

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 2211-02]

RIN 1115-AG55

Allowing Eligible Schools To Apply for Preliminary Enrollment in the Student and Exchange Visitor Information System (SEVIS)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Immigration and Naturalization Service (Service), consistent with its statutory authority to regulate foreign students under sections 101(a)(15)(F) and (M) of the Immigration and Nationality Act (Act), will be conducting a review of all Service-approved schools, as a prerequisite for enrollment in the Student and Exchange Visitor Information System (SEVIS). This interim rule will allow eligible schools to preliminarily enroll in SEVIS, beginning on July 1, 2002, provided they meet the established criteria. Eligibility for preliminary enrollment in SEVIS will continue through August 16, 2002. By that date, the Service anticipates publishing a new interim certification rule. When the forthcoming interim certification rule takes effect, the preliminary enrollment period will end and all schools will be required to apply for certification prior to enrollment in SEVIS in accordance with the requirements of that rule.

DATES: *Effective date.* This interim rule is effective July 1, 2002.

Comment date. Written comments must be submitted on or before July 31, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC, 20536. To ensure proper handling, please reference INS No. 2211-02 on your correspondence. Comments may also be submitted electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, you must include INS No. 2211-02, in the subject heading, and any attachments must be typed in MS Word format so that the comments can be electronically routed to the appropriate program office. Comments are available for public inspection at this location by calling

(202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:

Maura Deadrick, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514-3228.

SUPPLEMENTARY INFORMATION: On May 16, 2002, at 67 FR 34862, the Service published a proposed rule in the **Federal Register** to implement the new SEVIS requirements and establish a process for electronic reporting by designated school officials (DSOs). That proposed rule, which would be codified at 8 CFR 214.2(f), (j), and (m), indicated that the SEVIS system would begin operation on July 1, 2002, and proposed a mandatory compliance date of January 30, 2003, by which all schools must be using SEVIS in order to issue Form I-20, Certificate of Eligibility for Nonimmigrant Student. Schools will only be granted access to SEVIS by the Service after a review of the bona fides of the school.

The Service will allow schools that meet the criteria in 8 CFR 214.12, as promulgated in the present interim rule, to preliminarily enroll in SEVIS after the Service verifies that they meet the established criteria. This preliminary enrollment period will close the later of August 16, 2002, or until the date the service begins the SEVIS full scale certification process, which will be the effective date of a forthcoming interim rule (Interim Certification Rule) implementing section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173) (Border Security Act).

In general, 8 CFR 214.12(a) will permit private elementary and private secondary schools, post-secondary schools, and language and vocational schools, to apply for preliminary enrollment in SEVIS, if the school is accredited, and the school has been continuously approved by the Service for the last three years for the enrollment of F or M nonimmigrant students. Private elementary and private secondary schools must be accredited by an organization holding membership in the Council for the American Private Education (CAPE) or the American Association of Christian Schools (AACS). Postsecondary, language and vocational schools must be accredited by an accrediting agency recognized by the United States Department of Education. Proof that a school has been determined to be eligible under Title IV of the Higher Education Act of 1965 is sufficient to establish that a school is properly accredited, since such

accreditation is a prerequisite for recognition under Title IV of the latter Act. The specific requirements for Title IV eligibility are specified at 34 CFR part 600.

In addition, public high schools may also be permitted to enroll under 8 CFR 214.12(a) if the school provides certification from the appropriate public official that the school meets the requirements of the state or local public educational system and the school has been continuously approved by the Service for the last three years for enrollment of F or M nonimmigrant students.

8 CFR 214.12(b) and (c), as added by this interim rule, describes the preliminary enrollment process for eligible schools, which will be conducted through the Internet.

The Interim Certification Rule will establish a review process for all of the currently approved schools, including a new SEVIS certification fee associated with this review. The Interim Certification Rule will govern all schools not eligible for preliminary enrollment under 8 CFR 214.12, and all schools that were eligible but chose not to participate during the preliminary enrollment period. After the close of the preliminary enrollment period, schools previously eligible for preliminary enrollment will be required to apply for a certification review in accordance with the Interim Certification Rule prior to being granted approval to enroll in SEVIS.

Why Is the Service Allowing Preliminary Enrollment?

In the interest of implementing use of SEVIS by schools in a timely manner, the Service has developed a process whereby schools may enroll in SEVIS beginning on July 1, 2002, in advance of the new certification review process. This process necessitates that the Service have some means of assuring that schools allowed preliminary enrollment are in fact bona fide institutions. To be accredited by an agency recognized by the Department of Education, CAPE, or AACCS, a school must establish and maintain compliance with rigorous standards of operation. Therefore, accreditation by such an agency is considered to be preliminary establishment of evidence that the school meets the Service requirements for a bona fide institution outlined at 8 CFR 214.3(e). Maintenance of three consecutive years of Service approval to admit nonimmigrant students, evidenced by a valid school code, provides at least a preliminary assurance of the school's familiarity and

compliance with the Service Form I-20 issuance and reporting requirements.

