NAFSA
Association of International Educators

SEVIS Resource 2002-g

Final INS F SEVIS rule, compiled and annotated

[67 Fed.Reg. 76256 (December 11, 2002)]

Version: January 22, 2003

On December 11, 2002 the Immigration and Naturalization Service published in the Federal Register its **final** SEVIS implementation rule.

NAFSA compiled this version of how the INS final rule alters the current regulations at 8 CFR 214.2(f) and 214.3. This compilation does not include changes to the M student category at 8 CFR 214.2(m). Also, although the final INS rule does include a few provisions that affect the J exchange visitor category, those changes will be presented in a separate document.

In the Federal Register notice, many pages of "supplementary information" precede the rule language. Please also thoroughly read that supplementary information. The entire Federal Register notice, including the supplementary information and rule language, can be downloaded on the NAFSA Web site at www.nafsa.org/sevisresources.

Style Key:

This text style reflects the current rule text *unaltered by the final rule*

~~This text style reflects the current rule text *removed by the final rule*~~

This text style reflects new rule text *added by the final rule*

notes

Effective dates and deadlines

- **January 1, 2003**: the date when the new provisions of the rule become effective.
- **January 30, 2003**: the SEVIS mandatory compliance date, on which all schools must be enrolled in SEVIS.
- **August 1, 2003**: the date by which schools must enter into SEVIS all current or continuing students who are not yet in SEVIS, and the date on which all non-SEVIS I-20s issued before January 30, 2003 can no longer be used for entry or any other purpose.

8 CFR § 214.1: Requirements for admission, extension, and maintenance of status

214.1(h)

(h) Education privacy and F, J, and M nonimmigrants. As authorized by section 641(c)(2) of Division C of Pub. L. 104-208, 8 U.S.C. 1372, and Sec. 2.1(a) of this chapter, the Service has determined that, with respect to F and M nonimmigrant students and J nonimmigrant exchange visitors, waiving the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, is necessary for the proper implementation of 8 U.S.C. 1372. An educational agency or institution may not refuse to report information concerning an F or M nonimmigrant student or a J nonimmigrant exchange visitor that the educational agency or institution is required to report under 8 U.S.C. 1372 and Sec. 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) on the basis of FERPA and any regulation implementing FERPA. The waiver of FERPA under this paragraph authorizes and requires an educational agency or institution to report information concerning an F, J or M nonimmigrant that would ordinarily be protected by FERPA, but only to the extent that 8 U.S.C. 1372 and Sec. 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) requires the educational agency or institution to report information.

The final rule creates a new paragraph 214.1(h), which implements the IIRIRA 641(c)(2) provision waiving the provisions of FERPA for purposes of the information that a school or program sponsor is *required* to report under that provision of law. It is important to note that the regulation itself states that this is not a wholesale waiver of FERPA, but rather a waiver for the specific purposes of information that the school is required to report under 8 CFR 214.3(g) [see "8 CFR 214.3(g): Recordkeeping and reporting requirements" on page 41].

notes

8 CFR § 214.2(f)(1): Admission in F-1 status

(f) *Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs* -

214.2(f)(1)(i)

(1) Admission of student --

(i) *Eligibility for admission*. A nonimmigrant student ~~and his or her accompanying spouse and minor children~~ may be admitted into the United States ~~in F-1 and F-2 classifications for duration of status~~ in nonimmigrant status under section 101(a)(15)(F)~~(i)~~ of the Act, if ~~the student~~:

(A) The student presents a ~~properly completed Form I-20 A-B/I-20 ID, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, which is issued by a school approved by the Service for attendance by foreign students~~ a SEVIS Form I-20 issued in his or her own name by a school approved by the Service for attendance by F-1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I-20A-B/I-20ID, if that form was issued by the school prior to January 30, 2003;

Currently valid non-SEVIS Forms I-20 can be used for admission to the U.S. provided that the form was issued by the school prior to January 30, 2003

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I-20 (or the Form I-20A-B/I-20ID); and

(C) For students seeking initial admission only, intends to attend the school specified in the student's visa (~~except~~ or, where the student is exempt from the requirement for a visa, ~~in which case the student must intend to attend~~ the school indicated on the SEVIS Form I-20 (or the Form I-20A-B/I-20ID); and

(D) In the case of a student who intends to study at a public secondary school, the student has demonstrated that he or she has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance.

New paragraph, adds language implementing INA 214(m)

notes

214.2(f)(1)(ii)

(ii) *Disposition of Form I-20 A-B/I-20 ID*. Form I-20 A-B/I-20 ID contains two copies, the I-20 School Copy and the I-20 ID (Student) Copy. For purposes of clarity, the entire Form I-20 A-B/I-20 ID shall be referred to as Form I-20 A-B and the I-20 ID (Student) Copy shall be referred to as the I-20 ID. When an F-1 student applies for admission with a complete Form I-20 A-B, the inspecting officer shall:

(A) Transcribe the student's admission number from Form I-94 onto his or her Form I-20 A-B (for students seeking initial admission only);

(B) Endorse all copies of the Form I-20 A-B;

(C) Return the I-20 ID to the student; and

(D) Forward the I-20 School Copy to the Service's processing center for data entry. (The school copy of Form I-20 A-B will be sent back to the school as a notice of the student's admission after data entry.)

214.2(f)(1)(iii)

(iii) *Use of SEVIS*. On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I-20. A student or dependent who presents a non-SEVIS Form I-20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I-20 issued prior to January 30, 2003, will continue to be acceptable until August 1, 2003. However, schools must issue a SEVIS Form I-20 to any current student requiring a reportable action (e.g., extension of status, practical training, and requests for employment authorization) or a new Form I-20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

New paragraph 214.2(f)(1)(iii) sets two important deadlines: *January 30, 2003* and *August 1, 2003*. The SEVIS "mandatory compliance" date is set at January 30, 2003. After that date, all Forms I-20 must be issued in SEVIS. Schools whose enrollment in SEVIS is still pending as of January 30, 2003 will have to cease issuing Forms I-20 until they are enrolled in SEVIS. However, valid non-SEVIS I-20s issued before that date (i.e., January 29, 2003 and before) will continue to be accepted for admission and change of status until August 1, 2003. On August 1, 2003, a school must have entered all of its continuing students in SEVIS, and non-SEVIS Forms I-20 will no longer be acceptable for any purpose.

notes

8 CFR 214.2(f)(2): Safekeeping I-20

(2) I-20 ID. An F-1 student is expected to safekeep the initial I-20 ID bearing the admission number and any subsequent copies which have been issued to him or her. Should the student lose his or her current I-20 ID, a replacement copy bearing the same information as the lost copy, including any endorsement for employment and notations, may be issued by the designated school official (DSO) as defined in 8 CFR 214.3(l)(1)(i).

This paragraph remains unchanged from the prior rule. Although the paragraph refers only to "I-20 ID," it is assumed that this paragraph will apply to SEVIS I-20s as well.

8 CFR 214.2(f)(3): Admission of spouse and minor children of an F-1 student

(3) ~~Spouse and minor children following to join student.~~ *Admission of the spouse and minor children of an F-1 student*. The spouse and minor children accompanying an F-1 student are eligible for admission in F-2 status if the student is admitted in F-1 status. The spouse and minor children following-to-join an F-1 student are eligible for admission to the United States in F-2 status if they are able to demonstrate that the F-1 student has been admitted and is, or will be within ~~sixty days~~ 30 days, enrolled in a full course of study, or~~, if the student is~~ engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an F-1 student ~~may be admitted in F-2 status if they present the F-1 student's current I-20 ID with proper endorsement by the DSO~~ with a SEVIS I-20 must individually present an original SEVIS Form I-20 issued in the name of each F-2 dependent issued by a school authorized by the Service for attendance by F-1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an F-1 student in possession of a SEVIS Form I-20 to enter the United States using a copy of the F-1 student's SEVIS Form I-20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the F-1 student's current Form I-20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement. A new SEVIS Form I-20 (or Form I-20A-B) is required for a dependent where there has been any substantive change in the ~~information on the student's current I-20 ID~~ F-1 student's current information.

The final rule continues to allow F-2 dependents to enter the United States before the F-1 student is enrolled, but reduces the period before enrollment from 60 days to 30 days. The final rule covers entering in F-2 status while accompanying the F-1 as well as following to join the F-1.

notes

8 CFR 214.2(f)(4): Temporary Absence

(4) *Temporary absence*. An F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for attendance at a Service-approved educational institution, if the student presents:

(i) A current SEVIS Form I-20 (or, for readmission prior to August 1, 2003, a current Form I-20ID which was issued prior to January 30, 2003), properly endorsed by the DSO for reentry if there is no substantive change on the most recent Form I-20 ~~ID~~ information; or

(ii) A new SEVIS Form I-20 ~~A-B~~ (or, for readmission prior to August 1, 2003, a new Form I-20ID which was issued prior to January 30, 2003), if there has been ~~any~~ a substantive change in the information on the student's most recent I-20 ~~ID~~ information, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service approved institution, or who has advanced to a higher level of study.

The final rule retains the prior rule's definition of "temporary absence" as an absence of five months or less. Note: The final rule adds a provision that allows time spent in a study abroad program to be counted towards the "one full academic year" of lawful enrollment requirement for practical training eligibility. (See "8 CFR 214.2(f)(10): Practical Training" on page 25.) It is not clear how the 5-month temporary absence provision of 214.2(f)(4) will be seen by INS to interact with, and possibly limit, the provision at 214.2(f)(10).

