

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Parts 103, 214, 248 and 274a

[INS No. 2185-02]

RIN 1115-AF55

**Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations governing the retention and reporting of information regarding F, J, and M nonimmigrants (foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States). This rule also implements the Student and Exchange Visitor Information System (SEVIS), establishes a process for electronic reporting by designated school officials (DSO) of information required to be reported to the Service, and provides clear standards governing the maintenance, extension and reinstatement of student status. This rule is necessary to improve and streamline the reporting and recordkeeping of F, J, and M nonimmigrants.

**DATES:** This final rule is effective January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Maura Dadrack, Assistant Director, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514-3228.

**SUPPLEMENTARY INFORMATION:****Background***Who Are F, J, and M Nonimmigrants?*

The Immigration and Nationality Act (Act) provides for the admission of various classes of nonimmigrants, including F, J, and M nonimmigrants, who are foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States. The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification.

F-1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are

foreign students pursuing a full course of study in Service-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, and in language training programs in the United States. For the purposes of this rule, the term "school" refers to all of these types of Service-approved institutions. An F-2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F-1 nonimmigrant. J-1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been selected by a sponsor designated by the United States Department of State (formerly the United States Information Agency (USIA) to participate in an exchange visitor program in the United States. The J-1 classification includes aliens who are participating in programs under which they will receive graduate medical education or training. A J-2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J-1 exchange visitor.

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

Congress recently amended the Act to create new F-3 and M-3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico who continue to reside in their home country while commuting to the United States to attend an approved F or M school. Public Law 107-274 (Nov. 2, 2002). Such border commuter students are not subject to the existing requirement for F-1 and M-1 students to be pursuing a full course of study, and are specifically permitted to engage in either full-time or part-time studies. However, F-3 and M-3 border commuter students will not be eligible to obtain F-2 or M-2 status for their dependents. The Service recently adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to make the necessary conforming amendments in response to the recent legislation. In this rule, the Service merely notes that, except for a reduction in course load, the new F-3 and M-3 students will be subject to the same

reporting requirements and SEVIS processes as for F-1 and M-1 students.

The Service wishes to clarify that compliance with SEVIS reporting requirements does not exempt F, M or J nonimmigrants from requirements or restrictions associated with other applicable statutes and regulations. Nonimmigrant students or exchange visitors subject to such regulations or statutes may be required to seek government approval, and may be denied such approval, for initial enrollment in a program and for actions that a school or program official may otherwise authorize for a nonimmigrant in SEVIS, such as transfers, extensions and changes to course of study. For example, among the kinds of schools approved for attendance by M nonimmigrants are flight training schools. The Service notes that section 113 of the Aviation and Transportation Security Act, Public Law 107-71 (Nov. 19, 2001), imposes new restrictions on providing flight training to aliens and requires prior notification to the Attorney General before such training can begin. The requirements of that law are separate from, and in addition to, the law and regulations governing F, M and J nonimmigrants. The Department of Justice has already published public notices and regulations pertaining to section 113 at 67 FR 2238 (Jan. 16, 2002), 67 FR 6051 (Feb. 8, 2002), 67 FR 41140 (June 14, 2002), and 67 FR 41147 (June 14, 2002). As another example, Title II of the Public Health Security and Bioterrorism Preparedness and Response Act, Public Law 107-188 (June 12, 2002), imposes restrictions on access to dangerous select bio-agents and toxins.

*Response to Public Comments on the Proposed Rule*

On May 16, 2002, the Service published a proposed rule in the **Federal Register** at 64 FR 34862, to implement the electronic collection and reporting process mandated under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, 8 U.S.C. 1372. Specifically, the regulation sought to improve the collection of information on nonimmigrant students by establishing real time updates of student information. The proposed rule also amended the current regulations to establish additional reporting requirements based upon the USA PATRIOT Act (Public Law 107-56) and section 501 of the Enhanced Border Security Act (Public Law 107-173). Comments were due to the Service on or before June 17, 2002.

The following discussion will address only those provisions about which comments were received. Many commenters addressed identical issues in their comments, and as a result, the number of comments exceeds the number of issues discussed. In general, commenters expressed their overall support for SEVIS and the improvements to be made by electronic reporting as well as stressing the importance of foreign students on the economy and culture of the United States.

