8 CFR 214.3(l)(3).
- (x) Issuance of Forms I-20 to students without receipt of proof that the students have met scholastic, language, or financial requirements as required by 8 CFR 214.3(k)(2).
- (xi) Issuance of Forms I-20 to aliens who will not be enrolled in or carry full courses of study, as defined in 8 CFR 214.2(f)(6) or 214.2(m)(9).
- (xii) Failure to operate as a bona fide institution of learning.
- (xiii) Failure to employ adequate qualified professional personnel.
- (xiv) Failure to limit advertising in the manner prescribed in 8 CFR 214.3(j).

(xv) Failure to maintain proper facilities for instruction.

(xvi) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the school's Form I-17.

(xvii) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the Form I-17.

(xviii) Failure to comply with the procedures for issuance of Forms I-20 as set forth in 8 CFR 214.3(k).

(xix) Failure of a DSO to notify SEVP of material changes, such as changes to the school's name, address, or curriculum, as required by 8 CFR 214.3(f)(1).

(3) *Automatic withdrawal.* A school that is automatically withdrawn and subsequently wishes to enroll nonimmigrant students in the future may file a new petition for SEVP certification at any time. The school must use the certification petition procedures described in 8 CFR 214.3(h)(1) to gain access to SEVIS for submitting its petition. Past compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l), and with the requirements for transition of students under paragraph (i) of this section will be considered in the evaluation of a school's subsequent petition for certification. SEVP certification will be automatically withdrawn:

(i) As of the date of termination of operations, if an SEVP-certified school terminates its operations.

(ii) As of a school's certification expiration date, if an SEVP-certified school does not submit a completed recertification petition in the manner required by 8 CFR 214.3(h)(2).

(iii) Sixty days after the change of ownership if an SEVP-certified school changes ownership, unless the school files a new petition for SEVP certification, in accordance with the procedures at 8 CFR 214.3(h)(1), within 60 days of the change of ownership. SEVP will review the petition if the school properly files such petition to determine whether the school still meets the eligibility requirements of 8 CFR 214.3(a)(3) and is still in compliance with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3 (f), (g), (j), (k), and (l). SEVP will institute withdrawal proceedings in accordance with paragraph (b) of this section if, upon completion of the review, SEVP finds that the school is no longer eligible for certification, or is not in compliance with the recordkeeping, retention, reporting and other

requirements of 8 CFR 214.3 (f), (g), (j), (k), and (l).

(iv) If an SEVP-certified school voluntarily withdraws from its certification.

(b) *Withdrawal on notice.* SEVP will initiate an out-of-cycle review and serve the school's PDSO with a Notice of Intent to Withdraw (NOIW) if SEVP has information that a school or school system may no longer be entitled to SEVP certification prior to the school being due for its two-year recertification. The NOIW will inform the school of:

(1) The grounds for withdrawing SEVP certification.

(2) The 30-day deadline from the date of the service of the NOIW for the school to submit sworn statements, and documentary or other evidence, to rebut the grounds for withdrawal of certification in the NOIW. An NOIW is not a means for the school to submit evidence that it should have previously submitted as a part of its established reporting requirements.

(3) The school's right to submit a written request (including e-mail) within 30 days of the date of service of the NOIW for a telephonic interview in support of its response to the NOIW.

\* \* \* \* \*

(g) *Decision.* The decision of SEVP will be in accordance with 8 CFR 103.3(a)(1).

\* \* \* \* \*

(i) *Operations at a school when SEVP certification is relinquished or withdrawn, or whose recertification is denied and on the SEVIS access termination date—(1) General.* A school whose certification is relinquished or withdrawn, or whose recertification is denied may, at SEVP discretion, no longer be able to create Initial student records or issue new Forms I-20, Certificate of Eligibility for Nonimmigrant Student, for initial attendance. Schools must comply with the instructions given in the notice of withdrawal or denial with regard to management of status for their Initial and continuing F and/or M students. All other SEVIS functionality, including event reporting for students, will remain unchanged until the school's SEVIS access termination date. The school must continue to comply with the recordkeeping, retention, reporting and other requirements of 8 CFR 214.3(f), (g), (j), (k), and (l) until its SEVIS access termination date.