8 CFR 214.2(f)(5): Duration of status

214.2(f)(5)(i): general definition of duration of status

(5) *Duration of status* -- (i) *General*. Except for border commuter students covered by the provisions of paragraph (f)(18) of this section, an F-1 student is admitted for duration of status. Duration of status is defined as the time during which an F-1 student is pursuing a full course of ~~studies~~ study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, ~~plus 60 days to prepare for departure from the United States~~, except that an F-1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school(s). An F-1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I-20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of ~~studies~~ study. ~~Duration of status also includes the period designated by the Commissioner as provided in paragraph (f)(5)(vi) of this section.~~

Adds provision that F-1 student cannot be admitted to U.S. sooner than 30 days before start of course of study. Also, the rule places a period after "following completion of studies." The 60-day "grace period" language is therefore now in a sentence separate from the direct "definition" of duration of status. The paragraph also now makes reference to the 12-month aggregate limit on attendance of a public high school in F-1 status specified by INA § 212(m).

notes

214.2(f))(5)(ii): change in educational levels

(ii) *Change in educational levels*. An F-1 student who continues from one educational level to another is considered to be maintaining status, provided that the transition to the new educational level is accomplished according to transfer procedures outlined in paragraph (f)(8) of this section.

This paragraph remains unchanged.

214.2(f)(5)(iii): annual vacation

(iii) *Annual vacation*. An F-1 student at an academic institution is considered to be in status during the annual (or summer) vacation if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer is considered to be in status during that vacation, if the student has completed the equivalent of an academic year prior to taking the vacation.

This paragraph remains unchanged.

214.2(f)(5)(iv): 60- and 15-day grace periods

~~(iv) Illness or medical conditions. A student who is compelled by illness or other medical conditions to interrupt or reduce a full course of study is considered to be in status during the illness or other medical condition. The student must resume a full course of study upon recovery.~~

The medical exception language that used to be at 214.2(f)(5)(iv) has been moved and explained in greater detail at section (f)(6)(iii)(B).

(iv) *Preparation for departure.* An F-1 student who has completed a course of study and any authorized practical training following completion of studies will be allowed an additional 60-day period to prepare for departure from the United States or to transfer in accordance with paragraph (f)(8) of this section. An F-1 student authorized by the DSO to withdraw from classes will be allowed a 15-day period for departure from the United States. However, an F-1 student who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status is not eligible for an additional period for departure.

The final rule creates 2 grace periods: a **60-day period** for those who have completed their course of study and any authorized practical training, and a **15-day period** for those who terminate their course of study before it is complete. The 60-day period is given to all those who complete their course of study; the 15-day period, however, is only recognized if the student obtains the authorization of the DSO *prior* to terminating the course of study. Students who terminate their course of study without prior DSO approval or otherwise fail to maintain status are *not* eligible for any additional period.

notes

214.2(f)(5)(v)

(v) *Emergent circumstances as determined by the Commissioner.* Where the Commissioner has suspended the applicability of any or all of the requirements for on-campus or off-campus employment authorization for specified students pursuant to paragraphs (f)(9)(i) or (f)(9)(ii) of this section by notice in the Federal Register, an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice in the Federal Register will be considered to be in status during the authorized employment, subject to any other conditions specified in the notice, provided that, for the duration of the authorized employment, the student is registered for the number of semester or quarter hours of instruction per academic term specified in the notice, which in no event shall be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or less than 3 semester or quarter hours of instruction per academic term if the student is at the graduate level, and is continuing to make progress toward completing the course of study.

This paragraph and the next (establishing the framework for the Special Student Relief program) remain unchanged.

214.2(f)(5)(vi)

(vi) *Extension of duration of status*. The Commissioner may, by notice in the Federal Register, at any time she determines that the H-1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as the Commissioner deems necessary to complete the adjudication of the H-1B application, the duration of status of any F-1 student on behalf of whom an employer has timely filed an application for change of status to H-1B. The alien, according to 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay in order to obtain this extension of stay. An F-1 student whose duration of status has been so extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her F nonimmigrant stay. An extension made under this paragraph applies to the F-2 dependent aliens.

notes

8 CFR 214.2(f)(6): Full course of study

214.2(f)(6)(i)

(6) *Full course of study* -- (i) *General*. Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A course of study at an institution not approved for attendance by foreign students as provided in § 214.3(a)(3) does not satisfy this requirement. A "full course of study" as required by section 101(a)(15)(F)(i) of the Act means:

(A) Postgraduate study or postdoctoral study at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a DSO as a full course of study;

(B) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter hour systems, where all undergraduate students who are enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or are considered full-time for other administrative purposes, or its equivalent (as determined by the district director in the school approval process), except when the student needs a lesser course load to complete the course of study during the current term;

(C) Study in a postsecondary language, liberal arts, fine arts, or other non-vocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning which are either: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; or (2) a school accredited by a nationally recognized accrediting body; and which has been certified by a designated school official to consist of at least twelve clock hours of instruction a week, or its equivalent as determined by the district director in the school approval process;

(D) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or to consist of at least twenty-two clock hours a week if the dominant part of the course of study consists of laboratory work; or

The final rule does not change the "full course of study" definitions in paragraphs A-F. The only change to paragraph E is to reflect INA § 214(m), which makes public elementary schools ineligible for F-1 designation... and so the new rule adds the word "approved" to this paragraph. A new paragraph G is added to address the issue of distance and on-line education, and a new paragraph H is added to house a provision which used to be at § 214.2(f)(6)(iii).

notes

(E) Study in a curriculum at an approved ~~primary~~ private elementary or middle school or public or private academic high school ~~curriculum~~ which is certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(F) Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i) or (f)(9)(ii) of this section and published in the Federal Register shall be deemed to be engaged in a "full course of study" if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization.

(G) For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F-1 student's course of study is in a language study program, no on-line or distance education classes may be considered to count toward a student's full course of study requirement.

New paragraph (f)(6)(i)(G), covering *distance education and on-line coursework*, provides that no more than the equivalent of *one* on-line/distance ed class or 3 credits per session may be counted towards the "full course of study" requirement.

(H) On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

This language is repeated verbatim at 8 CFR § 214.2(f)(6)(iii), the "reduced course load" provision.

214.2(f)(6)(ii)

(ii) *Institution of higher learning*. For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctorate, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities. Vocational or business schools

This paragraph remains unchanged.

notes

which are classifiable as M-1 schools are provided for by regulations under 8 CFR 214.2(m).

214.2(f)(6)(iii)

(iii) *Reduced course load*. The designated school official may ~~advise~~ allow an F-1 student to engage in less than a full course of study ~~due to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement. An F-1 student authorized to reduce course load by the DSO in accordance with the provisions of this paragraph is considered to be maintaining status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.~~ as provided in this paragraph (f)(6)(iii). Except as otherwise noted, a reduced course load must consist of at least six semester or quarter hours, or half the clock hours required for a full course of study. A student who drops below a full course of study without the prior approval of the DSO will be considered out of status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

Reduced course load (RCL) *provision*. The final rule adds a requirement that an RCL must still consist of *at least six semester or quarter hours, or half the clock hours required for a full course of study*, unless otherwise noted. An exception to the 6-hour minimum is specifically noted in the medical reasons exception defined at 214.2(f)(6)(iii)(B). Another exception can be seen to be inherently noted in the "final term of study" exception defined at 214.2(f)(6) (iii)(C), which allows less than full-time enrollment "if fewer courses are needed to complete the course of study." (Note: some disagree with this reading, and are interpreting 214.2(f)(6)(iii)(C) to require at least 6 credits evenin the final semester of study). The reduced course load paragraph also specifies that a student who drops below a full course of study without prior approval of DSO will be considered "out of status." The last sentence of this paragraph remains unchanged by the final rule. Structurally, the reduced course load paragraph has been altered to house all acceptable grounds for reduction of course load in one section (paragraphs (iii)(A) through (iii)(C)).

notes

214.2(f)(6)(iii)(A): certain academic difficulties

(A) *Academic difficulties*. The DSO may authorize a reduced course load on account of a student's initial difficulty with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement. The student must resume a full course of study at the next available term, session, or semester, excluding a summer session, in order to maintain student status. A student previously authorized to drop below a full course of study due to academic difficulties is not eligible for a second authorization due to academic difficulties while pursuing a course of study at that program level. A student authorized to drop below a full course of study for academic difficulties while pursuing a course of study at a particular program level may still be authorized for a reduced course load due to an illness or medical condition as provided for in paragraph (B) of this section.

The final rule adds a requirement that a student may be authorized for a reduced course load on the "academic difficulties" basis only for a single term or semester during any one course of study at a particular program level, and must resume a full course of study at the next available term (excluding summer). The final rule retains the prior rule's definition of acceptable "academic difficulties" as being exclusively limited to "*initial difficulty with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement*."

214.2(f)(6)(iii)(B): medical conditions

(B) *Medical conditions*. The DSO may authorize a reduced course load (or, if necessary, no course load) due to a student's temporary illness or medical condition for a period of time not to exceed an aggregate of 12 months while the student is pursuing a course of study at a particular program level. In order to authorize a reduced course load based upon a medical condition, the student must provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to the DSO to substantiate the illness or medical condition. The student must provide current medical documentation and the DSO must reauthorize the drop below full time for each new term, session, or semester. A student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 12 months may not be authorized by a DSO to reduce his or her course load on subsequent occasions while pursuing a course of study at the same program level. A student may be authorized to reduce course load for a reason of illness or medical condition on more than one occasion while pursuing a course of study, so long as the aggregate period of that authorization does not exceed 12 months.