### I. Mandatory Compliance Date

The majority of comments opposed the January 30, 2003, mandatory compliance date. Most commenters suggested that the compliance date be established by the Service in a separate rulemaking after SEVIS becomes fully operational. Other commenters suggested that the compliance deadline be moved 9 to 12 months after the release of SEVIS.

The reason most often given by commenters for their belief that the January 30, 2003 date was not feasible for schools was the technological changes required for compliance. Commenters indicated that they have not had sufficient time to assess the system changes necessary to implement SEVIS at their school and expressed concern over the short time frame to change existing business processes to meet the new SEVIS requirements. Commenters stated that to bring schools into compliance requires time and scarce resources to purchase software and training from third party vendors. Several commenters stated that being forced to comply prematurely would result in an investment in technology that becomes obsolete once SEVIS is fully operational. These commenters also indicated that SEVIS should be placed into full operation only after the technology had been developed and tested and the Service was confident the system would work.

Further, many commenters indicated that they did not want to allocate significant investments toward the real time interactive portion of SEVIS and would instead choose to wait for the batch reporting capability. As the batch process will not be available until later in 2002, commenters stated they need time to install and test the software interface with SEVIS to determine any incompatibility and that such installation and testing would necessitate an implementation date after January 30, 2003. Commenters indicated that their schools must weigh using an outside vendor against the creation of a unique system within the school to

comply with SEVIS. The commenters argued that the deliberation necessary to determine which path to follow would take time, especially when the schools need authse authorization from the president or board of directors once all options have been weighed. Many commenters point out that there was no vendor software then available that meets the SEVIS requirements, although some vendors were in the final stages of development. The commenters stated that the absence of final specifications for batch processing had hampered the schools' efforts to begin implementation. Those institutions that do not purchase a product available in the market and who instead choose to build their own batch system may take even more time. One commenter estimated that it would take 4,000–5,000 hours of information technology (IT) effort to develop the school's system. The fact that international student and scholar data is located in various university offices within one school was another reason cited by commenters as a reason that it would take schools beyond January 30, 2003, to implement new systems and processes to comply with SEVIS.

Many commenters cited cost as another prohibitive factor in being able to be ready in time for the mandatory compliance date. The Service was given monetary figures ranging from \$15,000 to \$500,000 as the cost per school to implement SEVIS. These costs include paying contract programming rates, buying servers, software licenses, and software from a vendor, receiving training in new XML technology, and additional positions for staff.

Finally, commenters stated that January 30, 2003, is not reasonable in light of the fact that the Department of State (DOS) has not yet published corresponding regulations with the new SEVIS requirements for program sponsors with the new SEVIS requirements. Commenters discussed the need for the Service regulations and the DOS regulations to be consistent in order to reduce the burden on schools. Several commenters expressed concern over the fact that the Service and the DOS were publishing separate rules and felt that they will be forced to duplicate efforts if the rules are not consistent.

While the Service is aware of the concerns that the education community has in meeting the January 30, 2003 compliance date, the Service believes the date can be met at little to no cost to the schools. Other than personnel costs for data entry, there is virtually no cost to schools as real time interactive capability only requires that the school have Internet access and a free browser.

There is no other software necessary to use the real time interactive capability and there are no recurring access fees. Additionally, as will be discussed in the following section, January 30, 2003, is the date by which all schools must use SEVIS in order to issue a new Form I–20. Although schools may choose to do so, the Service does not intend January 30, 2003 to be the date by which schools must enter all students into SEVIS. Moreover, a Form I–20 issued prior to January 30, 2003, will be accepted for visa issuance, admission, or change of status prior to August 1, 2003.

The Service has been working under several statutory mandates for the implementation of SEVIS and must balance national security concerns against the concerns of the education community. The Service has been working within the tight timeframes required by statutory mandate since the inception of the Coordinated Interagency Partnership Regulating International Students (CIPRIS) pilot program in 1997. In 2001 Congress passed two separate laws to strengthen national security that focused directly on the Service's foreign student program. In addition, the Service has been involved with working groups on student issues as directed by the President in Presidential Directive Number 2. These working groups, led by the Office of Science and Technology Policy (OSTP) and Office of Homeland Security (OHS), included representatives from the National Institute of Standards and Technology (NIST), National Science Foundation (NSF), National Institute of Health (NIH), and other federal agencies. Several open meetings hosted by National Academy of Science (NAS) included representatives from NAFSA—Association of International Educators, American Council on Education (ACE), and universities such as MIT and UCLA. The January 30, 2003 compliance date evolved from the security concerns of Congress and the Administration. It was not a date chosen at random, but was a date chosen as the most reasonable balance between national security concerns and the education community's ability to comply. The sooner that all schools and students are in the SEVIS database, the sooner the Service will have the ability to more fully monitor them.