(2) *SEVIS access termination.* In determining the SEVIS access termination date, SEVP will consider the impact that such date will have upon SEVP, the school, and the school's

nonimmigrant students in determining the SEVIS access termination date. SEVP will not determine a SEVIS access termination date for that school until the appeals process has concluded and the initial denial or withdrawal has been upheld unless a school whose certification is withdrawn or whose recertification is denied is suspected of criminal activity or poses a potential national security threat. The school will no longer be able to access SEVIS, and SEVP will automatically terminate any remaining Active SEVIS records for that school on the SEVIS access termination date.

(3) *Legal obligations and ramifications for a school and its DSOs when a school is having SEVP certification denied or withdrawn.* Schools are obligated to their students to provide the programs of study to which they have committed themselves in the students' application for enrollment and acceptance process. Schools are obligated to the U.S. government to comply with the recordkeeping, retention, reporting and other requirements contained in 8 CFR 214.3. With any new petition for SEVP certification, SEVP will consider the extent to which a school has fulfilled these obligations to students and the U.S. government during any previous period of SEVP certification.

6. Section 214.13 is amended by revising paragraph (a), to read as follows:

**§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.**

(a) *Applicability.* The following aliens are required to submit a payment in the amount indicated for their status to the Student and Exchange Visitor Program (SEVP) in advance of obtaining nonimmigrant status as an F or M student or J exchange visitor, in addition to any other applicable fees, except as otherwise provided for in this section:

(1) An alien who applies for F-1 or F-3 status in order to enroll in a program of study at an SEVP-certified institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other SEVP-certified academic or language-training institution including private elementary and secondary schools and public secondary schools, the amount of \$200;

(2) An alien who applies for J-1 status in order to commence participation in an exchange visitor program designated by the Department of State (DOS), the amount of \$180, with a reduced fee for certain exchange visitor categories as

provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M-1 or M-3 status in order to enroll in a program of study at an SEVP-certified vocational educational institution, including a flight school, in the amount of \$200.

\* \* \* \* \*

**Michael Chertoff,**

*Secretary.*

[FR Doc. E8-8261 Filed 4-18-08; 8:45 am]

**BILLING CODE 4410-10-P**

**DEPARTMENT OF AGRICULTURE**

**Grain Inspection, Packers and Stockyards Administration**

**9 CFR Part 201**

**RIN 0580-AA99**

**Weighing, Feed, and Swine Contractors**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** We published a notice of proposed rulemaking in the **Federal Register** on February 11, 2008 (73 FR 7686), asking for comments on proposed amendments to four existing scales and weighing regulations issued under the Packers and Stockyards Act (P&S Act). The notice provided an opportunity for interested parties to submit written comments to Grain Inspection, Packers and Stockyards Administration (GIPSA) until April 11, 2008. In response to a request from the poultry industry, we are reopening and extending the comment period to provide interested parties with additional time in which to comment.

**DATES:** The comment period for the proposed rule published at 73 FR 7686, February 11, 2008, which originally closed on April 11, 2008, is reopened and extended through May 21, 2008. We will consider comments that we receive by May 21, 2008.

**ADDRESSES:** We invite you to submit comments on this notice of proposed rulemaking. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).

- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.

- Fax: Send comments by facsimile transmission to: (202) 690-2755.

- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Instructions: All comments should make reference to the date and page number of the February 11, 2008, issue of the **Federal Register**. [73 FR 7686]
- Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Avenue, SW., Washington, DC 20250-3646, (202) 720-7363, [s.brett.offutt@usda.gov](mailto:s.brett.offutt@usda.gov).

**SUPPLEMENTARY INFORMATION:** GIPSA published a notice of proposed rulemaking in the **Federal Register** on February 11, 2008 (73 FR 7686), seeking public comment on proposed amendments to 9 CFR part 201. The comment period of 60 days from the date of publication closed on April 11, 2008. GIPSA has received a request from the poultry industry to provide interested parties additional time to comment. In response, the comment period is reopened for an additional 30-day period. Any comments submitted after the close of the original comment period on April 11, 2008, but prior to the date of publication of this notice in the **Federal Register** will also be considered. All comments submitted between February 11, 2008 and May 21, 2008 will be considered.

Dated: April 14, 2008.

**Alan Christian,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E8-8554 Filed 4-18-08; 8:45 am]

**BILLING CODE 3410-KD-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. NM391; Notice No. 25-08-05-SC]

**Special Conditions: Embraer S.A., Model ERJ 190-100 ECJ Airplane; Flight-Accessible Class C Cargo Compartment**

**AGENCY:** Federal Aviation Administration (FAA), DOT.