New medical condition exception to the full course of study requirement adds the requirement that the condition be substantiated by "medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist." RCLs for medical conditions can be granted for no more than 12 months in the aggregate during any one course of study. Like all reduced course load authorizations, RCL authorizations for medical reasons must be approved by the DSO prior to the reduction in course load. The rule also requires the DSO to reauthorize the RCL each new term or session.

notes

214.2(f)(6)(iii)(C): completion of course of study

(C) *Completion of course of study.* The DSO may authorize a reduced course load in the student's final term, semester, or session if fewer courses are needed to complete the course of study. If the student is not required to take any additional courses to satisfy the requirements for completion, but continues to be enrolled for administrative purposes, the student is considered to have completed the course of study and must take action to maintain status. Such action may include application for change of status or departure from the U.S.

This paragraph of the final rule allows a DSO to authorize an RCL in advance for the "final semester of study" reason. Note, however, that it is unclear how this paragraph relates to 8 CFR 214.2(f) (6)(i)(A) & (B), which some read to recognize the final course of study exception as an inherent part of the definition of full course of study for those two paragraphs.

(f)(6)(iii)(D)-(E): RCL reporting requirements

(D) *Reporting requirements for non-SEVIS schools*. A DSO must report to the Service any student who is authorized to reduce his or her course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's current Form I-20ID along with Form I-538 to the Service's data processing center indicating the date and reason that the student was authorized to drop below full time status. Similarly, the DSO will report to the Service no more than 21 days after the student has resumed a full course of study by submitting a current copy of the student's Form I-20ID to the Service's data processing center indicating the date a full course of study was resumed and the new program end date with Form I-538, if applicable.

The final rule adds a reporting requirement for reduced course load authorizations. Paragraph (D) is the non-SEVIS reporting procedure, paragraph (E) is the SEVIS reporting procedure. A 21-day reporting window is created.

(E) *SEVIS reporting requirements*. In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study. If an extension of the program end date is required due to the drop below a full course of study, the DSO must update SEVIS by completing a new SEVIS Form I-20 with the new program end date in accordance with paragraph (f)(7) of this section.

notes

214.2(f)(6)(iv): concurrent enrollment

(iv) *Concurrent enrollmen*t. An F-1 student may be enrolled in two different Service approved schools at one time as long as the enrollment in both schools amounts to a full time course of study. In cases where a student is concurrently enrolled, the school from which the student will earn his or her degree or certification should issue the Form I-20, and conduct subsequent certifications and updates to the Form I-20. The DSO from this school is also responsible for all of the reporting requirements to the Service. In instances where a student is enrolled in programs with different full course of study requirements (e.g. clock hours vs. credit hours) the DSO is permitted to determine what constitutes a full time course of study.

A new provision recognizes the legitimacy of concurrent enrollment. Makes the degree-granting school responsible for I-20 issuance and SEVIS reporting. The last sentence of this paragraph allows a DSO to determine what constitutes a full-time course of study where the student is enrolled in programs with different full course of study requirements (for example, clock hours v. credit hours.)

8 CFR 214.2(f)(7): Extension of stay

214.2(f)(7)(i)

(7) *Extension of stay* --

(i) *General*. An F-1 student who is admitted for duration of status~~.~~ ~~The student~~ is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completing his or her educational objective. An F-1 student who is currently maintaining status and making normal progress toward completing his or her educational objective, but who is unable to complete ~~a full~~ his or her course of study ~~in a timely manner~~ by the program end date on the Form I-20, must apply~~, in a 30-day period before the completion date on the Form I-20 A-B~~ prior to the program end date ~~to the DSO~~ for a program extension pursuant to paragraph (f)(7)(iii) of this section.

The final rule eliminates the prior rule's "30-day" period in favor of an open period for requesting program extensions, provided that the request for extension is made and granted *prior* to the program end date on Form I-20.

214.2(f)(7)(ii): determining the program completion date

(ii) ~~Completion date on Form I-20 A-B~~. *Report date and program completion date on Form I-20.* When determining the program completion date on Form I-20, the DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes. Such required activities may include, but are not limited to, research projects and orientation sessions. However, for purposes of employment, the DSO may not indicate a report date more than 30 days prior to the start of classes.

The final rule eliminates the provision in the prior rule that allowed a DSO to add a grace period of up to 1 year to the program completion date. Also replaces "average *foreign* student" with "average student."

notes

When determining the program completion date on Form I-20~~A-B,~~ the DSO should make a reasonable estimate based on the time an average ~~foreign~~ student would need to complete a similar program in the same discipline. ~~A grace period of no more than one year may be added onto the DSO's estimate.~~

214.2(f)(7)(iii): extension procedures

(iii) *Program extension for students in lawful status*. An F-1 student who is unable to meet the program completion date on the Form I-20~~A-B~~ may be granted ~~a program~~ an extension by the ~~school,~~ DSO if the DSO certifies ~~on a Form I-538~~ that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses. Delays caused by academic probation or suspension are not acceptable reasons for program extensions. ~~The DSO must notify the Service within 30 days of any approved program extensions by forwarding to the Service data processing center a certification on Form I-538 and the top page of a new Form I-20 A-B showing a new program completion date.~~ A DSO may not grant an extension if the student did not apply for an extension until after the program end date noted on the Form I-20. An F-1 student who is unable to complete the educational program within the time listed on Form I-20 and who is ineligible for program extension pursuant to this paragraph (f)(7) is considered out of status. If eligible, the student may apply for reinstatement under the provisions of paragraph (f)(16) of this section.

The final rule specifies that a student must apply for program extension *before* end date on Form I-20.

214.2(f)(7)(iv): notification and SEVIS updates for extensions

notes

(iv) ~~Failure to complete the educational program in a timely manner. An F-1 student who is unable to complete the educational program within the time period written on the Form I-20 A-B and who is ineligible for program extension pursuant to paragraph (f)(7)(iii) of this section is considered to be out of status. Under these circumstances, the student must apply for reinstatement under the Provisions of paragraph (f)(16) of this section.~~ *Notification*. Upon granting a program extension, a DSO at a non-SEVIS school must immediately submit notification to the Service's data processing center using Form I-538 and the top page of Form I-20A-B showing the new program completion date. For a school enrolled in SEVIS, a DSO may grant a program extension only by updating SEVIS and issuing a new Form I-20 reflecting the current program end date. A DSO may grant an extension any time prior to the program end date listed on the student's original Form I-20.

The "unable to complete" language of this paragraph has been moved to (f)(7)(iii). The final rule's paragraph (f)(7)(iv) contains notification instructions for processing program extensions for both SEVIS and non-SEVIS schools. The non-SEVIS process is the same as current extension notification provisions. Remember that the final rule at (f)(7)(iii) provides that students must *request* extensions prior to the date of completion on their Form I-20. This paragraph (f)(7)(iv) provides that DSOs may likewise not *grant* an extension after the I-20 program end date.

notes

8 CFR 214.2(f)(8): Transfer procedures

214.2(f)(8)(i)

(8) *School transfe*r --

(i) *Eligibility.* ~~An F-1~~ A student who is maintaining status may transfer to another Service approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. However, an F-1 student is not permitted to remain in the United States when transferring between schools or program unless the student will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I-20, whichever is earlier. In the case of a student authorized to engage in post-completion optional practical training (OPT), the student must be able to resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. An F-1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school-transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section, or, in the alternative, may depart the country and return as an initial entry in a new F-1 nonimmigrant status.

The final rule adds a new "5-month limit" to the transfer eligibility requirements. Basically, a student must be able to begin classes within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her I-20, whichever is earlier. For students on OPT, a transfer can be done only if the student can begin studying at the new school within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is *earlier.* In the last sentence, INS recognizes the legitimacy of travel and re-entry in a new F-1 status for those not eligible for transfer.

notes

214.2(f)(8)(ii)

(ii) *Transfer procedure*.

214.2(f)(8)(ii)(A): Non-SEVIS to Non-SEVIS transfer

(A) *Non-SEVIS School to Non-SEVIS school.* To transfer ~~schools~~ from one non-SEVIS school to a different non-SEVIS school, the student, ~~an F-1 student~~ must first notify the school he or she is attending of the intent to transfer, then obtain a Form I-20 ~~A-B,~~ issued in accordance with the provisions of 8 CFR 214.3(k)~~,~~ from the school to which he or she intends to transfer. Prior to issuance of any Form I-20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. The transfer will be effected only if the F-1 student completes the Student Certification portion of the Form I-20 ~~A-B~~ and returns the form to a ~~designated school official~~ DSO of the transfer school ~~on campus~~ within 15 days of ~~beginning attendance at the new school~~ the program start date listed on Form I-20. ~~(iii) Notification.~~ Upon receipt of the student's Form I-20 ~~A-B~~, the DSO must ~~(A) N~~ note "transfer completed on (date)" ~~on the student's I-20 ID~~ in the space provided for the ~~in~~ DSO's remarks, thereby acknowledging the student's attendance at the transfer school; ~~(B) R~~ return the Form I-20 ~~ID~~ to the student; ~~(C) S~~ submit the ~~I-20~~ School copy of the Form I-20 to the Service's Data Processing Center within 30 days of receipt from the student; and ~~(D) F~~ forward a photocopy of the ~~Form I-20 A-B~~ school copy to the school from which the student transferred.

The final rule adds a requirement that the DSO determine validity of status of the transferring student *before* issuing a transfer I-20. Also, the rule changes the obligation of the student to present the transfer I-20 to the receiving school's DSO: the prior rule required the student to present the I-20 "within 15 days of beginning attendance;" the new rule requires the student to present the transfer I-20 to the receiving school's DSO "within 15 days of the program start date listed on Form I-20."

