and promotion, $370,730 for salaries, $320,000 for research, $38,250 for employee health insurance, and $54,860 for employee retirement, respectively.

As previously mentioned, the number of assessable containers during 2003–04 is estimated to be 50 million and the recommended assessment rate would generate $1,250,000 in income. The Committee's financial reserve is now estimated to be $1,767,427 and is available to cover the deficit in assessment income. The increased assessment rate would allow the Committee to maintain its financial reserve at a level it deems appropriate.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $1,773,100 which included increases in administrative and office salaries, research, and education and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.025 per 25-pound container of tomatoes was determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate would generate $1,250,000 in income. This is approximately $523,100 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–04 season could range between $6.45 and $10.37 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 2003–04 as a percentage of total grower revenue could range between .4 and .2 percent, respectively.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 4, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–04 fiscal period began on August, 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past fiscal periods.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August, 1, 2003, an assessment rate of $0.025 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: October 21, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–27014 Filed 10–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214, and 299

[ICE No. 2297–03]

RIN 1653–AA23

Authorizing Collection of the Fee Levied on F, J, and M Nonimmigrant Classifications Under Public Law 104–208

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (HSA) (Public Law 107–296). The Service's adjudications functions transferred to the U.S. Citizenship and Immigration Services (CIS) of DHS, and the Service's Student and Exchange Visitor Information System (SEVIS) functions transferred to the Bureau of Immigrations and Customs Enforcement (ICE) of DHS. For the sake of simplicity, any reference to the Service has been changed to DHS, even when referencing events that preceded March 1, 2003. This rule proposes to amend the regulations of DHS to provide for the collection of a fee to be paid by certain aliens who are applying for F–1, F–3, M–1, or M–3 student visas or for a J–1 visa as an exchange visitor. Generally, the rule proposes a fee of $100, although applicants for certain J–1 exchange programs will pay a reduced fee of $35, and certain other aliens will be exempt from the fee altogether. This proposed rule explains which aliens will be required to pay the fee, describes the consequences that an alien seeking an F, J, or M nonimmigrant visa faces upon failure to pay the fee, and specifies which aliens are exempt from the fee. This fee is levied on students applying for F, J, or M nonimmigrant visas to cover the costs of administering and maintaining the SEVIS system and ensuring compliance by individuals, schools, and organizations with the system's requirements. The fee imposed under this proposed rule will pay for the continued operation of the SEVIS

program and will also include the funds to hire SEVIS Liaison Officers and other ICE officers to ensure compliance with the SEVIS requirements.

DATES: Written comments must be submitted on or before December 26, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference ICE No. 2297–03 on your correspondence. Comments may also be submitted electronically to DHS at *rfs.regs@dhs.gov.* When submitting comments electronically, you must include ICE No. 2297–03 in the subject box. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jill Drury, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 800 K Street, NW, Room 1000, Washington, DC 20536, telephone (202) 514–1988.

SUPPLEMENTARY INFORMATION:

Background

Who Are F, J, and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of different classes of nonimmigrants, who are foreign nationals seeking temporary admission to the United States.

The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification. Some classifications permit the nonimmigrant's spouse and qualifying child(ren) to accompany the nonimmigrant to the United States, or to join the nonimmigrant here. To qualify, a child must be unmarried and under the age of 21.

F–1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are foreign students coming to the United States to pursue a full course of study in DHS-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, or in language training programs in the United States. For the purposes of this rule, the term ''school'' refers to all of these types of DHS-approved institutions. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 student.

J–1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been selected by a sponsor designated by the United States Department of State (DOS) (formerly the United States Information Agency [USIA]) to participate in an exchange visitor program in the United States. The J–1 classification includes aliens who are participating in programs under which they will receive graduate medical education or training. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor.

M–1 nonimmigrants, as defined in section 101(a)(15)(M) of the Act, are foreign nationals pursuing a full course of study at a DHS-approved vocational or other recognized nonacademic institution (other than in language training programs) in the United States. The term ''school'' also encompasses those institutions attended by M–1 students for the purposes of this rule. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student.

On November 2, 2002, Congress passed the Border Commuter Student Act of 2002, Pub. L. (107–274), which created new F–3 and M–3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico who continue to reside in their home country while commuting to the United States to attend an approved F or M school. Such border commuter students are not subject to the existing requirement for F–1 and M–1 students to be pursuing a full course of study, and are specifically permitted to engage in either full-time or part-time studies. DHS recently adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to make the necessary conforming amendments in response to the new legislation. In this proposed rule, DHS merely notes that the new F–3 and M–3 students will be subject to the same rules regarding the collection of the fee as for F–1 and M–1 students.

Why Is DHS Proposing This Rule?

This rule is necessary to implement section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 8 U.S.C. 1372, (regarding the program to collect information relating to nonimmigrant foreign students and other exchange program participants) and provides for the collection of the required fee to defray the costs of this program. Section 641 of IIRIRA requires DHS to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable.

DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement. The substantive requirements and procedures for SEVIS have been promulgated in separate rulemaking proceedings. *See* 67 FR 34862 (May 16, 2002) (proposed rule implementing SEVIS); 67 FR 44343 (July 1, 2002) (interim rule for schools to apply for preliminary enrollment in SEVIS); 67 FR 60107 (Sept. 25, 2002) (interim rule for certification of schools applying for enrollment in SEVIS); 67 FR 76256 (Dec. 11, 2002) (DHS's final rule implementing SEVIS); 67 FR 76307 (Dec. 12, 2002) (DOS interim rule implementing SEVIS).

In accordance with section 641(e) of IIRIRA, as amended, 8 U.S.C. 1372(e), which directs that this information collection system be self-funded by aliens in those visa classifications, DHS proposes to set the amount of the fee and outline the regulatory provisions associated with such a fee.

What Does This Rule Propose To do?

