

ensure that the practical training opportunity is long enough to complement the student's academic experience and allow for a meaningful educational experience, particularly given the complex nature of STEM projects.

## **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during the development of their rules. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and small governmental jurisdictions with populations of less than 50,000.

### **1. Initial Regulatory Flexibility Analysis**

DHS is publishing this initial regulatory flexibility analysis (IRFA) to aid the public in commenting on the small entity impact of the proposed recognition requirements. In particular, DHS requests information and data that would assist with better understanding the impact of this rule on small entities. DHS also seeks alternatives that will accomplish the objectives of this rulemaking and minimize the proposed rules' economic impact on small entities.

#### **a. A description of the reasons why the action by the agency is being considered**

The proposed rule would amend current regulations governing F-1 nonimmigrant students to allow for an extension of the OPT period for such students after completing a degree in a STEM-related field, as defined in the proposed rule. The rule would also improve the previous STEM OPT program by increasing oversight and strengthening requirements for participation. The proposed changes to the STEM OPT extension regulation are intended to

enhance the academic benefit of the STEM extension, create a formal process for updating the list of STEM degree programs that are eligible for the STEM extension, and incorporate new measures to better ensure that STEM OPT does not result in displacement of U.S. workers.

This rulemaking reflects the Department's commitment to enhancing our nation's scientific and technological competitiveness. DHS believes that evaluating, strengthening, and improving practical training would make the United States more competitive in attracting foreign students and increase the ability to retain foreign students educated in the United States.

**b. A succinct statement of the objectives of, and legal basis for, the proposed rule**

The rule would improve the STEM OPT extension by increasing oversight and strengthening requirements for participation. The proposed changes to the STEM OPT extension regulations are intended to enhance the academic benefit of the STEM OPT extension, create a formal process for updating the list of STEM degree programs that are eligible for the STEM extension, and incorporate new measures to better ensure that STEM OPT extensions do not result in displacement of U.S. workers. DHS objectives and legal authority for this proposed rule are further discussed in the NPRM preamble.

**c. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply**

The proposed rule would affect SEVP-certified schools and employers of STEM OPT students. The analysis below presents the estimated number of applicable schools and employers separately. DHS uses data from 2010 through 2014, a five year period, for the purposes of this analysis.

### *Schools*

During the period from 2010 through 2014, a total of 1,109 approved and accredited<sup>94</sup> schools recommended students for STEM OPT extensions.<sup>95</sup> DHS conducted a statistically valid sample analysis to estimate the number of schools that would be considered small entities. DHS determined a minimum sample size of 286 would be necessary to achieve a 95 percent confidence interval of +/- 5 percentage point on a population of 1,109.<sup>96</sup> DHS oversampled 293 schools to account for schools that would lack sufficient data to determine whether they were a small entity.

Of the 293 schools, DHS found that 149 are public and owned by State governments or other large governmental jurisdictions, and are not considered small entities. To determine whether schools impacted by the proposed rule are public or private institutions, DHS obtained information from the National Center for Education Statistics (NCES).<sup>97</sup> To determine whether public schools, not owned by a State government, are owned by small jurisdictions, DHS also reviewed county-level population data from the U.S. Census Bureau.<sup>98</sup> Of the 144 remaining schools, DHS determined whether these schools were private not-for-profits or private for-profit schools also from the available NCES data, except in the case of two schools for which DHS did not have enough information to make a determination. Four of the 144 schools were private, for-profit institutions. The Small Business Administration published guidelines on small business size standards applied by NAICS code to private, for-profit entities, but size standards are not specified for non-profit entities. Therefore, DHS has conservatively considered the 140 not-for-

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<sup>94</sup> Accredited by a Department of Education-approved accrediting agency.

<sup>95</sup> ICE SEVIS data.

<sup>96</sup> See <https://www.qualtrics.com/blog/determining-sample-size/>.

<sup>97</sup> National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, <http://nces.ed.gov/>, Data obtained in July 2015.

<sup>98</sup> U.S. Census QuickFacts, Population Estimates for City and County, <http://quickfacts.census.gov/qfd/index.html>. Data retrieved July 2015.

profit schools and schools with insufficient information to be small entities. For the four private, for-profit schools, DHS used databases such as Hoovers, Reference USA, and public data sources to search for the school employee size and revenue.<sup>99</sup> Of the four private, for-profit schools, one had annual revenue below the SBA size standard and is a small entity, and the other three are not small entities. DHS estimated 141 (2+138+1) schools would be small entities out of the 293. DHS therefore estimated 48 percent of schools that recommended a student for STEM OPT extensions are small entities. The following table summarizes the outcomes.