214.2(f)(8)(ii)(B): Non-SEVIS to SEVIS transfer

(B) *Non-SEVIS school to SEVIS school.* To transfer schools from a non-SEVIS school to a SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a SEVIS Form I-20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I-20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. Once the transfer school has issued the SEVIS Form I-20 to the student indicating a transfer, the transfer school becomes responsible for updating and maintaining the student's record in SEVIS. The student is then required to notify the DSO at the transfer school within 15 days of the program start date listed on SEVIS Form I-20. Upon notification that the student is

notes

enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process the current address and that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I-20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school updates SEVIS indicating that the student has registered in classes with[in] the 30 days required by 214.3(g)(3)(iii).

214.2(f)(8)(ii)(C): SEVIS to SEVIS transfer

(C) *SEVIS school to SEVIS school.* To transfer from a SEVIS school to a SEVIS school the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as a "transfer out" and indicate the school to which the student intends to transfer, and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The current school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current DSO, the transfer school will be granted full access to the student's SEVIS record and then becomes responsible for that student. The current school conveys authority and responsibility over that student to the transfer school, and will no longer have full SEVIS access to that student's record. As such, a transfer request may not be cancelled by the current DSO after the release date has been reached. After the release date, the transfer DSO must complete the transfer of the student's record in SEVIS and may issue a SEVIS Form I-20. The student is then required to contact the DSO at the transfer school within 15 days of the program start date listed on the SEVIS Form I-20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I-20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the

SEVIS introduces the concept of "release date" to the transfer procedures. The current school must set a "release date" in the system. Until that time, the student remains under the control of the current school. On the release date, the transfer school gains full access to the student's SEVIS record, and becomes responsible for that student. A SEVIS I-20 can be issued by the transfer school only after the release date is reached. In addition, the student can indicate only one school to whom he or she should be released for transfer. These SEVIS system requirements will require students to make decisions sooner as to which school they will attend if they have applied to more than one institution. Likewise, both the current school and the transfer school will have to adjust internal business practices to take into account the more rigid procedures for effectuating transfers in SEVIS.

notes

transfer school notifies SEVIS that the student has enrolled in classes in accordance within the 30 days required by 214.3(g)(3)(iii).

214.2(f)(8)(ii)(D): SEVIS to Non-SEVIS transfer

(D) *SEVIS school to non-SEVIS school*. To transfer from a SEVIS school to a non-SEVIS school, the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student in SEVIS as “a transfer out”, enter a “release” or expected transfer date, and update the transfer school as “non-SEVIS.” The student must then notify the school to which he or she intends to transfer of his or her intent to enroll. After the student has completed his or her current term or session, or has reached the expected transfer date, the DSO at the current school will no longer have full access to the student's SEVIS record. At this point, if the student has notified the transfer school of his or her intent to transfer, and the transfer school has determined that the student has been maintaining status at his or her current school, the transfer school may issue the student a Form I-20. The transfer will be effected only if the F-1 student completes the Student Certification portion of the I-20 and returns the Form to a designated school official of the transfer school within 15 days of the program start date listed on Form I-20. Upon receipt of the student's Form I-20 the DSO must note “transfer completed on (date)” in the space provided for in DSO's remarks, thereby acknowledging the student's attendance; return the Form I-20 to the student; submit the school copy of the Form I-20 to the Service’s data processing center within 30 days of receipt from the student; and forward a photocopy of the School copy to the school from which the student transferred.

notes

8 CFR 214.2(f)(9): Employment

214.2(f)(9)(i): On-campus work authorization

(9) *Employment* --

(i) *On-campus employment*. On-campus employment must either be performed on the school's premises, (including on-location commercial firms which provide services for students on campus, such as the school bookstore or cafeteria), or at an off-campus location which is educationally affiliated with the school. Employment with on-site commercial firms, such as a construction company building a school building, which do not provide direct student services is not deemed on-campus employment for the purposes of this paragraph. In the case of off-campus locations, the educational affiliation must be associated with the school's established curriculum or related to contractually funded research projects at the postgraduate level. In any event, the employment must be an integral part of the student's educational program. Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emergent circumstances, as determined by the Commissioner, by means of notice in the Federal Register, the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I-20 in accordance with the Federal Register document. An F-1 student may, however, work on campus full-time when school is not in session or during the annual vacation. A student who has been issued a Form I-20A-B to begin a new program in accordance with the provision of 8 CFR 214.3(k) and who intends to enroll for the next regular academic year, term, or session at the institution which issued the Form I-20A-B may continue on-campus employment incident to status. Otherwise, an F-1 student may not engage in on-campus employment after completing a course of study, except employment for practical training as authorized under paragraph (f)(10) of this section. An F-I student may engage in any on-campus employment authorized under this paragraph which will not displace United States residents. In the case of a transfer in SEVIS, the student may only engage in on-campus work at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, an F-1 student may not begin on-campus employment more than 30 days prior to the actual start of classes.

The on-campus employment rules have been kept largely intact in the final rule, with two significant changes: 1) the final rule specifies that on-campus employment may begin no sooner than 30 days prior to the start of classes for students admitted for initial entry to begin a new program; and 2) clarifies that in the case of a transfer student, employment can occur only at the school that "has jurisdiction over his/her SEVIS record." The prior school has jurisdiction over the SEVIS record *before* the transfer release date, and the transfer school has jurisdiction over the SEVIS record on and *after* the transfer release date. The final rule also specifies that "*upon initial entry to begin a new course of study, an F-1 student may not begin on-campus employment more than 30 days prior to the actual start of classes.*"

notes

214.2(f)(9)(ii): Off-campus work authorization

(ii) *Off-campus work authorization* --

(A) *General*. An F-1 student may be authorized to work off-campus on a part-time basis in accordance with paragraph (f)(9)(ii) (B) or (C) of this section after having been in F-1 status for one full academic year provided that the student is in good academic standing as determined by the DSO. Part-time off-campus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted off-campus employment authorization may work full-time during holidays or school vacation. The employment authorization is automatically terminated whenever the student fails to maintain status. In emergent circumstances as determined by the Commissioner, the Commissioner may suspend the applicability of any or all of the requirements of paragraph (f)(9)(ii) of this section by notice in the Federal Register.

(B) Reserved. ~~Wage-and-labor attestation requirement. Except as provided under paragraphs (f)(9)(ii)(C) and (f)(9)(iii) of this section, a student may be authorized to accept off-campus employment only if the prospective employer has filed a labor-and-wage attestation pursuant to 20 CFR part 655, subparts J and K (requiring the employer to attest to the fact that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.)~~

The final rule removes the language of the wage and labor attestation pilot program, which is now defunct.

214.2(f)(9)(ii)(C)-(D) and (F): severe economic hardship employment

(C) *Severe economic hardship*. If other employment opportunities are not available or are otherwise insufficient, an eligible F-1 student may request off-campus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student's control. These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses.

(D) *Procedure for off-campus employment authorization* *due to economic hardship*. The student must ~~submit the application to~~ request a recommendation from the DSO ~~on Form I-538, Certification by Designated School Official~~ for off-campus employment. The DSO at a non-SEVIS school must make such a certification on Form

notes

I-538, Certification by Designated School Official. The DSO of a SEVIS school must complete such certification in SEVIS. The DSO may recommend the student work off-campus for one year intervals by certifying ~~on the Form I-538~~ that:

(1) The student has been in F-1 status for one full academic year;

(2) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(3) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(4) ~~Either: (i) The prospective employer has submitted a labor-and-wage attestation pursuant to paragraph (f)(9)(ii)(B) of this section, or (ii)~~ The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section and has demonstrated that employment under paragraph (f)(9)(i) ~~and (f)(9)(ii)(B)~~ of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) Reserved ~~Wage-and-Labor attestation application to the DSO. An eligible F-1 student may make a request for off-campus employment authorization to the DSO on Form I-538 after the employer has filed the labor-and-wage attestation. By certifying on Form I-538 that the student is eligible for off-campus employment, and endorsing the student's I-20 ID, the DSO may authorize off-campus employment in one year intervals for the duration of a valid attestation as determined by the Secretary of Labor. The endorsement on the student's I-20 ID should read "part-time employment with (name of employer) at (location) authorized from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status pursuant to 8 CFR 274a.12(b)(6)(ii) and employer-specific and, therefore, exempt from the EAD requirement. The DSO must notify the Service of each off-campus employment authorization by forwarding to the Service data processing center the completed Form I-538. The DSO shall return to the student the endorsed I-20 ID.~~

(F) *Severe economic hardship application* --

(1) The applicant should submit the application for employment authorization on Form I-765, with the fee required by 8 CFR 103.7(b)(1), to the service center having jurisdiction over his or her place of residence. ~~The applicant should submit to the Service Form I-20 ID, Form I-538, and Form I-765 along with the fee~~

notes

~~required by 8 CFR 103.7(b)(1),~~ Applicants at a non-SEVIS school should submit Form I-20, Form I-538, and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraph~~s~~ (f)(9)(i) ~~and (f)(9)(ii)(B)~~ of this section. ~~The requirement with respect to paragraph (f)(9)(ii)(B) of this section is satisfied if the DSO certifies on Form I-538 that the student and the DSO are not aware of available employment in the area through the Pilot Off-Campus Employment Program. In areas where there are such Pilot program opportunities, this requirement is satisfied if the DSO certifies on Form I-538 that employment under the Pilot program is insufficient to meet the student's needs. The student must apply for the employment authorization on Form I-765 with the Service office having jurisdiction over his or her place of residence.~~ Students enrolled in a SEVIS school should submit the SEVIS Form I-20 with the employment page demonstrating the DSO's comments and certification.