Based partly on a fee study of the costs of implementing SEVIS conducted in 2002, and upon the costs of ensuring compliance with the program, this rule proposes to set the regular fee at $100. Section 641(e)(3) of IIRIRA provides that aliens applying for a J–1 visa as a participant in an exchange program sponsored by the Federal Government are exempt from the fee. Under section 641(e) of IIRIRA, as amended by section 110 of the Making Appropriations for the Government of the District of Columbia and Other Activities Chargeable in Whole or in Part Against the Revenues of Said District of Columbia for the Fiscal Year Ending September 30, 2001 and for Other Purposes, Pub. L. 106–553 dated December 21, 2000, aliens who are applying for a J–1 visa as an au pair, camp counselor, or participant in a summer work travel program are subject to a reduced fee of not more than $35. DHS is also proposing in this rule that dependent aliens (F–2, J–2, and M–2) are exempt from paying a fee in connection with that status.

Aliens who are subject to the fee will pay the fee prior to being granted an F–1, F–3, J–1, M–1 or M–3 nonimmigrant visa (or, for aliens who are exempt from the visa requirement under section 212(d)(4) of the Act, prior to their admission to the United States). Similarly, aliens already in the United States who apply for a change of status

to one of those classifications (for example, an alien admitted as an F–2 dependent or a B–2 visitor for pleasure who seeks to pursue full-time study as an F–1 college student) also will pay the fee prior to applying for the change of status. However, an alien who has already paid the $100 or $35 fee, prior to obtaining F, J, or M nonimmigrant status, is not required to pay the fee again at the time of applying for an extension of status in the same classification as an F, J or M nonimmigrant. DHS has sought to build in as much flexibility as possible for the payment of the fee, recognizing that aliens abroad will be required to pay the fee prior to seeking an F, J or M visa at a U.S. embassy or consulate. Accordingly, DHS proposes two options for aliens to pay the fee:

(1) The alien may pay the fee by mail, by submitting Form I–901, Fee Remittance for Certain F, M, and J Nonimmigrants, together with a check or money order drawn on a U.S. bank and payable in U.S. dollars to ''I–901 Student/Exchange Visitor Processing Fee;'' or

(2) The alien may submit the fee electronically, by completing Form I–901 through the Internet and using a credit card.

These options are similar to the usual means that any student or exchange visitor abroad would use to pay fees and expenses to the school or exchange program. The requirement that a check or money order be drawn on an U.S. bank does not necessarily mean that the student living abroad must approach an U.S. bank to make a payment. As provided in 8 CFR 103.7(a)(1), an application fee submitted from outside the U.S. ''may be made by bank international money order or foreign draft drawn on a financial institution in the United States'' and payable in U.S. currency. Many foreign banks are able to issue checks or money orders drawn on a U.S. bank. Accordingly, students may obtain checks from banks chartered or operated in the U.S., from foreign subsidiaries of U.S. banks, or from foreign banks that have an arrangement with a U.S. bank to issue a check, money order, or foreign draft that is drawn on a U.S. bank.

DHS will issue a paper receipt to the alien in each case acknowledging the payment. As discussed further below in response to the public comments on the December 21, 1999 proposed rule, an alien who submits the fee electronically will be able to print out an immediate electronic receipt. Finally, DHS intends to incorporate the fee payment information electronically into SEVIS, which will then be passed in a data share arrangement to the Department of State so that a consular officer abroad will be able to confirm that the fee has been paid at the time the alien applies for an F, J, or M visa.

To accommodate multiple options for payment, DHS intends to continue to consider alternate means for payment where available. Such options may include other companies that have products and services that facilitate fee payment and fee receipt abroad or collection of the fee payment by another federal agency.

How Has Congress Amended the Law as It Relates to the Collection of the Fee?

The provisions in this proposed rule have taken into account amendments to section 641 of IIRIRA contained in section 404 of the Visa Waiver Permanent Program Act of 2002, Pub. L. 106–396 dated October 20, 2000, and section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56, dated October 26, 2001.

As initially enacted by Congress, section 641(e) of IIRIRA required the schools and exchange programs to collect the fee. Because of the many concerns presented by that approach, DHS, working in cooperation with other governmental agencies and members of the regulated community, submitted to Congress amendatory language to section 641(e) of IIRIRA, removing the schools and exchange visitor programs from the role of fee collectors. Congress adopted this language with modifications in section 404 of the Pub. L. 106–396. The fee will now be collected from the alien directly by DHS.

The USA PATRIOT Act expanded the class of nonimmigrants subject to the fee. Section 416 of the USA PATRIOT Act provided that the SEVIS program and the applicable fee cover all F and M students attending an approved educational institution, not merely those attending an institution of higher education. It also specifically required that flight schools be included in both the fee requirement and the underlying tracking system.

Was a Previous Proposed Rule Published Prior to the Issuance of This Proposed Rule?

On December 21, 1999, a proposed rule was published in the **Federal Register** at 64 FR 71323, proposing to implement the fee collection process pursuant to section 641(e) of the IIRIRA. Specifically, the proposed rule sought to establish a $95 fee that schools and exchange visitor programs would collect and remit on behalf of qualifying F–1, J–1, and M–1 nonimmigrants upon the occurrence of certain events during the course of the student's or exchange visitor's stay in the United States. The proposed rule also calculated the basis for the user fee population base and outlined the associated program costs from which the fee amount was derived. Written comments were due by February 22, 2000.

A total of 4,617 comments were received on the proposed rule.

Since the receipt of comments on the initial proposed rule, the HSA abolished the Service. Likewise, there have been several statutory changes relating to the collection of fees. SEVIS, a concept at the time of the proposed rule, has been implemented and I–20's and DS–2019's not issued through the SEVIS system are no longer valid. In light of these factors, DHS is issuing this proposed rule, in lieu of implementing a final rule.

The following is a discussion of differences between this proposed rule and the rule proposed in 1999, as well as comments received regarding the 1999 proposed rule and DHS's response. Many commenters to the 1999 proposed rule addressed identical issues in their comments, and as a result, the number of comments exceeds the number of issues discussed here. This proposed rule also responds to legislative enactments affecting the collection and the fee amount that occurred after publication of the 1999 proposed rule. Taking into consideration both the comments received and the passage of the new legislation, DHS proposes the resulting regulatory provisions set forth herein.