How Does a School Apply for Preliminary Enrollment?

Eligible institutions must request preliminary enrollment by accessing the Internet site, <http://www.ins.usdoj.gov/sevis>. Upon accessing the site, the president, owner, head of the school or designated school official will be asked to enter the following information: The school's name; the first, middle, and last name of the contact person for the school; and the email address and phone number of the contact person. Once this information has been submitted, the Service will issue the school a temporary ID and password, which will be forwarded to the email address listed. When the contact person receives this temporary ID and password, the school will again access the Internet site and will electronically enter the school's information for its Form I-17.

Once a school has electronically submitted the Form I-17 information, a Service officer will review the school's eligibility to verify that the school meets the preliminary enrollment eligibility requirements. If the officer determines that the school is eligible for preliminary enrollment, the officer will update SEVIS and enroll the school. Once SEVIS has been updated by the officer, permanent user IDs and passwords will be automatically generated and issued via email to the DSOs listed on the Form I-17. Schools that are not approved by the Service for preliminary enrollment must apply for certification in accordance with the Interim Certification Rule.

Will There Be a Fee for Preliminary Enrollment?

A school that applies for preliminary enrollment will not have to pay a fee at this time. The Service, however, plans to impose a certification fee on all schools, including those granted preliminary enrollment, in the Interim Certification Rule. Section 502 of the Border Security Act requires the Service to conduct a periodic review of compliance of all Service-approved schools by May 14, 2004. This periodic review will require an on-site visit to help determine whether a school is in compliance with various recordkeeping and reporting requirements. As a result, all schools that are granted preliminary enrollment in SEVIS under the terms of 8 CFR 214.12, will be required to apply for a certification review under the Interim Certification Rule, and pay a certification fee, prior to May 14, 2004.

Any school that is ineligible for preliminary enrollment, or that applies after the close of the preliminary enrollment period, will be required to pay the certification fee in accordance with the Interim Certification Rule before it can be enrolled in SEVIS.

What if a School Is Not Eligible for Preliminary Enrollment?

If a school falls under one of the following categories, it is not eligible for preliminary enrollment: (1) Schools that are not accredited by CAPE, AACCS, or an agency recognized by the Department of Education; (2) schools that have not been participating as a Service approved school for three years; and (3) flight schools even if they have been accredited by an agency recognized by the Department of Education and have been participating as a Service approved school for three years. Schools that do not meet the criteria for preliminary enrollment will not be eligible to apply for access to SEVIS until they apply for certification under the Interim Certification Rule and undergo a full-scale review by the Service. Prior to this review, such schools must continue to comply with the recordkeeping and reporting requirements as provided in 8 CFR 214.2(f) and (m) and 8 CFR 214.3.

What if a School That Is Eligible for Preliminary Enrollment Chooses Not To Enroll During the Preliminary Enrollment Period?

Schools that are eligible for preliminary enrollment in SEVIS, under 8 CFR 214.12(a), but do not apply for such enrollment before the close of the preliminary enrollment period will be required to apply for certification and pay the certification fee, just as for schools not eligible for preliminary enrollment. The fee for certification is the same for all schools whether eligible for preliminary enrollment or not. However, in recognition of the status of schools that are properly accredited and have been recognized by the Service for the last three years, the Service, after a review of the application, will be authorized to approve the enrollment of such a school in SEVIS prior to completion of the required on-site visit. If such schools are granted enrollment in SEVIS without undergoing on-site review, they will be required to complete the on-site visit prior to May 2004, in accordance with the mandate for school review set forth in the Border Security Act.

Must Schools Use SEVIS Once They Have Been Approved for Preliminary Enrollment?

Once a school is approved for preliminary enrollment in SEVIS, the school will be required to utilize SEVIS to generate any new Forms I-20 for new students, as well as in any circumstance where a currently-enrolled student must be issued a new Form I-20 (for example, for an extension of the student's approved program of study). Schools enrolling in SEVIS should refer to the provisions of the proposed rule published by the Service at 67 FR 34862 (May 16, 2002), for information on the requirements that will be applicable to SEVIS, once that rule is adopted in final form.

Schools that preliminarily enroll in SEVIS prior to the final SEVIS compliance date are not required to enter all data for their current students into SEVIS at that time, but may do so until the use of SEVIS is mandatory. However, any action taken on the part of a current or a new student that involves a change or update to the information on the Form I-20 must be done using SEVIS.