**Table 27: Outline of Research Statistics on Schools**

Parameter	Quantity	Small Entities (Sample Segment)	Comments
Population—Schools	1,109	N/A	Total number of accredited schools endorsing STEM-OPT Students between 2010-2014
Minimum Sample	286	N/A	Sample size necessary to achieve confidence goals.
Over-sampling	293	N/A	Estimated sample needed to match 286 entities
Non-matched Sample Segment	2	Yes	Entities not found in online databases such as NCES, Hoovers, and Reference USA, assumed to be small entities
Matched Sample Segment Non-Profit Schools	138	Yes	Entities determined to be private not-for-profit, assumed to be small entities
Matched Sample Segment For-Profit Schools	1	Yes	Private for-profit, matched in online database with revenue lower than SBA size standard, assumed to be small entity
Matched Sample Segment For-Profit Schools	3	No	Entities determined to be private for-profit, matched in online databases with revenue exceeding SBA size standard, assumed not small entities
Matched Sample Segment Government Jurisdictions	149	No	Entities among the 293 sampled confirmed as large governmental jurisdictions.

### *STEM OPT Employers*

During the period from 2010 through 2014, a total of 26,260 entities employed students who had obtained STEM OPT extensions.<sup>100</sup> DHS conducted a statistically valid sample

<sup>99</sup> The Reference USA website is <http://www.referenceusa.com>. The Hoovers website is [www.hoovers.com](http://www.hoovers.com). ICE collected data from these sources were collected in July 2015.

<sup>100</sup> ICE SEVIS data.

analysis to estimate the number of STEM OPT employers that would be considered small entities. DHS determined a minimum sample size of 379 would be necessary to achieve a 95 percent confidence interval of +/- 5 percentage points on this population. DHS oversampled 659 employers to account for of lack sufficient data in the sample.

Of the 659 employers, DHS was not able to retrieve sufficient data on 279, and assumed these employers are small entities. Of the remaining 380 with sufficient data, from one or more of multiple data sources such as Hoovers, Reference USA, and NCES, 357 were private, for-profit entities and not governmental jurisdictions. DHS also found that three of the sampled entities were temporary placement agencies (temporary agencies) and removed these three from the quantitative cost analysis, as DHS assumed most temporary agencies would not be able to comply with the requirements of the Mentoring and Training Plan. Of these 357 entities, 215 were small entities based on the number of employees or revenue being less than their respective SBA size standard for small entities, while the remaining exceeded their respective SBA size standard. The following table provides a summary of the top 30 NAICS codes representing 61 percent of the sampled 380 employers with sufficient data.

**Table 28: Top 30 Industries of Sampled Employers**

NAICS Code Labels	NAICS Description	Count of Entities with Sufficient Data	Percent of Entities (# in NAICS / 380)	SBA Size Standard
541511	Custom Computer Programming Services	37	9.7%	\$25000000 Dollars
443142	Camera & Photographic Supplies Stores	24	6.3%	\$7000000 Dollars
541330	Engineering Services	22	5.8%	\$4500000 Dollars
926130	Government	16	4.2%	50,000 population
541512	Computer Systems Design Services	12	3.2%	\$25000000 Dollars
325412	Pharmaceutical Preparation Manufacturing	9	2.4%	750 Employees
541810	Advertising Agencies	7	1.8%	\$7010000 Dollars
561990	All Other Support Services	7	1.8%	\$7000000 Dollars
523930	Investment Advice	7	1.8%	\$7000000 Dollars
541618	Other Management Consulting Services	6	1.6%	\$7000000 Dollars
339999	All Other Miscellaneous Manufacturing	6	1.6%	500 Employees
611310	Colleges, Universities & Professional Schools (Non-Government)	5	1.3%	\$7000000 Dollars
541611	Administrative Management & General Management Consulting Serv.	5	1.3%	\$7000000 Dollars
511210	Software Publishers	5	1.3%	\$25000000 Dollars
561311	Employment Placement Agencies	5	1.3%	\$7000000 Dollars
334111	Electronic Computer Manufacturing	5	1.3%	1000 Employees
541613	Marketing Consulting Services	5	1.3%	\$7000000 Dollars
339112	Surgical and Medical Instrument Manufacturing	4	1.1%	500 Employees
213112	Support Activities for Oil and Gas Operations	4	1.1%	\$7000000 Dollars
541614	Process, Physical Distribution & Logistics Consulting Services	4	1.1%	\$7000000 Dollars
621999	All Other Miscellaneous Ambulatory Health Care Services	4	1.1%	\$10000000 Dollars
517919	All Other Telecommunications	4	1.1%	\$25000000 Dollars
519190	All Other Information Services	4	1.1%	\$7000000 Dollars
811212	Computer and Office Machine Repair & Maintenance	4	1.1%	\$25000000 Dollars
561320	Temporary Help Services	3	0.8%	\$13500000 Dollars
621511	Medical Laboratories	3	0.8%	\$13500000 Dollars
561110	Office Administrative Services	3	0.8%	\$7000000 Dollars
524210	Insurance Agencies & Brokerages	3	0.8%	\$7000000 Dollars
238910	Site Preparation Contractors	3	0.8%	\$14000000 Dollars
518210	Data Processing, Hosting, & Related Services	3	0.8%	\$25000000 Dollars
Total		230	60.5%	