Significant Differences Between This Proposed Rule and the Rule Proposed in 1999

On December 21, 1999, a fee of $95 was proposed in the **Federal Register** to support SEVIS (64 FR 71323). After careful evaluation of the costs to design, develop, and maintain the statutorily mandated information collection system, DHS now proposes the fee as $100 for nonimmigrant students and exchange visitors, and $35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States. In addition, DHS proposes to collect the fee from the student or exchange visitor directly, rather than placing the burden on the school or exchange program to collect or remit the fee.

Additionally, DHS now has specifically authorized an exemption

from fee payment for aliens who initially paid a SEVIS fee and applied for an F–1, F–3, J–1, M–1, or M–3 visa, but whose initial application was denied by the consular officer abroad. DHS has provided that such an alien will not have to pay a new SEVIS fee if the new application for a visa is made within nine months of the notice of denial. This length of time was selected as consistent with exceptions for payment of duplicative fees. DHS acknowledges that this policy may differentiate in treatment between aliens present in the United States and aliens who are outside the United States. However, DHS believes it is imperative for aliens to be extended the benefit of only paying one fee for a limited time period, to take into account changes in program upkeep and maintenance as well as individual circumstances.

DHS seeks comments from the public regarding the length of time provided in the exception for aliens re-applying after a denial of a visa by a consular officer.

Discussion of Comments Received Regarding the 1999 Proposed Rule

There was a total 4,617 comments regarding the collection of the required fee as set forth in the 1999 proposed rule. The following paragraphs will address each issue raised in comments received. This discussion will not describe in detail the provisions outlined in the 1999 regulation, but rather will address only those provisions relevant to the comments received. In general, commenters opposed imposition of this fee. Many commenters felt the fee itself was excessive. Many commenters also discussed various aspects of the fee collection process. The vast majority of commenters suggested that the fee should not be collected by educational institutions or exchange visitor programs, but should instead be collected by the Federal Government. As previously stated in the summary to this proposed rule, all reference to the Service has been changed to DHS even though the events may have preceded March 1, 2003.

I. Fee Amount

A primary issue of concern cited by the majority of commenters was that the proposed $95 fee was excessive and that the imposition of this fee disproportionately would affect students who stay in the United States for shorter periods than a full 4-year course of study. Commenters further stated that the proposed regulation outlining the collection and remittance of the fee was based on inaccurate and outdated data.

As discussed in the 1999 proposed rule, at 64 FR 71323, an extensive fee study was conducted to arrive at the fee amount authorized by the proposed rule, utilizing the enrollment figures for foreign students and exchange visitors on the best available data. The proposed $95 fee as indicated in the 1999 proposed rule was necessary to cover the design and development costs of carrying out section 641 of IIRIRA.

To address the concerns raised by the education community and to reassess the amount of the fee based on changes in the student program and project funding since publication of the proposed rule, DHS decided to undertake a new fee review. KPMG Consulting was hired to conduct an objective fee review and ensure that applicable federal law and fee guidance were adhered to. The fee review included the recovery of historical costs and costs over the FY 2003/2004 time period, as well as the appropriated monies received. The fee review also included costs for increased staffing and training for DHS personnel involved in the student program at DHS headquarters, district offices, service centers and regional offices as well as the DOS.

The fee study methodologies for the initial fee study and the second fee study were essentially the same. The basic change between the two studies is the assumptions that went into the calculation of the fee. The second fee study took into account changes resulting from the $36.8 million in counter-terrorism funding to expedite development of SEVIS and the legislation that identified the $35 fee for certain J nonimmigrants. DHS has determined that the student fee should also provide for the resources necessary to ensure compliance with regulations. The need to pay for these additional resources was not included in the KPMG study, but is now factored into the determination of the calculation of the fee amount in these regulations.

SEVIS Liaison Officers will be a local resource for schools and students, providing timely and accurate information or assistance in meeting the requirements of the program. SEVIS Liaison Officers may visit schools, interview school officials, review records, compare system information to school information, and assist schools with system security issues. They will also coordinate with local school representatives and work on local training programs. Finally, SEVIS Liaison Officers will be available to assist immigration and other law enforcement officials who may have a need for information derived from SEVIS. Other ICE officers will conduct investigations to ensure compliance with these regulations. In addition, these officers will work in conjunction with SEVIS Liaison Officers for school reviews and re-certifications.

This initial fee as authorized by IIRIRA is not to exceed $100. Further, the fee for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program is not to exceed $35. However, IIRIRA also provides that the Secretary of Homeland Security may, on a periodic basis, revise the amount of the fee imposed and collected to take into account changes in the cost of carrying out this program. Pursuant to the Chief Financial Officers Act of 1990, DHS will review this fee every two years. Upon review, if it is found that the fee is either too high or too low, a new fee may be requested.

This fee proposed in this rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program. Based on prior data, approximately 362,400 F–1 students are expected to enter the United State in Fiscal Year 2004. Another 312,000 J–11 exchange visitors are also expected to enter the United States. In order to ensure that the personnel, system operations and maintenance, and training costs are supported, as well as providing compliance resources for the program on a sustained basis, and to remain within the initial $100 limitation on the fee amount, DHS recalculated the fee to cover the costs of 61 SEVIS Liaison Officers and 182 other ICE officers in the field. Based upon estimates of the total foreign student population and estimates of the total man-hours that will be needed to ensure compliance with the SEVIS requirements, DHS has estimated that this number of officers will constitute approximately 60% of the personnel resources needed for compliance efforts. DHS intends to staff 100% of the necessary SEVIS Liaison Officers and ICE Officers necessary to ensure compliance efforts, even if the costs of staffing exceed the funds generated by this proposed fee. Because of the initial $100 fee limitation, however, the fee proposed in this rule is now determined to be $100, and $35 for certain J nonimmigrants.