Good Cause Exception

This rule is effective on publication in the **Federal Register**. The Service finds that good cause exists both for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553, and for making this rule immediately effective, rather than having it enter into force 30 days after publication. The USA Patriot Act, Public Law 107-56, mandates that the SEVIS be fully implemented and expanded prior to January 1, 2003. Further, the Border Security Act requires the Service to review all schools within 2 years of its enactment. In order to meet the mandate for complete functionality of SEVIS while maintaining the integrity of data in SEVIS, a timely review of all schools is necessary prior to allowing a school to access SEVIS. To accomplish this action, the Service must allow a portion of eligible schools to preliminarily enroll in SEVIS. The provision for review of all approved schools is an important part of helping to safeguard against the abuse of the traditional American openness to foreign students by foreign terrorists. Because of the vital national security concerns that underpin the USA Patriot Act, and the Border Security Act, it would be contrary to the public interest to observe the requirements of 5 U.S.C. 533(b) and (d).

Regulatory Flexibility Act

The Commissioner, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. Preliminary enrollment is voluntary and applies to those schools that have the capability to electronically enroll in SEVIS. The information a school must submit is information that should be readily available to the school. In addition, any expenditure required by the school can easily be recouped by the school in student fees. Accordingly, any economic impact will not be "significant."

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)–(D), this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this

rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The information collection requirement to electronically enroll in SEVIS has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The OMB Control number for this collection is 1115–0252.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment.

Accordingly, part 214 of chapter I of title 8, Code of Federal Regulations, is amended as follows:

PART 214—[AMENDED]

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; sec. 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.

2. Section 214.12 is added, to read as follows:

§ 214.12 Preliminary enrollment of schools in the Student and Exchange Visitor Information System (SEVIS).

(a) Private elementary and private secondary schools, public high schools, post-secondary schools, language schools, and vocational schools are eligible for preliminary enrollment in Student and Exchange Visitor Information System (SEVIS), beginning on or after July 1, 2002, but only if the school is accredited by an accrediting agency recognized by the United States Department of Education, CAPE, or AACCS, or in the case of a public high school, the school provides certification from the appropriate public official that the school meets the requirements of the state or local public educational system and has been continuously approved by the Service for a minimum of three years, as of July 1, 2002, for the admission of F or M nonimmigrant students. A school may establish that it is accredited by showing that it has been designated as an eligible school under

Title IV of the Higher Education Act of 1965.

(b) Preliminary enrollment in SEVIS is optional for eligible schools. The preliminary enrollment period will be open from July 1, 2002, through August 16, 2002, or, if later, until the Service begins the SEVIS full scale certification process. The process for eligible schools to apply for preliminary enrollment through the Internet is as follows:

(1) Eligible institutions must access the Internet site, <http://www.ins.usdoj.gov/sevis>. Upon accessing the site, the president, owner, head of the school or designated school official will be asked to enter the following information: the school's name; the first, middle, and last name of the contact person for the school; and the e-mail address and phone number of the contact person.

(2) Once this information has been submitted, the Service will issue the school a temporary ID and password, which will be forwarded to the e-mail address listed. When the contact person receives this temporary ID and password, the school will again access the Internet site and will electronically enter the school's information for its Form I–17.

(c) The Service will review the information by a school submitted as provided in paragraph (b) of this section, and will preliminarily enroll a school in SEVIS, if it is determined to be eligible under the standards of paragraph (a) of this section. If the officer determines that the school is eligible for preliminary enrollment, the officer will update SEVIS and enroll the school and permanent user IDs and passwords will be automatically generated via e-mail to the DSOs listed on the Form I–17. Schools that are not approved by the Service for preliminary enrollment will be notified that they must apply for certification in accordance with the Interim Certification Rule. A school that is granted preliminary enrollment will have to use SEVIS for the issuance of any new Form I–20 to a new or continuing student.

(d) Schools granted preliminary enrollment in SEVIS will not have to apply for certification at this time. However, all such schools will be required to apply for certification, and pay the certification fee, prior to May 14, 2004.

(e) Eligible schools that meet the standards of paragraph (a) of this section, but do not apply for preliminary enrollment in SEVIS prior to the close of the preliminary enrollment period will have to apply for certification review under the Interim

Certification Rule and pay the certification fee before enrolling in SEVIS. However, once a school meeting the standards of paragraph (a) of this section applies for certification review, the Service will have the discretion, after a review of the school's application, to allow the school to enroll in SEVIS without requiring an on-site visit prior to enrollment. If the Service

permits such a school to enroll in SEVIS prior to completion of the on-site visit, the on-site visit must be completed prior to May 14, 2004.

(f) Schools that are not eligible to apply for preliminary enrollment in SEVIS under this section—including flight schools—will have to apply for certification under the Interim Certification Rule, pay the certification

fee, and undergo a full certification review including an on-site visit, prior to being allowed to enroll in SEVIS.

Dated: June 27, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

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