Of the remaining 23 that were not-for-profit entities, 7 were private, not-for-profit and assumed to be small, and 16 were large governmental jurisdictions. DHS estimated 500 (279+214+7) employers would be small entities out of the 659. DHS therefore estimated 76 percent of employers of students obtaining STEM OPT extensions are small entities. The following table summarizes the outcomes.

**Table 29: Outline of Research Statistics on Employers**

Parameter	Quantity	Small Entities (Sample Segment)	Comments
Population—Employers	26,260	N/A	Total number of STEM-OPT employers between 2010-2014
Minimum Sample	379	N/A	Sample size necessary to achieve confidence goals.
Over-sampling	659	N/A	Estimated sample needed to match 379 entities
Non-matched Sample Segment	279	Yes	Entities not found in online databases, assumed to be small entities
Matched Sample Segment For-Profit	214	Yes	For-profit entities matched in online databases that did not exceed SBA size standard.
Matched Sample Segment Not-For-Profit	7	Yes	Entities confirmed as private not-for-profit.
Matched Sample Segment For-Profit	140	No	For-profit entities matched in online databases that did exceed SBA size standard.
Temporary Agencies	3	No	Quantitative impact not analyzed.
Matched Sample Segment Government Jurisdictions	16	No	Entities that are large governmental jurisdictions.

**d. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record**

The proposed rule requires assurance that STEM OPT participants obtain skills, knowledge, and competencies through structured activities such as on-the-job training. It requires students to develop, with their employers, a mentoring plan by completing and signing the Mentoring and Training Plan form. When completed, students submit the Mentoring and Training Plan form to their DSOs when requesting the 24-month STEM OPT extension. The DSO must retain a copy of the form. Additionally, students would be required to update the

form every six months to include a progress report on accomplishments and skills or knowledge obtained. Employers must meet with the student and sign the six-month evaluation, and DSOs would check to ensure the evaluation has been completed and retain a copy.

### *Schools*

Under the proposed rule, students must provide the completed Mentoring and Training Plan forms to their DSOs to request STEM OPT extensions. DHS includes an opportunity cost of time for reviewing the form to ensure its proper completion and filing the record either electronically or in a paper folder.

Schools would incur costs for providing oversight and reporting STEM OPT students' information as well as reviewing required documentation. DSOs would be required to ensure the form has been completed and signed prior to making a recommendation in SEVIS. Schools would be required to ensure that SEVP has access to student evaluations (electronic or hard copy) for a period of at least three years following the completion of each STEM practical training opportunity. The 2008 IFR previously required six-month student validation check-ins with DSOs, and this proposed rule would maintain the validation requirement. While the DSO would be in communication with the student during a six-month validation check-in, DHS proposes to add an additional requirement that DSOs would also check to ensure the six-month evaluation has been properly completed and retain a copy. The NPRM proposes to maintain the 2008 IFR requirements for periodic information reporting requirements on students, which would result in a burden for DSOs. Table 30 summarizes the school costs from the proposed rule, as described previously in the Costs section of this regulatory impact analysis.