The application of user fees as a funding source for compliance activities has been widely used and permitted since the introduction of user fees in the early 1980's. A federal agency is allowed to recoup the ''full cost'' of providing special benefits, including the costs of enforcement, collection,

research, establishment of standards, and regulation, when calculating its fees. Indeed, DHS currently recoups the cost of detecting and deterring fraud and protecting the integrity of benefits and documents through its immigration benefit application fees.

Commenters objected both to the concept of a fee, as well as the fee level proposed. Many commenters to the 1999 proposed rule stated that the imposition of a fee would adversely affect the position of the United States in the international student market, and that the regulations authorizing collection of such a fee will interfere with important cultural exchanges. Additionally, many commenters noted that the imposition of the fee would affect the availability of seasonal and short-term foreign employees. DHS understands these concerns; however, collection of a fee of up to $100 associated with the student and exchange visitor data collection system was mandated by Congress. Thus, DHS is required, by statute, to impose a fee on the system's participants and, as noted above, DHS has taken into account the program costs in setting the fee. Finally, no supporting documentation was provided by the commenters to demonstrate that the imposition of a fee will have the adverse effects suggested in the comments.

II. The Collection and Remittance Process

Most commenters to the 1999 proposed rule expressed strong opposition over the proposed rule's designation of educational institutions and exchange visitor programs as fee collectors. Comments stemming from this primary topic included: the lack of resources and infrastructure at educational institutions and exchange visitor programs to collect and remit the fee; the inappropriateness of requiring such groups to serve as enforcers of federal law in instances where the student or exchange visitor failed to pay the fee; and the absence of any financial assistance from the government to help defray the cost of setting up a fee collection system. Rather, commenters suggested that the Federal Government should directly collect the proposed fee without involving these institutions and programs in the collection and remittance process.

As previously discussed, subsequent to the publication of the 1999 proposed rule, Congress revised the law to provide that DHS itself will collect the fee directly from the alien prior to the alien's classification as an F–1, F–3, J–1, M–1, or M–3 nonimmigrant, and this revised proposed rule incorporates this statutory change. The schools and exchange visitor programs in which such aliens wish to participate will not need to have any role whatsoever in the collection of the required fees. Additionally, consistent with comments made to the 1999 proposed rule and with section 641 of IIRIRA, which directs that the design and development of the student/exchange visitor information collection system be electronic. DHS now proposes a fee payment process that utilizes both electronic and paper-based methods. Aliens with access to the Internet will be able to complete the Form I–901 and remit payment through a website sponsored by the Federal Government. Given that some students and exchange visitors may not have access to the Internet, the Form I–901 will also be available on paper, and those aliens may remit payment to DHS by mail to the address listed on Form I–901. DHS also solicits suggestions as to whether there might be alternative payment methods offered to facilitate fee payment and receipt.

Aliens who apply for their nonimmigrant visas while abroad will be required to pay the fee prior to submitting their visa application to the U.S. embassy or consulate with jurisdiction over their place of residence. Aliens who are already located in the United States will be required to pay the fee prior to submitting their request to DHS for change of classification as an F or M student or a J–1 exchange visitor. Aliens who are exempt from the visa requirement described in section 212(d)(4) of the Act will be required to pay the fee prior to the granting of admission to the United States. Upon payment in each of these situations, DHS will provide the alien with a paper receipt to be used by the alien to demonstrate that he or she has complied with the fee requirement.

DHS and the DOS are also working on integrating a data share arrangement in order to provide consular officers electronic access to an F, J, or M nonimmigrant's fee payment information. For those nonimmigrants who are unable to receive the paper receipt, in the future, the consular officer will be able to verify fee payment information when verifying the electronic Form I–20 or DS–2019 information. Such an arrangement will ensure that in instances where paper receipts sent by mail are either not received in a timely manner or not at all, the issuance of the nonimmigrant visa will not be delayed unnecessarily.

III. Aliens Exempt From the Fee

The law provides that an alien seeking J–1 status to participate in an exchange program that is sponsored by the U.S. government is exempt from paying a fee.

IV. The Frequency of the Fee

Many commenters to the 1999 proposed rule suggested that the fee should not be required each time a student or exchange visitor changes institutions or programs. DHS agrees with this suggestion and therefore proposes in this rule that students and exchange visitors will not have to pay a new fee upon each transfer to a new school or exchange program or upon commencement of a new program immediately following completion of the initial program. Rather, students and exchange visitors will only be required to pay the fee prior to being classified into the F, J, or M visa category. Thus, aliens seeking either initial enrollment at a school or initial participation in an exchange visitor program will be required to pay the fee prior to applying for their visas. As a result, many aliens will be paying the fee while abroad. As stated in section 641(e) of IIRIRA, as amended, such aliens will be required to present proof of fee payment, as part of their visa application, to the U.S. embassy or consulate prior to the granting of the visa. In the future, as part of a data share arrangement between SEVIS and DOS, consular officers will have electronic access to an alien's fee payment information. At that time, DOS may use the electronic information to verify whether the fee has been paid by the alien and may not require the alien to present the actual paper receipt as proof of payment. However, until such a data share arrangement is in place, if the alien does not submit the paper receipt as proof of payment, the consular officer will be required to deny the visa application. Similarly, aliens already located in the United States will be required to pay the fee prior to applying to DHS for change of classification to an F, J, or M visa category. It is important to note that under this proposed rule, the alien will be required to pay the fee only one time prior to being classified as an F, J, or M nonimmigrant. Students or exchange visitors whose initial visa applications are denied by a United States consular officer will not be required to pay the fee again when reapplying for the same status for which the alien originally applied within nine months of the notice of denial.