(2) The Service shall adjudicate the application for work authorization based upon severe economic hardship on the basis of Form I-20 ID, Form I-538, and Form I-765, and any additional supporting materials. If employment is authorized, the adjudicating officer shall issue an EAD. The Service director shall notify the student of the decision, and, if the application is denied, of the reason or reasons for the denial. No appeal shall lie from a decision to deny a request for employment authorization under this section. The employment authorization may be granted in one year intervals up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect. Off-campus employment authorization may be renewed by the Service only if the student is maintaining status and good academic standing. The employment authorization is automatically terminated whenever the student fails to maintain status.

notes

214.2(f)(9)(iii): employment with an international organization

(iii) *Internship with an international organization*. A bona fide F-1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization~~, in person,~~ to the service ~~office~~ center having jurisdiction over his or her place of residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, ~~an I-20 ID endorsed for reentry by the DSO within the last 30 days~~ Form I-20ID or SEVIS Form I-20 with employment page completed by DSO certifying eligibility for employment, and a completed Form I-765, ~~Application for Employment Authorization, with the fee required in 8 CFR 103.7(b)(1)~~ with required fee as contained in § 103.7(b)(1) of this section.

The final rule replaces the prior requirement of a recent travel signature with the requirement that the DSO certify the employment on the Form I-20's employment authorization section. Clarifies that international internship employment authorization applications (I-765) are to be filed with Service Centers.

8 CFR 214.2(f)(10): Practical Training

(10) *Practical training*. Practical training ~~is available to F-1 students who have been~~ may be authorized to an F-1 student who has been lawfully enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for ~~at least nine 9 consecutive months~~ one full academic year. This provision also includes students who, during their course of study, were enrolled in a study abroad program, if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level. Students in English language training programs are ineligible for practical training. An eligible F-1 student may request employment authorization for practical training in a position which is directly related to his or her major area of study. There are two types of practical training available:

The final rule changes the required period of lawful enrollment from "9 months" to "one full academic year." The rule also allows counting time spent in study abroad programs during the course of study towards this one academic year requirement, as long as the student had spent at least one full academic term enrolled in a full course of study prior to studying abroad. It is, however, not clear how this provision might be limited by the rule at 214.2(f)(4) (see page 6), which limits time spent outside the U.S. to no more than 5 months in order to be considered a temporary absence. The final rule also specifies that a student who has used 12 months of OPT is eligible for another 12 months after changing to a higher educational level.

notes

214.2(f)(10)(i): curricular practical training (CPT)

(i) *Curricular practical training programs*. An F-1 student may be authorized, by the DSO, to participate in a curricular practical training program which is an integral part of an established curriculum. Curricular practical training is defined to be alternate work/study, internship, cooperative education, or any other type of required internship or practicum which is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full-time curricular practical training are ineligible for post-completion practical training. Exceptions to the ~~nine-month in status~~ one academic year requirement are provided for students enrolled in graduate studies which require immediate participation in curricular practical training. ~~A request for authorization for curricular practical training must be made to the DSO on Form I-538. Upon approving the request for authorization, the DSO shall:~~ A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her I-20 with the DSO endorsement.

(A) *Non-SEVIS process*. A student must request authorization for curricular practical training using Form I-538. Upon approving the request for authorization, the DSO shall; ~~C~~ certify ~~the~~ Form I-538 and send the form to the Service's data processing center; endorse the student's Form I-20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and sign and date the I-20 ID before returning it to the student.

(B) *SEVIS process*. To grant authorization for a student to engage in curricular practical training a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the student's SEVIS Form I-20 indicating that curricular practical training has been approved. The DSO must sign, date and return the SEVIS Form I-20 to the student prior to the student's commencement of employment.

~~(B) Endorse the student's I-20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and~~

Paragraphs (B) and (C) of the current rule have been incorporated in paragraph (A).

notes

~~(C) Sign and date the I-20 ID before returning it to the student. A student may begin curricular practical training only after receiving his or her I-20 ID with the DSO endorsement.~~

214.2(f)(10)(ii): optional practical training (OPT)

214.2(f)(10)(ii)(A)

(ii) *Optional practical training* -- (A) *General*. An F-1 student may apply to the Service for authorization for temporary employment for practical training directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his or her employment authorization document, Form I-766 or Form 688B. A student may submit an application for optional practical training up to 90 days prior to being enrolled for one full academic year, provided that the period of employment will not begin until the completion of the full academic year as indicated by the DSO. A student may be granted authorization to engage in temporary employment for optional practical training: ~~Temporary employment for practical training may be authorized:~~

(1) During the student's annual vacation and at other times when school is not in session if the student is currently enrolled, ~~and eligible, and intends, to register~~ and is eligible for registration and intends to register for the next term or session;

(2) While school is in session, provided that practical training does not exceed ~~twenty~~ 20 hours a week while school is in session; or

An F-1 student becomes eligible to begin practical training only after being enrolled for a full academic year [See "8 CFR 214.2(f)(10): Practical Training" on page 25.] The final rule allows applications for OPT to be filed up to 90 days prior to a student being enrolled for one full academic year, provided that the period of employment will not begin until the completion of the full academic year. Allowing a student to apply in advance is meant to accommodate long processing times for OPT EAD cards. This is a particularly valuable provision for students in programs that consist only of one academic year, as well as for those who wish to do practical training in the summer following their first academic year.

(3) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. However, optional practical training must be requested prior to the completion of all course requirements for the degree or prior to the completion of the course of study. A student must complete all practical training within a 14-month period following the completion of study.

(4) [Reserved] ~~After completion of the course of study. A student must complete all practical training within a 14 month period following the completion of study.~~

notes

The final rule combines prior paragraphs 3 and 4 into a single paragraph 3. **The final rule also specifies that OPT must be requested prior to the completion of course requirements or prior to completion of the course of study. This may impact students who graduate in December 2002, but who wait to apply for OPT until on or after January 1: Under the current rule, it is possible to apply for OPT up to 60 days after completion of studies; those who wait to apply for OPT until January 1, 2003 will be subject to the new rule, which requires applications to be received by INS before the end of the course of study.** The final rule also maintains the current requirement that all OPT be completed within 14 months following the completion of study.

214.2(f)(10)(ii)(B)

(B) *Termination of practical training*. Authorization to engage in practical training employment is automatically terminated when the student transfers to another school or begins study at another educational level.

The final rule adds beginning study at another educational level as a ground for automatic termination of practical training. It is unclear how this will impact someone who legitimately wants to use OPT, but would also like to begin studying for a next degree.

214.2(f)(10)(ii)(C)

(C) *Request for authorization for practical training*. A request for authorization to accept practical training must be made to the designated school official (DSO) of the school the student is authorized to attend on Form I-538, accompanied by his or her current Form I-20 ID.

notes

214.2(f)(10)(ii)(D)

(D) *Action of the DSO-Non SEVIS schools*. In making a recommendation for practical training, a designated school official must:

(1) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(2) Endorse and date the student's Form I-20 ID to show that practical training in the student's major field of study is recommended "full-time (or part-time) from (date) to (date)"; and

(3) Return to the student the Form I-20 ID and send to the Service data processing center the school certification on Form I-538.

The final rule keeps the same procedures for OPT at non-SEVIS schools as in the current regulations.

214.2(f)(10)(ii)(E)

(E) *SEVIS process*. In making a recommendation for optional practical training under SEVIS, the DSO will update the student's record in SEVIS as having been recommended for optional practical training. A DSO who recommends a student for optional practical training is responsible for maintaining the record of the student for the duration of the time that training is authorized. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment. The DSO will then print the employment page of the student's SEVIS Form I 20, and sign and date the form to indicate that optional practical training has been recommended. The F-1 student file with the service center for an Employment Authorization Document, on Form I-765, with fee and the SEVIS Form I-20 employment page indicating that optional practical training has been recommended by the DSO.

This new paragraph establishes OPT procedures for SEVIS schools, and confirms that an EAD will still be required for OPT under SEVIS.

8 CFR 214.2(f)(11)-(12): Procedures and time limits for OPT

(11) *Employment authorization*. The total periods of authorization for optional practical training under paragraph (f)(10) of this section shall not exceed a maximum of twelve months. Part-time practical training, 20 hours per week or less, shall be deducted from the available practical training at one-half the full-time rate. As required by the regulations at 8 CFR part 274a, an F-1 student seeking practical training (excluding curricular practical training) under paragraph (f)(10) of this section may not accept employment until he or she has been

This paragraph remains essentially unchanged, but for amendments referencing SEVIS Form I-20.

notes

issued an Employment Authorization Document (EAD) by the Service. An F-1 student must apply to the INS for the EAD by filing the Form 1-765. The application for employment authorization must include the following documents:

(i) A completed Form I-765, with the fee required by § 103.7(b)(1); and

(ii) A DSO's recommendation for practical training on Form I-20ID, or, for a SEVIS school, on an updated SEVIS Form I-20.

(12) *Decision on application for employment authorization*. The Service shall adjudicate the Form I-765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The Service shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision. An F-1 student authorized by the Service to engage in practical training is required to report any change of name or address, or disruption of such employment to the DSO for the duration of the authorized training. A DSO who recommends a student for optional practical training is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

The final rule adds the requirement that a student with OPT must continue to report name and address changes to the DSO, and that DSOs are responsible for maintaining the records (SEVIS and otherwise) of students on OPT, and of updating SEVIS with changes in name, address, or disruption in employment, when those changes are reported to the DSO by the student.