**Table 30: Schools - Cost of Compliance per STEM OPT Opportunity**

<b>Proposed Provision</b>	<b>Calculation of School Cost per Student</b>	<b>Cost in Year 1 per Student</b>	<b>Cost in Year 2 per Student</b>
Initial Completion of Mentor & Train Plan	$((0.25 \text{ hrs} + 0.083 \text{ hrs}) \times \$39.33)$	\$13.09	\$0.00
6 Month Evaluations & Validation Check-Ins <sup>1</sup>	$(0.333 \text{ hrs} \times 2 \text{ Evals} \times \$39.33)$	\$26.20	\$26.20
Additional Implementation Cost <sup>2</sup>	0.1 x Mentor & Train Plan Initial + Evals & Validation Check-Ins Costs	\$3.93	\$2.62
Student Info. Reporting Requirements	$0.167 \text{ hrs} \times 2 \text{ rpts} \times \$39.33$	\$13.14	\$13.14
<b>Total</b>	<b>Total</b>	<b>\$56.35</b>	<b>\$41.95</b>

<sup>1</sup> Estimated based on 12 month period costs per extension, for students on a 12-month second extension such as those with prior degrees and second degrees, only Year 1 costs were applied.

<sup>2</sup> Mentoring and Training Plan initial costs are only in Year 1 per STEM OPT.

DHS estimates the annual impact to schools based on the school cost of compliance as a percentage of annual revenue. Second year costs account for new additional STEM OPT extension students. For the not-for-profit schools DHS multiplied the tuition per full-time first-year student with total enrollment numbers to estimate their revenue.<sup>101</sup> While tuition revenue may underestimate the actual school revenue, this is the best information available to DHS. It is the most significant source of income for most schools, and DHS believes it is a reasonable approach to measuring the impact of this proposed rule. Based on the results of the sampled small-entity schools with sufficient data, all had first year annual impacts less than 1 percent, with the average annual impact being 0.006 percent. All sampled small-entity schools with sufficient data had second year annual impacts of less than 1 percent, with the average annual impact being 0.005 percent. DHS acknowledges there may be additional regulatory costs<sup>102</sup> to

<sup>101</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “Academic year prices for full-time, first-time undergraduate students”, (Total enrollment, including Undergraduate and Graduate) 2014-2015, Available at <http://nces.ed.gov/globallocator/>

<sup>102</sup>Such costs could be related to training DSOs on how to comply with the requirements, program changes within the school, and time to generally review and comprehend the requirements of the regulation and make

the following quantified costs, and requests comments specifically addressing concerns on costs for entities of all sizes, including small entities.

**Table 31: Schools – Annual Impact in Year 1**

Revenue Impact Range	Number of Small Entities For-Profit with Data	Number of Non-Profit Entities with Data	Percent of Small Entity Schools
0% < Impact ≤ 1%	4	137	100%
1% < Impact ≤ 3%	0	0	0%
3% < Impact ≤ 5%	0	0	0%
5% < Impact ≤ 10%	0	0	0%
Above 10%	0	0	0%
<b>Total</b>		<b>141</b>	<b>100%</b>

**Table 32: Schools – Annual Impact in Year 2**

Revenue Impact Range	Number of Small Entities For-Profit with Data	Number of Non-Profit Entities with Data	Percent of Small Entity Schools
0% < Impact ≤ 1%	4	137	100%
1% < Impact ≤ 3%	0	0	0%
3% < Impact ≤ 5%	0	0	0%
5% < Impact ≤ 10%	0	0	0%
Above 10%	0	0	0%
<b>Total</b>		<b>141</b>	<b>100%</b>

Unaccredited Schools

Schools not accredited by a Department of Education-recognized accrediting agency may incur unquantified costs from the proposed prohibition on participation in the STEM OPT extension by students attending unaccredited schools. A few schools may choose to seek accreditation, or may potentially lose future foreign students and associated revenue. DHS

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determinations on how to best implement the requirements with the least negative impact to their ongoing operations.

requests comment from unaccredited institutions on this provision, including the potential effect of the requirement on your school and any data associated with the impact, such as the cost of accreditation or potential revenue loss.