Students and exchange visitors who have already paid the SEVIS fee would

only be required to pay a new SEVIS fee if they are applying for a new nonimmigrant visa to begin a new course of study or new program or for change of status in order to begin a new nonimmigrant status, not if they are merely extending an existing course of study or transferring to a new school or program level. Many commenters to the 1999 proposed rule suggested that the fee should be imposed one time only or should be an annual fee. DHS cannot adopt these suggestions. To collect a fee for each student and exchange visitor on an annual basis would be overly burdensome to the government as well as the affected parties, and would result in more money being collected than is necessary to fund the program. However, to collect the fee only once, for the lifetime of each student or exchange visitor, would be insufficient to cover program costs. With each event that occurs during the course of a student's or exchange visitor's stay in the United States, the data collection system mandated by section 641 of IIRIRA, will require updates by the school official or program officer and/or require adjudication by a government official, all of which require resources to be expended and funded. Where an F or M nonimmigrant is applying for reinstatement of student status because of a violation of status more than 5 months in duration, the nonimmigrant will be required to pay a new fee to DHS prior to the application for reinstatement in order to be granted a return to valid status. Similarly, pursuant to 22 CFR 62.45, where an exchange visitor applies for reinstatement after a substantive violation or after falling out of his or her J program status for longer than 120 days, the exchange visitor will be subject to paying a new fee prior to applying for reinstatement. The new fee amount may be $35 or $100, depending on the type of exchange visitor program to which the J–1 nonimmigrant is seeking to be reinstated.

The following chart outlines who is required to pay a fee under the proposed rule and when fee payment is required:

Fee payment *not* required if applicant is:
- An F–2, J–2 or M–2 dependent.
- A J–1 participant in an exchange program sponsored by the Federal government.
- An F–1, F–3, J–1, M–1, or M–3 nonimmigrant transferring between schools, programs or program categories.
- An F–1, F–3, J–1, M–1, or M–3 nonimmigrant requesting/applying for an extension of course of study or program.
- An alien who paid an initial fee when seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular official abroad for initial attendance at an approved school or exchange program, who was denied a visa by the consular officer, and is re-applying for the same status within nine months of the denial.
- Applying for a change of classification between an F–1 and F–3 nonimmigrant or between M–1 or M–3 nonimmigrant.

Fee payment *is* required if the applicant is:
- An alien seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer abroad for initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange program.
- An alien exempt from the visa requirement described in section 212(d)(4) of the Act, applying for admission to the United States to begin initial attendance at a DHS-approved school or initial participation in a Department of State-designated exchange program.
- An alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 (except in the case of change classification between F–1 and F–3 or between M–1 or M–3).
- A J–1 nonimmigrant who is applying for reinstatement after a substantive violation, or who has been out of program status for longer than 120 days but less than 270 days during the course of his or her program.
- An F or M nonimmigrant applying for reinstatement of student status because of a violation of status more than 5 months in duration.

Fee payment is *reduced* if applicant is:
- A J–1 nonimmigrant participating in a summer work/travel, au pair, or camp counselor program.

V. Applicability of the Fee Requirement

Many commenters to the 1999 proposed rule stated that the fee should not be retroactive to August 1, 1999, and should only be collected once the student and exchange visitor information system is fully operational. Congress mandated in section 641 of the IIRIRA that the student/exchange visitor information collection program be funded by those aliens included in the program. This system is currently operational and DHS is incurring associated costs. As such, while the fee is not being imposed retroactively, this fee must be collected as soon as feasibly possible. This proposed rule therefore anticipates collection of fees upon implementation of a final rule.

Many commenters to the 1999 proposed rule suggested that F–1 nonimmigrant students participating in intensive English programs should be exempt from the fee requirement, that the fee should be waived for all short-term J–1 or F–1 nonimmigrants, or that the fee should be limited to F–1 students who are in a degree-seeking program. The language of section 641 of IIRIRA does not limit the application of the fee requirement to students in this specific category. Rather, the statute (as amended by Public Law 106–396) directs the Secretary of Homeland Security to impose a fee on all F and M students and J exchange visitors, with the sole exception of J–1 exchange visitors who have come to the United States as participants in an exchange program sponsored by the Federal Government.

Many commenters stated that the language of the proposed fee rule published in December 1999 was ambiguous as to whether or not the fee requirement applied to F–1 nonimmigrants attending private high schools. Section 641(e)(1) of IIRIRA as amended by Public Law 107–56, now directs the Secretary of Homeland Security to collect this fee from students enrolled in other approved educational institutions as well. As a result of this statutory change, the proposed rule subjects F–1, F–3, J–1, M–1, and M–3 nonimmigrants enrolled in public and private high schools or private elementary schools to fee payment. Many commenters stated that the language in section 641(e) of IIRIRA, ''sponsored by the Federal Government,'' is ambiguous, and suggested that, because all J–1 nonimmigrants are in some way sponsored by the Federal Government, all J–1 nonimmigrants should be exempt from paying the fee. DHS cannot adopt this suggestion. In determining who should be exempt from the fee, Congress specifically exempted J–1 nonimmigrants who are participating in an exchange program sponsored by the Federal Government. If Congress intended all J–1 nonimmigrants to be exempt from the fee, it would not have provided for this express exemption. In fact, Congress provided for a reduced fee of $35 for three other specific categories of J–1 programs. Thus, this provision falls under the principle of *expressio unius:* when one or more things of a class are expressly mentioned, others of the same class are necessarily excluded. That is, by expressly noting that those J–1 nonimmigrants sponsored by the Federal Government are exempt from the fee, other J–1 program participants must therefore not be exempted.

VI. Miscellaneous Comments and Concerns

Many commenters stated that the 1999 proposed rule allows the fee money remitted to DHS to be used for purposes outside the scope of section

641(e) of IIRIRA. The commenters stated that revenue generated from collection of the fee should be deposited in an account separate from the general Examinations Fee Account. In response to these comments, and in recognition that section 641(e) of IIRIRA specifies that the fee be imposed for the specific purpose of designing, developing, and maintaining the F, J, and M nonimmigrant monitoring system, DHS will establish a sub-account under the general Examinations Fee Account, into which revenue generated by the fee will be placed. Only costs associated with the F, J, and M nonimmigrant monitoring system and program mandated by section 641(e) of IIRIRA will be supported by the funds in this account.

