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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4992]

RIN 1400-AC03

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Student and Exchange Visitor Information System (SEVIS)

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule makes final the interim rule amending the Department's regulations pertaining to foreign students and exchange visitors who enter the United States in F, M, or J nonimmigrant visa categories. The new regulations will establish the verification and reporting procedures required by the Department of Homeland Security (DHS) foreign student monitoring system known as Student and Exchange Visitor Information System (SEVIS). As SEVIS was fully implemented on February 15, 2003, the Department's transitional foreign student database known as the Interim Student and Exchange Authentication System (ISEAS) is no longer available to the educational and exchange visitor communities. However, it remains available to consular sections in the field as a means of electronically verifying student and exchange visitor documentation issued prior to February 15, 2003.

EFFECTIVE DATES: The interim rule became effective on May 23, 2003. This final rule takes effect on the date of publication in the **Federal Register**.

ADDRESSES: You may view this final rule online at <http://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: Jill Nebel, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, 202-663-1260 or e-mail nebelj@state.gov

SUPPLEMENTARY INFORMATION: On May 23, 2003, the Department published an interim rule (68 FR 28129; Public Notice 4368) detailing the implementation of

the SEVIS monitoring system. The Department published this interim rule with a request for comments. There were no comments received and the Department is now making final the interim rule.

How Is the Department Amending Its Regulations?

The Department is amending its regulations at 22 CFR 41.61 and 41.62 regarding students and exchange visitors by adding the requirement that authorized consular officials verify the provenance of SEVIS-generated forms I-20 or DS-2019 against SEVIS data in the Consular Consolidated Database CCD. It is also amending its regulations by adding the requirement that authorized consular officials verify the payment of any applicable SEVIS fee, and to make Border Commuter Students (F-3 and M-3) subject to SEVIS requirements. No F-1, F-2, F-3, M-1, M-2, M-3, J-1 or J-2 visas may be issued unless an authorized consular official has verified the provenance of the student or exchange visitor acceptance documentation against SEVIS data in the CCD, or via direct access to SEVIS.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, after a 60-day provision for post-promulgation public comments and review, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The 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 import markets.

The Unfunded Mandates Reform Act of 1995

This rule will not result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector and it will not significantly or uniquely affect small governments.

Executive Order 12866: Regulatory Review

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132: Federalism

This regulation 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 require consultations or warrant the preparation of a federalism summary impact statement.

The Paperwork Reduction Act of 1995

The final rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., chapter 35.

Final Rule

The interim rule amended the Departments' regulations at 22 CFR part 41. In view of the foregoing, the Department does not feel it necessary to amend the regulations as published in the interim rule, and the interim rule is being incorporated herein as a final rule.

Dated: November 8, 2004.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

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