### *Employers*

Employers would be required to provide information for certain fields, review the completed form, and attest to the certifications on the form. The proposed rule also ensures that students would be unable to complete their STEM OPT extensions as volunteers by requiring commensurate compensation, and additionally requires that students work at least 20 hours per week while on their STEM OPT extension. DHS does not have data on the number of STEM OPT students who do not currently receive compensation. In addition, DHS does not have data on the number of STEM OPT students who do not currently receive wages or other qualifying compensation that would be considered commensurate under the proposed rule. To the extent that employers are not currently compensating STEM OPT participants in accordance with the proposed rule, this proposal would create additional costs to these employers. However, DHS notes that employer participation in the STEM OPT program is entirely voluntary, and each employer would determine if the benefits of hiring the STEM OPT student exceeds the cost of doing so when considering all of the costs and burdens of the proposed rule, including the requirement to pay commensurate compensation. DHS requests comments from employers on the effect of these proposed requirements. In the quantified costs, DHS does account for the possible additional burden of reviewing the employment terms of similarly situated U.S. workers in order to compare the terms and conditions of their employment to those of the STEM OPT student's practical training opportunity.

The proposed rule indicates that ICE, at its discretion, may conduct a site visit of an employer. The employer on-site review is intended to ensure that each employer meets program requirements, including that they are complying with assurances and that they possess the ability and resources to provide structured and guided work-based learning experiences outlined in

students' Mentoring and Training Plans. Site visits would not be a requirement for each STEM OPT student employer or a regularly scheduled occurrence, but rather be performed at the discretion of DHS either randomly or when DHS determines that such an action is needed. The length and depth of such a visit would be determined on a case-by-case basis. For law enforcement reasons, DHS does not include an estimate of the basis for initiating a site visit and is unable to estimate of the number of site visits that may be conducted, and thus is unable to provide a total annual estimated cost for such potential occurrences. However, based on on-site-reviews to schools, DHS estimates that an employer on-site visit may include review of records and questions for the supervisor, and would take five hours per employer. Therefore, DHS estimates that if an employer were to receive such an on-site review, it may cost the employer approximately \$394.80 (5 hours x \$78.96).

DHS acknowledges there may be additional regulatory costs<sup>103</sup> to the following quantified costs, and requests comments specifically addressing concerns on costs for entities of all sizes, including small entities.

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<sup>103</sup> Such costs could be related to train supervisors on how to comply with the requirements, program changes within the school, and time to generally review and comprehend the requirements of the regulation and make determinations on how to best implement the requirements with the least negative impact to their ongoing operations.

**Table 33: Individual Employer - Cost of Compliance**

<b>Proposed Provision</b>	<b>Calculation of costs</b>	<b>Cost in Year 1</b>	<b>Cost in Year 2</b>
Initial Completion of Mentor & Train Plan	$(0.5 \text{ hrs} \times \$80.12) + (0.5 \text{ hrs} \times \$78.96) + (1 \text{ hrs} \times \$43.93)$	\$123.47	\$0.00
6 Month Evaluations & Validation Check-Ins <sup>1</sup>	$(0.25 \text{ hrs} \times 2 \text{ Evals} \times \$78.96)$	\$39.48	\$39.48
Additional Implementation Cost <sup>2</sup>	0.1 x Mentor & Train Plan Initial + Evals & Validation Check-Ins Costs	\$11.90	\$3.95
<b>Employer STEM OPT Costs per Student =</b>	Total	<b>\$179.25</b>	<b>\$43.43</b>
<b>Cost per E-Verify per New Hire Case =</b>	$(0.16 \text{ hrs} \times \$43.93)$	<b>\$7.03</b>	<b>\$7.03</b>
E-Verify Enrollment	$(\$80.12 \times 2.26) + \$100$	\$281.07	\$0.00
E-Verify Annual Training & Maintenance Costs	$(1 \text{ hrs} \times \$43.93) + \$398$	\$441.93	\$441.93
Compliance Site Visits	$(5 \text{ hrs} \times \$78.96)$	\$0.00	\$394.80
<b>E-Verify and Site Visit Employer Costs =</b>	Total	<b>\$723.00</b>	<b>\$836.73</b>

DHS estimates the annual impact to employers based on the employer cost of compliance as a percentage of annual revenue. Second year costs include initial submission of Mentoring and Training Plans for new STEM OPT students who would be hired in the second year. For not-for-profit school employers without revenue data DHS multiplied the tuition per full-time first-year student with total enrollment numbers to estimate their revenue. Based on the results of the sampled small entities with sufficient data, almost all had first and second year annual impacts less than 1 percent, with the average first-year annual revenue impact being 0.13 percent and second-year annual revenue impact being 0.15 percent. Additionally, the cost impact per employer included a compliance site visit in year two; therefore, costs could be less for employers that do not receive a site visit. Employers of STEM OPT students would determine if the benefits of hiring such students exceed program requirements costs. To the extent that the benefits do not exceed costs, employers may choose not to hire STEM OPT students.