Several commenters noted that the 1999 proposed rule imposed yet another fee on international students, and that foreign countries will respond to the fee by imposing fees on U.S. students studying abroad. DHS is statutorily mandated by section 641(e) of IIRIRA to impose and collect a fee from each student and exchange visitor identified under section 641(e)(3) of IIRIRA. Additionally, under 31 U.S.C. 9701, DHS must assess a fee for the participation in any program that affords a particular benefit to an identifiable recipient.

In converting the older paper-based process to one that is automated, DHS intends the reengineered student and exchange visitor information collection program to benefit all F, J, and M nonimmigrants by creating a more effective and timely process for verifying their compliance with the conditions of their status.

Several commenters to the 1999 proposed rule suggested that those F, J, and M nonimmigrants subject to the fee should be refunded or credited for fees that are paid in error. DHS agrees with this suggestion. As with all fees imposed by DHS, students and exchange visitors will be refunded any amount of the fee that is erroneously remitted on the part of the alien to DHS.

VII. Description of Fee Payment Process

Several commenters stated that the 1999 proposed rule did not address the process by which the fee will be collected from students/exchange visitors who obtain their visas through a change of status. As previously discussed, nonimmigrants who are seeking a change of status to F–1, F–3, J–1, M–1, or M–3 status will be required to pay the fee prior to the granting of their new status. Under this proposed rule, payment of the fee may be remitted either electronically or by paper prior to the nonimmigrant's application for a change of classification. The nonimmigrant will be required to provide evidence of payment as part of his or her application for change of status. Absence of proof of fee payment will result in a denial of the application request. In the future, the officers will also have access to the electronic fee payment information in SEVIS to verify payment in instances where the paper receipt is lost or never received by the nonimmigrant.

DHS is cognizant of the fact that many prospective students and exchange visitors are from developing countries that may have delays in mail delivery and may lack easy access to the Internet. For this reason, DHS has designed the fee payment process to provide several methods for payment and for timely receipt of payment confirmation. The fee payment process will begin after the student receives his or her Form I–20 from a DHS-approved school or after the exchange visitor receives the Form DS–2019 from an exchange visitor program authorized by the DOS. The fee may be paid either by: (1) submitting payment using Form I–901, Fee Remittance for Certain F, J, and M Nonimmigrants, by mail or (2) completing Form I–901 and making payment electronically over the Internet.

The fee payment may be completed by schools, programs, family members, or friends on behalf of the applicant. If the Internet is used to complete the Form I–901 and payment, the applicant will be required to use a credit card. The form will be accessible at www.FMJfee.com or through DHS SEVIS Web page. In the future, applicants may have the added capability of payment by electronic funds transfers through an ACH (Alternate Clearinghouse) debit transaction. The Form I–901 will also be available by calling the Forms Center at 1–800–870–3676.

If the Form I–901 and payment are completed by mail, the applicant will be required to pay by using either a check, money order, or foreign draft drawn on a U.S. bank, in U.S. dollars, and to submit the form and payment to the P.O. box address listed on the Form I–901. The check or money order must be made payable to ''The Department of Homeland Security, Immigration and Customs Enforcement.'' DHS does not allow applicants to pay any of DHS fees with foreign currency due to fluctuations in currency rates. Furthermore, DHS does not allow applicants to pay fees with checks drawn on foreign banks as the collection process is slow and expensive and there is no guarantee on these funds as there is with funds drawn on U.S. banks.

After the completed Form I–901 and accompanying fee payment have been received by DHS, a receipt will be issued on the Form I–797, Notice of Action, to the prospective student or exchange visitor, by mail. All fee receipts will be printed and mailed to the applicant within 3 days of the fee payment being processed. Applicants will also have the option to have the receipt sent to them in an expedited manner. If this option is chosen, the receipt will be delivered by a courier for an additional fee. If the applicant pays the fee over the Internet, the applicant will be able to print and retain an electronic receipt at that time, in addition to the receipt that will be received by mail.

Once the student or exchange visitor has received the Form I–797 as proof of payment of the fee, either electronically or via mail, he or she will submit the Form I–797 in conjunction with either the application for a visa abroad, admission to the United States, if exempt from visa requirements, or a change of status if in the United States. As previously stated, in the future, in instances where the receipt is not received or is lost by the applicant, the consular officer or DHS officer will have access to the fee payment information in SEVIS to verify that a fee has been paid for a particular individual.

Regulatory Flexibility Act

The Secretary of Homeland Security, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, preliminarily certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule levies a fee on nonimmigrant students and exchange visitors initially arriving or continuing a program in the United States, and this fee will have an impact on these nonimmigrants, DHS is required by statute to collect a fee to support an electronic information collection system on foreign students and exchange visitors. The fees were arrived at after careful evaluation of the costs to design, develop, and maintain the statutorily-mandated information collection system.

Since Congress has changed the law to provide that DHS will collect the fee directly from the student or exchange visitor, rather than having the school or exchange program collect and remit the fee, the schools and exchange programs will no longer need to be involved in any way with respect to the collection of the fee, although they are free to offer

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

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

The costs to the public that this rule imposes are primarily the fees that must be paid by nonimmigrant students and exchange visitors that will be processed through the SEVIS system and admitted to the United States. DHS is required by section 641 of Public Law 104–208 to collect a fee to recover the cost of collecting student information electronically. On December 21, 1999, a fee of $95 was proposed in the **Federal Register** to support the SEVIS (64 FR 71323). After careful evaluation of the costs to design, develop, and maintain the statutorily mandated information collection system, DHS is now proposing a fee of $100 for nonimmigrant students and exchange visitors, and $35 for exchange visitors admitted as au pairs, camp counselors, or participants in a summer work/travel program, initially arriving or continuing a program in the United States. The fees imposed under this proposed rule will support personnel costs, ongoing system operation and maintenance costs, training costs, and other costs related to the program as well as provide for the resources necessary to ensure compliance with the regulations.