8 CFR 214.2(f)(13): Travel while authorized for employment

(13) *Temporary absence from the United States of F-1 student granted employment authorization*.

(i) A student returning from a temporary trip abroad with an unexpired off-campus employment authorization on his or her I-20 ID may resume employment only if the student is readmitted to attend the same school which granted the employment authorization.

(ii) An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the United States to resume employment after a period of temporary absence. The EAD must be used in combination with an I-20 ID endorsed for reentry by the DSO within the last six months.

This paragraph remains unchanged by the final rule.

notes

8 CFR 214.2(f)(14): Effect of strikes, etc.

(14) *Effect of strike or other labor dispute*. Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner's designee, that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means the facility or facilities where a labor dispute exists. The employer is prohibited from transferring F-1 students working at other facilities to the facility where the work stoppage is occurring.

This paragraph remains unchanged by the final rule.

8 CFR 214.2(f)(15): Spouse and children of F-1

(15) *Spouse and children of F-1 student*. The F-2 spouse and minor children of an F-1 student shall each be issued an individual SEVIS Form I-20 in accordance with the provisions of § 214.3(k).

The final rule clarifies that F-2 dependents are to be issued separate, individual I-20s in SEVIS.

214.2(f)(15)(i): Restrictions on F-2 employment

(i) *Employment.* The F-1 spouse and children of an F-1 student may not accept employment.

The final rule retain's the prior rule's prohibition on F-2 employment.

notes

214.2(f)(15)(ii): Restrictions on F-2 study

(ii) *Study.* (A) The F-2 spouse of an F-1 student may not engage in full time study, and the F-2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The F-2 spouse and child may engage in study that is avocational or recreational in nature.

(B) An F-2 spouse or F-2 child desiring to engage in full time study, other than that allowed for a child in paragraph (f)(15)(ii)(A) of this section, must apply for and obtain a change of nonimmigrant classification to F-1, J-1, or M-1 status. An F-2 spouse or child who was enrolled on a full time basis prior to January 1, 2003, will be allowed to continue study but must file for a change of nonimmigrant classification to F-1, J-1, or M-1 status on or before March 11, 2003.

(C) An F-2 spouse or F-2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.

The final rule prohibits full-time study by F-2 spouses and limits full-time study by F-2 children to elementary and secondary schooling. F-2 dependents are permitted to engage in part-time "avocational or recreational" study. The only guidance INS provided on how to interpret "avocational or recreational in nature" is the following, which appears on page 76266 of the Federal Register rule notice: *"If a student engages in study to pursue a hobby or if the study is that of an occasional, casual, or recreational nature, such study may be considered as avocational or recreational."* F-2 dependents who were enrolled on a full-time basis prior to January 1, 2003 will be allowed to continue such study, but only if they apply for a change of status to F-1, M-1, or J-1 on or before March 11, 2003.

notes

8 CFR 214.2(f)(16): Reinstatement

214.2(f)(16)(i)

(16) *Reinstatement to student status* --

(i) *General*. The ~~Service~~ district director may consider reinstating an F-1 student who makes a request for reinstatement on Form I-539, Application to Extend/Change Nonimmigrant Status ~~Time of Temporary Stay~~, accompanied by a properly completed SEVIS Form I-20 indicating the DSO's recommendation for reinstatement (or a properly completed Form I-20A-B issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request if the student:

Paragraphs (16)(i)(A) through (16)(i)(E) specify the preconditions and exclusions from eligibility for reinstatement. Paragraph (16)(i)(F) specifies two specific grounds of eligibility for reinstatement.

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

This new provision makes students that have been out of status for more than 5 months ineligible for reinstatement, unless they can show exceptional circumstances.

(B) Does not have a record of repeated or willful violations of Service regulations;

~~(B)~~ (C) Is currently pursuing, or intending to pursue, a full course of study in the immediate future at the school which issued the Form I-20~~A-B~~;

~~(C)~~ (D) Has not engaged in unauthorized employment; and

~~(D)~~ (E) Is not deportable on any ground other than section ~~241~~237(a)(1)(B) or (C)(i) of the Act; and

~~(A)~~ (F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(1) ~~that~~ The violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight, or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

The final rule tightens the criteria for what constitutes "beyond the student's control," but does recognize certain failures on the part of the DSO as circumstances beyond the control of the student.

notes

(2) ~~that~~ The violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to ~~receive~~ approve reinstatement ~~to lawful F-1 status~~ would result in extreme hardship to the student;

The only ground for reinstatement that does not depend on circumstances beyond a student's control are situations where the student reduced his or her course load without prior DSO approval, and where the RCL would have been in the DSO's power to authorize. To qualify for reinstatement on this ground, the student would have to also show that not being reinstated would result in "extreme hardship" to the student.

214.2(f)(16)(ii)

(ii) *Decision*. If the Service reinstates the student, the Service shall endorse the student's copy of Form I-20 ~~A B~~ to indicate that the student has been reinstated and return the ~~I-20 ID~~ form to the student.~~,~~ ~~and~~ If the Form I-20 is from a non-SEVIS school, ~~forward~~ the school copy ~~of the form~~ will be forwarded the school. ~~to the Service's processing center for data entry.~~ If the Form I-20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, ~~I~~if the Service does not reinstate the student, the student may not appeal that decision.

8 CFR 214.2(f)(17): Student's current name and address

(17) *Current name and address.* A student must inform the DSO and the Service of any legal changes to his or her name or any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 by providing a notice of a change of address within 10 days to the DSO, who in turn shall enter the information in SEVIS within 21 days of notification by the student. A student enrolled at a non-SEVIS school must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides, rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service, the actual physical location where the student resides.

The final rule requires an F-1 student to comply with the address notification requirement of 8 CFR 265.1 by notifying the DSO of name or address changes; the DSO must in turn update SEVIS within 21 days of receiving the student's updated information.

notes

8 CFR 214.2(f)(18): Mexican and Canadian border commuter students

(18) *Special rules for certain border commuter students* -- (i) Applicability. For purposes of the special rules in this paragraph (f)(18), the term "border commuter student" means a national of Canada or Mexico who is admitted to the United States as an F-1 nonimmigrant student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. A border commuter student must maintain actual residence and place of abode in the student's country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

(A) Residing in the United States while attending an approved school as an F-1 student, or

(B) Enrolled in a full course of study as defined in paragraph (f)(6) of this section.

(ii) *Full course of study.* The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or professional objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (f)(6) of this section, provided that the reduced course load is consistent with the border commuter student's approved course of study.

(iii) *Period of admission*. An F-1 nonimmigrant student who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student's current term of study. A new Form I-20 will be required for each new semester or term that the border commuter student attends at the school. The provisions of paragraphs (f)(5) and (f)(7) of this section, relating to duration of status and extension of stay, are not applicable to a border commuter student.

(iv) *Employment*. A border commuter student may not be authorized to accept any employment in connection with his or her F-1 student status, except for curricular practical training as provided in paragraph (f)(10)(i) of this section or post-completion optional practical training as provided in paragraph (f)(10)(ii)(A)(3) of this section.

This section was added to the regulations on August 27, 2002 [67 Fed.Reg. 54941]. Since it pre-existed the SEVIS rule, it is shown here as being a current regulation that has not been modified by the December 11, 2002 SEVIS regulation. Note: This provision preceded the "Border Commuter Student Act of 2002" [Pub. L. 107-274 (H.R. 4967) (November 2, 2002)], which added a new "F-3" student category to the Immigration and Nationality Act (INA). The parameters of the new F-3 category are slightly different than the special rules for F-1 border commuter students contained in this paragraph, and INS has not yet written regulations to implement the F-3 category.

notes

8 CFR 214.3: Petitions for approval of schools

The proposed rule makes several changes to 8 CFR 214.3 as well, which is reproduced here in its entirety for reference. As you will see, most of this section remains unaltered by the December 11 regulation, but there are some very important additions, most notably the paragraphs that add SEVIS reporting requirements.

8 CFR 214.3(a): Filing petitions for F or M designation

(a) *Filing petition*--

(1) General. A school or school system seeking approval for attendance by nonimmigrant students under sections 101(a)(15)(F)(i) or 101 (a)(15)(M)(i) of the Act, or both, shall file a petition on Form I-17 with the district director having jurisdiction over the place in which the school or school system is located. Separate petitions are required for different schools in the same school system located within the jurisdiction of different district directors. A petition by a school system must specifically identify by name and address those schools included in the petition. The petition must also state whether the school or school system is seeking approval for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act or both.

(i) *Filing a petition after the SEVIS mandatory compliance date*. Any school or school system seeking approval for attendance by nonimmigrant students after the SEVIS mandatory compliance date must electronically file a petition for initial approval using the Student and Exchange Visitor Information (SEVIS). To electronically file a petition, the petitioning school must access SEVIS on the Internet and provide the following information: the school's name; the first, middle, and last name of the contact person for the school; and the email address of the contact person. Once this basic information has been submitted, the school will be issued a temporary ID and password in order to access the SEVIS site to complete and submit an electronic Form I-17.

This paragraph and paragraph (ii) were added to section 214.3(a)(1) by the interim certification rule, 67 Fed. Reg. 60107 (September 25, 2002)

(ii) [Reserved.]

(2) Approval for F-1 or M-1 classification, or both--

(i) F-1 classification. The following schools may be approved for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Act:

notes

(A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's doctor's or professional degrees.

(B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees.

(C) A seminary.

(D) A conservatory.

(E) An academic high school.

(F) A~~n~~ private elementary school.