**Table 34: Employers – Annual Impact in Year 1**

Revenue Impact Range	Number of Small Entities For-Profit with Data	Number of Non-Profit Entities with Data	Percent of Small Entities Employers
0% < Impact ≤ 1%	211	7	99%
1% < Impact ≤ 3%	2	0	1%
3% < Impact ≤ 5%	0	0	0%
5% < Impact ≤ 10%	0	0	0%
Above 10%	0	0	0%
<b>Total</b>	<b>220</b>		<b>100.0%</b>

**Table 35: Employers – Annual Impact in Year 2**

Revenue Impact Range	Number of Small Entities For-Profit with Data	Number of Non-Profit Entities with Data	Percent of Small Entities Employers
0% < Impact ≤ 1%	210	7	99%
1% < Impact ≤ 3%	3	0	1%
3% < Impact ≤ 5%	0	0	0%
5% < Impact ≤ 10%	0	0	0%
Above 10%	0	0	0%
<b>Total</b>	<b>220</b>		<b>100.0%</b>

Current Employers that Do Not Continue to Participate

Due to additional employer requirements that must be met in order to receive the benefit of training STEM OPT extension opportunity, it may be possible that some employers (such as temporary employment agencies) would no longer participate in STEM OPT extensions. DHS does not present the quantitative burden or cost associated with this possible impact on employers due to lack of available information on employers that would fall under this category and the associated economic impacts. DHS will consider data or information provided by commenters to assess such an impact upon employers.

**e. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule**

DHS is not aware of any Federal rules applying to F-1 nonimmigrant students that may duplicate, overlap, or conflict with the proposed rule. DHS invites any comment and information regarding any relevant rules.

**f. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities**

DHS understands that the proposed rule would place more requirements on schools and employers of STEM OPT students, of any size, than currently exist. DHS has tried to minimize, to the extent possible, the small entity economic impacts of the proposed rule by structuring the program such that students are largely responsible for meeting its requirements. This not only minimizes the burden of the proposed program on schools and employers, but also helps to ensure that students are active participants in determining the success of their practical training opportunities, and that they bear an equitable amount of responsibility as the main beneficiaries of the benefits of the practical training opportunities.

DHS has tried to minimize additional DSO responsibilities while balancing the need for oversight. For example, to the extent possible, new requirements that the rule proposes are streamlined, such as Mentoring and Training Plan evaluations that would be conducted and submitted along the same schedule as the six-month student check-ins (also known as student validation reports).

DHS has tried to provide flexibility for small entities in methods they can use to meet the commensurate duties, hours, and compensation requirements for STEM OPT students. DHS has

proposed to allow employers to perform an analysis that uses their own wage and compensation data to determine how to compensate their STEM OPT employee in a comparable manner to their similarly situated U.S. workers. This provides small entities flexibilities rather than applying a prescriptive national, state, or metropolitan data requirement. DHS also considers the small entities that may not have similarly situated U.S. workers and provides options discussed in the preamble as to how they could comply with the requirements to demonstrate commensurate compensations.

Additionally, in addition to considering all comments received on the proposed rule, DHS expects that following any final rule, DHS will engage in further stakeholder outreach activities and provide clarifying information as appropriate. DHS envisions that this outreach would reduce the burden that may result from small entities having uncertainty in how to comply with the requirements.

Employer participation in the STEM OPT program is entirely voluntary, and should an employer determine that the cost of complying with the relevant requirements is too high, the employer would be free to no longer hire F-1 students on STEM OPT extensions.

DHS welcomes comments on the conclusions identified above and alternatives that might help reduce the impact on small entities for the proposed rule. Members of the public should submit a comment, as described in this proposed rule under **Public Participation**, if they think that their business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on them. It would be helpful if commenters provide DHS with as much information as possible as to why this proposed rule would create an impact on small businesses.