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

The costs to DHS of either not assessing the fees under this rule or assessing the fees at a lesser amount would be the inability to continue to implement and operate the SEVIS system, if no fees were imposed, or at a minimum, a more limited ability to ensure compliance with by foreign students and exchange visitors with the requirements of the SEVIS system. Additionally, if the fees are not imposed or are imposed at a lesser amount the public could incur the intangible cost of reduced security as a result of a more limited ability to ensure compliance. The imposition of this fee also shifts the burden of funding program operating and compliance efforts to the population actually utilizing the SEVIS system. If the fees are not imposed or are imposed at a lesser amount, the general public, rather than the population of SEVIS users, would be responsible for bearing the cost of program implementation and conformity; this would be explicitly contrary to the directive of section 641 of Public Law 104–208, to collect a fee to recover the costs of SEVIS to the government.

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

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

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

Executive Order 13132

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

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 required by the Form I–901, Fee Remittance Form for Certain F, J, and M Nonimmigrants, is considered an information collection and subject to review and clearance under the Paperwork Reduction Act procedures. Accordingly, DHS has submitted this information collection requirement to OMB for emergency clearance under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and record keeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and record keeping requirements, Students.

8 CFR Part 299

Immigration, Reporting and record keeping requirements.

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 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a: 8 U.S.C. 1101, 1103, 1304, 1356; 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 proposed to be amended by adding the entry for Form I–901 to the listing of fees, in proper alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–901. For remittance of the SEVIS fee levied on certain F, J, and M nonimmigrant aliens—$100 ($35 for J–1 au pairs, camp counselors, and participants in a summer work/travel program).

* * * * *

PART 214—NONIMMIGRANT CLASSES

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

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305; 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.

4. Section 214.2 is amended by:

a. Adding a new paragraph (f)(19);

b. Adding a new paragraph (j)(5); and

c. Adding a new paragraph (m)(20).

The additions read as follows:

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

* * * * *

(f) * * *

(19) *Remittance of the fee.* An alien who applies for F–1 or F–3 nonimmigrant status in order to enroll in a program of study at a Department of Homeland Security (DHS)-approved educational institution is required to pay the SEVIS fee to DHS in advance, pursuant to § 214.13(c), except as otherwise provided in that section.

* * * * *

(j) * * *

(5) *Remittance of the fee.* An alien who applies for J–1 nonimmigrant status in order to commence participation in a Department of State (DOS)-designated exchange visitor program is required to pay the SEVIS fee to DHS in advance, pursuant to § 214.13(c), except as otherwise provided in that section.

* * * * *

(m) * * *

(20) *Remittance of the fee.* An alien who applies for M–1 or M–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution is required to pay the SEVIS fee to DHS in advance, pursuant to § 214.13(c), except as otherwise provided in that section.

* * * * *

5. Section 214.13 is added to read as follows:

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

(a) *Applicability.* Except as otherwise provided in this section, the following aliens are required to submit a payment of a $100 fee to the Department of Homeland Security (DHS), in advance, in connection with obtaining nonimmigrant status as a student or exchange visitor, in addition to any other applicable fees:

(1) An alien who applies for F–1 or F–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved 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 DHS-approved academic or language-training institution including private elementary and secondary schools and public secondary schools;

(2) An alien who applies for J–1 nonimmigrant status in order to commence participation in an exchange visitor program designated by the Department of State (DOS) (with a reduced fee for certain exchange visitors as provided in paragraph (e) of this section); and

(3) An alien who applies for M–1 or M–3 nonimmigrant status in order to enroll in a program of study at a DHS-approved vocational educational institution, including a flight school.

(b) *Aliens not subject to a fee.* No SEVIS fee is due with respect to: (1) A J–1 exchange visitor who is coming to the United States as a participant in an exchange program sponsored by the Federal Government.

(2) *Dependents.* The principal alien must pay the fee, when required under this section, in order to obtain F–2, J–2, or M–2 status for his or her dependents. However, an F–2, J–2, or M–2 dependent is not required to pay a separate fee under this section in order to obtain that status or during the time they remain in that status.

(c) *Time for payment of SEVIS fee.* An alien who is subject to payment of the SEVIS fee must remit the fee directly to DHS as follows:

(1) An alien seeking an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer abroad for initial attendance at a DHS-approved school or to commence participation in a Department of State-approved program, must pay the fee to DHS before applying for the visa.

(2) An alien who is exempt from the visa requirement described in section 212(d)(4) of the Act must pay the fee to DHS before the alien applies for admission to the United States to begin initial attendance at a DHS-approved school or initial participation in a Department of State-approved program.

(3) A nonimmigrant alien in the United States seeking a change of status to F–1, F–3, J–1, M–1, or M–3 must pay the fee to DHS before the alien submits the application for change of nonimmigrant status, except as

provided in paragraph (d) of this section.

(4) A J–1 nonimmigrant who is applying for reinstatement after a substantive violation, or who has been out of program status for longer than 120 days during the course of his or her program, must pay the applicable fee to DHS prior to applying for reinstatement to valid J–1 status.

(5) An F or M student who is applying for reinstatement of student status because of a violation of status more than 5 months in duration, must pay a new fee to DHS in connection with the application for reinstatement in order to be granted a return to valid status.

(d) *Circumstances where no new fee is required.* (1) *Extension of stay or transfer.* An alien who has previously paid the fee prior to obtaining his or her current status, as a student or exchange visitor is not required to pay a new fee in connection with:

(i) An application for an extension of stay as provided in § 214.2(f)(7) or (m)(10);

(ii) An application for transfer as provided in § 214.2(f)(8) or (m)(11); or

(iii) An application for post-completion practical training as provided in § 214.2(f)(10)(ii) or (m)(14).

(2) *New program in the same classification.* An F–1, F–3, M–1, or M–3 nonimmigrant who has previously paid the fee is not required to pay a new fee for an extension of status in connection with enrollment in a new course of study in the same nonimmigrant status. For purposes of the preceding sentence, no fee is required for changes between the F–1 and F–3 classifications, and no fee is required for changes between the M–1 and M–3 classifications.