Final rule amends paragraph (F) to allow only private elementary schools to receive F-1 designation. This conforms the regulation to IIRIRA, which prohibits a public elementary school from being designated to bring F-1 students.

(G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines.

(ii) M-1 classification. The following schools are considered to be vocational or nonacademic institutions and may be approved for attendance by nonimmigrant students under section 101(a)(15)(M)(i) of the Act:

(A) A community college or junior college which provides vocational or technical training and which awards recognized associate degrees.

(B) A vocational high school.

(C) A school which provides vocational or nonacademic training other than language training.

(iii) *Both F-1 and M-1 classification*. A school may be approved for attendance by nonimmigrant students under both sections 101(a)(15)(F)(i) and 101(a)(15)(M)(i) of the Act if it has both instruction in the liberal arts, fine arts, language, religion, or the professions and vocational or technical training. In that case, a student whose primary intent is to pursue studies in liberal arts, fine arts, language, religion, or the professions at the school is classified as a nonimmigrant under section 101(a)(15)(F)(i) of the Act. A student whose primary intent is to pursue vocational or technical training at the school is classified as a nonimmigrant under section 101(a)(15)(M)(i) of the Act.

(iv) *English language training for a vocational student*. A student whose primary intent is to pursue vocational or technical training who

notes

takes English language training at the same school solely for the purpose of being able to understand the vocational or technical course of study is classified as a nonimmigrant under section 101(a)(15)(M)(i) of the Act.

(v) The following may not be approved for attendance by foreign students:

(A) A home school,

(B) A public elementary school,

(C) An adult education program, as defined by section 203(j) of the Adult Education and Family Literacy Act, Public Law 105-220, as amended, 20 U.S.C. 9202(l), if the adult education program is funded in whole or in part by a grant under the Adult Education and Family Literacy Act, or by any other Federal, State, county or municipal funding.

Final rule adds a new paragraph (v) to prohibit certain kinds of institutions from being designated for F or M purposes. This also conforms the regulation to IIRIRA.

8 CFR 214.3(b)

(b) *Supporting documents*. Pursuant to sections 101(a)(15) (F) and (M) of the Immigration and Nationality Act, the Service has consulted with the Department of Education and determined that petitioning institutions must submit certain supporting documents as follows. A petitioning school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof shall submit a certification to that effect signed by the appropriate public official who shall certify that he or she is authorized to do so. A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he or she is authorized to do so to the effect that it meets the requirements of the State or local public educational system. Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it is licensed, approved, or accredited. In lieu of such certification a school which offers courses recognized by a State-approving agency as appropriate for study for veterans under the provisions of 38 U.S.C. 3675 and 3676 may submit a statement of recognition signed by the appropriate official of the State approving agency who shall certify that he or she is authorized to do so. A charter shall not be considered a license, approval, or accreditation. A school catalogue, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement

notes

containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and finances (including a certified copy of the accountant's last statement of school's net worth, income, and expenses). Neither a catalogue nor such a written statement need be included with a petition submitted by:

(1) A school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof;

(2) A school accredited by a nationally recognized accrediting body; or

(3) A secondary school operated by or as part of a school so accredited.

8 CFR 214.3(c)

(c) *Other evidence*. The Service has also consulted with the Department of Education regarding the following types of institutions and determined that they must submit additional evidence. If the petitioner is a vocational, business, or language school, or American institution of research recognized as such by the Attorney General, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character. If the petitioner is an institution of higher education and is not within the category described in paragraph (b) (1) or (2) of this section, it must submit evidence that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees that its credits have been and are accepted unconditionally by at least three such institutions of higher learning. If the petitioner is an elementary or secondary school and is not within the category described in paragraph (b) (1) or (3) of this section, it must submit evidence that attendance at the petitioning institution satisfies the compulsory attendance requirements of the State in which it is located and that the petitioning school qualifies graduates for acceptance by schools of a higher educational level within the category described in paragraph (b) (1), (2), or (3) of this section.

notes

8 CFR 214.3(d)

(d) *Interview of petitioner.* An authorized representative of the petitioner may be required to appear in person before an immigration officer prior to the adjudication of the petition to be interviewed under oath concerning the eligibility of the school for approval.

This paragraph had been slightly amended by the interim certification rule, 67 Fed. Reg. 60107 (September 25, 2002).

8 CFR 214.3(e)

(e) *Approval of petition*--

214.3(e)(1)

(1) *Eligibility.* To be eligible for approval, the petitioner must establish that--It is a bona fide school;

(ii) It is an established institution of learning or other recognized place of study;

(iii) It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and

(iv) It is, in fact, engaged in instruction in those courses.

214.3(e)(2)

(2) *General*. Upon approval of a petition, the district director shall notify the petitioner. An approved school is required to report immediately to the district director having jurisdiction over the school any material modification to its name, address, or curriculum for a determination of continued eligibility for approval. The approval is valid only for the type of program and student specified in the approval notice. The approval may be withdrawn in accordance with the provisions of 8 CFR 214.4, and is subject to review every 2 years.

This paragraph had been amended by the interim certification rule, 67 Fed. Reg. 60107 (September 25, 2002) to reflect the 2-year review requirement

214.3(e)(3)

(3) *SEVIS reporting*. Upon approval of a petition, the district director shall update SEVIS to reflect approval of the petition. An e-mail notification will be sent to the principal DSO by SEVIS. An approved school that has been enrolled in SEVIS must immediately update SEVIS to reflect any material changes to its name, address or curriculum for a determination of continued eligibility for approval.

notes

8 CFR 214.3(f)

(f) *Denial of petition*. If the petition is denied, the petitioner shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of part 103 of this chapter.

8 CFR 214.3(g): Recordkeeping and reporting requirements

(g) Recordkeeping and reporting requirements-

8 CFR 214.3(g)(1): recordkeeping requirements

(1) *Recordkeeping requirements*. An approved school must keep records containing certain specific information and documents relating to each F-1 or M-1 student to whom it has issued a Form I-20A or I-20M while the student is attending the school and until the school notifies the Service, in accordance with the requirements of paragraph (g)(2) of this section, that the student is not pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least one year. If a student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status. The designated school official must make the information and documents required by this paragraph available to and furnish them to any Service officer upon request. The information and documents which the school must keep on each student are as follows:

Surprisingly, the recordkeeping requirements of 8 CFR 214.3(g)(1) have not substantially changed under the December 11 rule. Except for an expansion of the "current address" requirement and a clarification on the "academic status" requirement, this section remains virtually unchanged.

(i) Name.

(ii) Date and place of birth.

(iii) Country of citizenship.

(iv) ~~Address~~. *Current address where the student and his or her dependents physically reside*. In the event that the student or his or her dependents reside on or off campus and cannot receive mail at that location, the school may provide a mailing address. The school, however, must maintain a record of the physical location of residence of the student and his or her dependents and provide such information to the Service upon request. Once SEVIS is modified, in cases where the mailing and physical address are not the same, the school will be required to report both the student's current mailing and current physical address in SEVIS.

The final rule allows schools to report mailing address to SEVIS where a student and his or her dependents cannot receive mail at the actual physical address. In such circumstances, the school is still required to maintain a record of the physical location of residence of the student and his or her dependents, and to make that information available to INS upon request.

notes

(v) ~~Status, i.e., full-time or part-time~~. The student's current academic status.

(vi) Date of commencement of studies.

(vii) Degree program and field of study.

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

(ix) Termination date and reason, if known.

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

(xi) The number of credits completed each semester.

(xii) A photocopy of the student's I-20 ID Copy.

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

8 CFR 214.3(g)(2): reporting requirements for non-SEVIS students

(2) *Reporting requirements for non-SEVIS students*. At intervals specified by the Service but not more frequently than once a term or session, the Service's processing center shall send each school (to the address given on Form I-17 as that to which the list should be sent) a list of all F-1 and M-1 students who, according to Service records, are attending that school. A designated school official at the school must note on the list whether or not each student on the list is pursuing a full course of study and give, in addition to the above information, the names and current addresses of all F-1 or M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status. The designated school official must comply with the request, sign the list, state his or her title, and return the list to the Service's processing center within sixty days of the date of the

The "reporting requirements" section of the current regulation at 214.3(g)(2) remains mostly unchanged, but adds the requirement that, in the case of students that have not yet been entered into SEVIS, INS will notify the school of the student's entry on the school's Form I-20AB, and that the school must report to INS within 30 days following the close of registration for classes if that student fails to register.

notes

request. In the case of a student that does not have an electronic record in SEVIS, the Service will notify the school if the student enters the U.S. to attend their institution. No later than 30 days following the deadline for registering for classes, the school is then required to contact the Service if that student fails to register.

8 CFR 214.3(g)(3): SEVIS reporting requirements

(3) SEVIS reporting requirements.

The final rule adds a new paragraph (g)(3), to specify SEVIS reporting requirements. Reporting windows range from 21 to 30 days after the occurrence of an event, as specified in the new paragraph.

214.3(g)(3)(i): reporting changes to school information

(i) Within 21 days of a change in any of the information contained in paragraph (e)(3) of this section, schools must update SEVIS with the current information.

214.3(g)(3)(ii): event-based reporting

(ii) Schools are also required to report within 21 days of the occurrence the following events:

214.3(g)(3)(ii) sets forth new "**event-based**" reporting requirements of SEVIS. The data specified in this paragraph must be reported to SEVIS within 21 days of the occurrence of the event.

(A) Any student who has failed to maintain status or complete his or her program;

(B) A change of the student or dependent's legal name or U.S. address;

(C) Any student who has graduated early or prior to the program end date listed on SEVIS Form I-20;

(D) Any disciplinary action taken by the school against the student as a result of the student being convicted of a crime; and

(E) Any other notification request made by SEVIS with respect to the current status of the student.