(3) *Re-application following denial of application by consular officer.* An alien who fully paid a SEVIS fee in conjunction with an initial application for an F–1, F–3, J–1, M–1, or M–3 visa from a consular officer and whose initial application was denied, who is reapplying for the same status within 9 months following the notice of denial.

(e) *Special rules for J–1 exchange visitors.* (1) A J–1 exchange visitor coming to the United States as an au pair, camp counselor, or participant in a summer work/travel program is subject to a reduced fee of $35.

(2) A J–1 exchange visitor applying for a change of category as provided in 22 CFR 62.41 is not required to pay the fee.

(3) A J–1 exchange visitor applying for transfer of program as provided in 22 CFR 62.42 is not required to pay the fee.

(4) A J–1 exchange visitor applying for an extension of program as provided in 22 CFR 62.43 is not required to pay the fee.

(f) Reserved.

(g) *Procedures for payment of the SEVIS fee.* (1) *Options for payment.* An alien subject to payment of a fee under this section may pay the fee by any procedure approved by DHS, including:

(i) Submission of Form I–901, to DHS by mail, along with the proper fee paid by check, money order, or foreign draft drawn on a financial institution in the United States and payable in United States currency, as provided by § 103.7(a)(1) of this chapter;

(ii) Electronic submission of Form I–901 to DHS using a credit card, or other electronic means of payment accepted by DHS; or

(iii) Any other designated payment service and receipt mechanism approved by DHS.

(2) *Receipts.* DHS will generate and mail a receipt for each fee payment under this section.

(i) If the payment was made by mail, DHS may provide for an expedited delivery of the receipt, upon request, for an additional fee.

(ii) If payment was made electronically or through a DHS-designated payment service and receipt mechanism, DHS will accept a properly completed receipt that is printed out electronically or provided by the payment service's mechanism in lieu of the receipt generated by DHS.

(3) *Recording electronic fee payment.* DHS will maintain an electronic record of payment for the alien to reflect the receipt of the required fee under this section. If the alien's record indicates that the fee has been paid, an alien who has lost or did not receive a receipt for a fee payment under this section will not be denied an immigration benefit solely because of a failure to submit proof of payment of the fee.

(4) *Third-party payments.* DHS may accept payment of the required fee for an alien from an approved school or a designated exchange program, or from another appropriate source, in accordance with procedures approved by DHS.

(h) *Reinstatement.* (1) In certain instances, the alien must pay the initial required fee in order to be eligible to apply for reinstatement. An F or M student who has been out of status for more than 5 months at the time of seeking reinstatement of student status pursuant to § 214.2(f)(16) or (m)(16) must pay a new fee in connection with the application for reinstatement. A J–1 nonimmigrant who has a substantial violation or who has been out of program status for longer than 120 days but less than 270 days during the course of his or her program must pay a new fee to DHS, if applicable, before applying for reinstatement to valid J–1 status. Approval of reinstatement also reinstates the status of any dependents.

(2) The failure by an F or M student or a J–1 exchange alien to pay the required fee is a violation of status for the principal alien and his or her dependents. For purposes of reinstatement, the principal alien and his or her dependents will not be considered to have gone out of status ''through no fault of his or her own'' or ''for minor or technical infractions.'' Payment of the fee does not, however, preserve the lawful status of any F, J, or M nonimmigrant who has violated his or her status in some other way.

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended in the table by adding, in proper alpha/numeric sequence, the entry for **✕**Form I–901'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
	* * * * *	
I–901	.....	Fee Remittance for Certain F, J, and M Nonimmigrants.
	* * * * *	

8. Section 299.5 is amended in the table heading by revising the term ''INS form No.'' to read ''Form No,'' and in the table by adding, in proper alpha/numeric sequence, the entry for Form ''I–901'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

Form No.	Form title	Currently assigned OMB control No.
*	*	*
I–901	Fee Remittance For Certain F, J, and M Non-immigrants.	1115–
*	*	*

Dated: October 21, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–26970 Filed 10–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–524 series turbofan engines, with certain part number (P/N) intermediate pressure (IP) compressor stage 5 discs installed. This proposed AD would establish new reduced IP compressor stage 5 disc cyclic limits. This action would also require removing from service, affected discs that already exceed the new reduced cyclic limit, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. This action would also allow optional inspections at each shop visit or a one-time on-wing eddy current inspection (ECI) to extend the disc life beyond the lives specified. This proposed AD is prompted by the discovery of cracks in the cooling air hole areas of the disc front spacer arm. We are proposing this AD to prevent IP compressor stage 5 disc failure, which could result in uncontained engine failure and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by December 26, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Rolls-Royce plc, P.O. Box 31 Derby, DE248BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2002–NE–40–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on certain RR model RB211–524 series turbofan engines. The CAA reports that cracks were found, during overhaul, in the cooling air hole areas of the disc front spacer arm. The engine manufacturer has performed a reassessment of the safe cyclic limits of certain IP compressor stage 5 discs. The cyclic limits of these discs are reduced based on that reassessment. This condition, if not corrected, could result in uncontained engine failure and possible damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of mandatory service bulletin (MSB) RB.211–72–D428, Revision 3, dated June 30, 2003, that specifies a drawdown schedule for removing from service affected IP compressor stage 5 discs, using new Time Limits Manual (TLM) cyclic limits. The MSB also describes procedures for optional inspections at each shop visit to extend the disc life beyond the lives specified. The CAA has classified this service bulletin as mandatory and issued AD 006–04–2002 in order to ensure the airworthiness of these RR plc turbofan engines in the U.K. We have also reviewed and approved the technical contents of Service Bulletin (SB) RB.211–72–E148, dated March 13, 2003 and SB RB.211–72–E150, dated April 17, 2003 that provide an optional on-wing ECI of the affected discs, to extend the disc life beyond the lives specified.

Differences Between This Proposed AD and the Manufacturer's Service Information

The compliance time is added, to remove or inspect discs not later than 30 days after the effective date of this AD.