214.3(g)(3)(iii): periodic reporting

(iii) Each term or session and no later than 30 days after the deadline for registering for classes, schools are required to report the following registration information:

214.3(g)(3)(iii) sets forth new "**periodic**" reporting requirements of SEVIS. The data specified in this paragraph must be reported to SEVIS on all (F and M) students each term or session, no later than 30 days after the deadline for registering for classes.

(A) Whether the student has enrolled at the school, dropped below a full course of study without prior authorization by the DSO, or failed to enroll;

(B) The current address of each enrolled student; and

notes

(C) The start date of the student's next session, term, semester, trimester, or quarter.

214.3(g)(4): administrative corrections to SEVIS records

(4) *Administrative correction of a student's record*. In instances where technological or computer problems on the part of SEVIS cause an error in the student's record, the DSO may request the SEVIS system administrator, without fee, to administratively correct the student's record.

The final rule adds this essential provision, which creates a way for administrative correction of a student's SEVIS record in cases where technological or computer problems on the part of SEVIS caused an error in the record. This provision appears to cover only SEVIS system errors, and not data entry errors by DSOs or errors in batch transmissions sent by schools.

8 C.F.R. § 214.3(h): SEVIS certification and school review

(h) SEVIS certification and school review.-

(1) *Review of schools for initial enrollment in SEVIS*. Each school that is currently approved for attendance by nonimmigrants under section 101(a)(15)(F)(i) or 101(a)(15)(m)(i) of the Act, is required to apply for review by the Service for continuation of approval and access to SEVIS no later than the SEVIS mandatory compliance date.

This entire section 214.3(h) had been added by the interim certification rule, 67 Fed. Reg. 60107 (September 25, 2002) to reflect SEVIS certification and 2-year review requirements

(i) *SEVIS certification process*. In order to ensure that the Service has sufficient time to review and adjudicate all submitted Forms I-17 prior to the SEVIS mandatory compliance date, schools must electronically complete a Form I-17 in SEVIS and submit a certification fee of $580 at least 75 days prior to the SEVIS mandatory compliance date. A school may still submit a Form I-17 any time prior to the SEVIS mandatory compliance date. However schools that file petitions less than 75 days prior to the SEVIS mandatory compliance date may experience a period during which they may not issue Forms I-20 as the Service completes the review process. Schools may begin the review process by accessing the SEVIS website and entering the basic contact information required in order to receive a temporary user ID and password for SEVIS. Using this ID and password, the school official will again access the SEVIS website and complete and submit the electronic Form I-17.

(ii) *Preliminary enrollment in SEVIS*. Schools that were approved for preliminary enrollment by the Service under 8 CFR 214.12 must

notes

complete the certification review process, including submission of the required fee, prior to May 14, 2004.

(2) *Service adjudication*. The Service will review the electronic Form I-17 information submitted in SEVIS and will require an on-site visit of the school. If the Service approves the certification request, SEVIS will be updated to reflect the approval and will automatically generate permanent passwords and IDs for all Designated School Officials listed. Upon the discretion of the Service, certain schools may be conditionally enrolled in SEVIS prior to the on-site visit, as provided in Sec. 214.12(e). If the Service does allow a school to enroll in SEVIS prior to an on-site review, the school will be subject to a full-scale review and on-site visit at a later date. If the Service denies SEVIS certification, the Service will send electronic notification through SEVIS to the school and mail written notification that includes the reasons for denial and the process for seeking review of such denial.

(3) *Two-year review of school approval*. The Service will review the approval of a school every 2 years and will charge a recertification fee to review a school's compliance with the reporting requirements of paragraph (g)(2) of this section and continued eligibility for approval pursuant to paragraph (e) of this section. If the Service determines that a recertification should be denied, the school will be notified of the reasons for denial and the process for seeking review of such denial.

(4) *Periodic review of approved schools*. In addition, the Service may, at any time, review the approval of a school to verify compliance with the reporting requirements of paragraph (g)(2) of this section and continued eligibility for approval pursuant to paragraph (e) of this section. The Service shall also, upon receipt of notification, evaluate any changes made to the name, address, or curriculum of an approved school to determine if the changes have affected the school's eligibility for approval. The Service may require the school under review to furnish a currently executed Form I-17 without fee, along with supporting documents, as a petition for continuation of school approval when there is a question about whether the school still meets the eligibility requirements. If upon completion of the review, the Service determines that the school is not eligible for continued access to SEVIS, the Service will institute withdrawal proceedings in accordance with 8 CFR 214.4(b).

notes

8 C.F.R. § 214.3(i)

(i) *Administration of student regulations by the Immigration and Naturalization Service*. District directors in the field shall be responsible for conducting periodic reviews on the campuses under the jurisdiction of their offices to determine whether students are complying with Service regulations including keeping their passports valid for a period of six months at all times when required. Service officers shall take appropriate action regarding violations of the regulations.

8 C.F.R. § 214.3(j)

(j) *Advertising*. In any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed or reprinted by or for an approved school, any statement which may appear in such material concerning approval for attendance by nonimmigrant students shall be limited solely to the following: This school is authorized under Federal law to enroll nonimmigrant alien students.

8 C.F.R. § 214.3(k): issuance of Form I-20

(k) *Issuance of Certificate of Eligibility.* ~~A designated official of a school that has been approved for attendance by nonimmigrant students must certify Form I-20A or I-20M, but only after page 1 has been completed in full. A Form I-20A-B or I-20M-N issued by an approved school system must state which school within the system the student will attend. The form must be issued in the United States. Only a designated official shall issue a Certificate of Eligibility, Form I-20A-B or I-20M-N, to a prospective student and only after the following conditions are met:~~ A designated school official (DSO) of a school approved by the Service to enroll nonimmigrant students must sign any completed Form I-20 issued for either a prospective or continuing student or a dependent. A Form I-20 issued by an approved school system must state which school within the system the student will attend. The form must only be issued from within the United States. Only a designated official of a Service approved school shall issue a Certificate of Eligibility, Form I-20 to a prospective student and his or her dependents, and only after the following conditions are met:

(1) The prospective student has made a written application to the school.

(2) The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and

notes

other supporting documents have been received, reviewed, and evaluated at the school's location in the United States.

(3) The appropriate school authority has determined that the prospective student's qualifications meet all standards for admission.

(4) The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study.

8 CFR 214.3(l): Designated Officials

214.3(l)(1)

(l) *Designated official* --

(1) Meaning of term *designated official*. As used in §§ 214.1(b), 214.2(f), 214.2(m), and 214.4 ~~and this section~~, a *Designated Official*, *Designated School Official (DSO)*, or Principal Designated School Official (PDSO) means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official. The PDSO and any other DSO must be named by the president, owner, or head of a school or school system. The PDSO and DSO may not delegate this designation to any other person. ~~The president, owner, or head of a school or school system must designate a designated official. The designated official may not delegate this designation to any other person. Each school or institution may have up to five designated officials at any one time. In a multi-campus institution, each campus may have up to five designated officials at any one time. In an elementary or secondary school system, however, the entire school system is limited to five designated officials at any one time.~~

(i) A PDSO and DSO must be either a citizen or lawful permanent resident of the United States.

(ii) Each campus must have one PDSO. The PDSO is responsible for updating SEVIS to reflect the addition or deletion of all designated officials on his or her associated campus. The Service will also use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations as well as any system alerts generated by SEVIS. In all other respects the PDSO and DSO will share the same responsibilities.

The final rule adds the new category of "Principal Designated School Official" (PDSO), and increases the total number of designated school officials to 10 per school or campus (i.e., one PDSO and up to 9 DSOs). The final rule also specifies the duties and limits of authority for both types of designated official. The final rule eliminated the category of Administrative School Official (ASO) that had been suggested in the proposed rule.

notes

(iii) Each school may have up to 10 designated officials at any one time, including the PDSO. In a multi-campus school, each campus may have up to 10 designated officials at any one time including a required PDSO. In a private elementary or public or private secondary school system, however, the entire school system is limited to 10 designated officials at any one time including the PDSO.

214.3(l)(2)-(3)

(2) *Name, title, and sample signature*. Petitions for school approval must include the names, titles, and sample signatures of designated officials. ~~An approved school must report to the Service office having jurisdiction over it any changes in designated officials and furnish the name, title, and sample signature of the new designated official within thirty days of each change.~~ An approved school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name and title of the new official within 21 days of the change. Any changes to the PDSO or DSO must be made by the PDSO. In its discretion, the Service may reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.

Final rule requires changes and updates to designated officials to be reported to SEVIS within 21 days of the change.

(3) *Statement of designated official**s***. A petition for school approval must include a statement by each designated official certifying that the official ~~has read~~ is familiar with the Service regulations relating to the requirements for admission and maintenance of status of nonimmigrant students, change of nonimmigrant status under part 248 of this chapter, and school approval under §§214.3 and 214.4, ~~namely §§ 214.1(b), 214.2(f), and 214.2(m); the Service regulations relating to change of nonimmigrant classification for students, namely §§ 248.1(c), 248.1(d), 248.3(b), and 248.3(d); the Service regulations relating to school approval, namely this section and the regulations relating to withdrawal of school approval namely, § 214.4;~~ and affirming the official's intent to comply with these regulations. At the time a new designated official is added, the designated official must make the same certification. ~~An approved school must also submit to the Service office having jurisdiction over it such a statement from any new designated official within thirty days of each change in designated official.~~