Furthermore, the Service and the DOS have been working collaboratively since the inception of SEVIS to ensure that similar requirements were being proposed in areas as appropriate. From the beginning of the CIPRIS pilot program, the DOS has committed a full-time staff person to SEVIS to develop

the SEVIS requirements with the Service and to incorporate such requirements in the DOS regulations. On numerous occasions both agencies have come together to discuss SEVIS requirements with the education community. The fact that two separate rules are being promulgated setting out SEVIS requirements is a matter of the federal rulemaking process, and does not indicate that the two agencies are not working together.

Although the Attorney General has the primary responsibility for implementing SEVIS, the DOS must promulgate a rule setting forth SEVIS requirements that specifically pertain to J-1 program sponsors. Furthermore, in areas where the Service has responsibility over J-1 nonimmigrants (e.g., admission and duration of status), the Service has addressed those areas in this rule. The DOS has addressed in their separate rule those areas in which the Service does not have responsibility over the J-1 exchange visitor (e.g., eligibility for employment, change of category, transfer, or reinstatement). For more information on SEVIS as it relates to DOS authority over program sponsors and J exchange visitors, see the DOS rule. By the time the SEVIS mandatory compliance date is reached, the batch SEVIS technical requirements will have been available for approximately 18 months. It was the intent of the Service to provide schools and programs access to such technical requirements as early as possible in order to assist in the transition to SEVIS especially under the narrow timeframe as mandated by Congress. The Service began notification and publication of the batch technical specifications of the F, M and J data requirements in August 2001. The Service also published an announcement in the Commerce Business Daily and sponsored multiple vendor conferences specifically to release the SEVIS technical specifications for batch-interface. Nine vendor conferences were held on the east and west coasts during the months of August and September 2001. The technical specifications for the Service and the DOS were posted on the Internet at that time and were subsequently updated with a revised draft version on November 21, 2001. In response to a number of requests from the education community, the Service sponsored an additional technical conference in the Washington, DC metropolitan area on June 13, 2002, to continue to discuss XML technical specifications and to begin release of a finalized version of the Interface Control Document. The final Interface Control

Document was published on the Service's Web site on August 14, 2002.

Finally, while the Service understands the time and monetary concerns expressed by those schools interested in utilizing the batch capability of SEVIS, the Service notes that the real time interactive capability of SEVIS remains available to such schools. The use of batch processing is a choice to be made voluntarily by each individual school. Therefore, the fact that a school may not be technologically or financially ready to use batch processing does not mean that the school is not able to comply with the new SEVIS reporting requirements and processes on January 30, 2003, by utilizing the real time interactive capability of SEVIS. The real time interactive portion of SEVIS is currently available to enrolled schools. The additional benefit to schools using real time interactive capability is that these schools may begin use of SEVIS through real time interactive now and enter students on a phased-in basis. By doing so, the school would essentially have all students already entered in SEVIS and could then switch over to batch processing at the first registration after the mandatory compliance date. By entering these students over time, schools will be able to gain system familiarity and requirement familiarity while still meeting the mandatory date.

## **II. Form I-20, Certificate of Eligibility for Nonimmigrant (F-1)/(M-1) Student Status—For Academic and Language Students/Vocational Students**

Many comments were received regarding the SEVIS Form I-20. The majority of commenters requested that the Service clarify the responsibilities of those schools that begin using SEVIS prior to the mandatory compliance date. Commenters urged the Service to allow schools sufficient time to enter all current students in SEVIS and suggested several alternative dates by which all current students should be entered in SEVIS.

While the proposed rule indicated that all schools were required to report the registration of all current students by the next academic term after mandatory compliance, the Service believes the final rule should impose one date upon all schools by which all current students must be entered in SEVIS. The Service agrees with the commenters that many schools with large student populations would be forced to input all current students in SEVIS in a very short time frame in order to meet the terms of the proposed rule. In response to the commenters and the Service's desire to allow schools

sufficient time to ensure that the information entered in SEVIS is accurate, the Service believes that a specific date is an equitable solution that leads to less confusion among schools as to when all of their current students must be entered into SEVIS. As such, the Service has determined August 1, 2003, to be the date upon which all current or continuing students must be entered into SEVIS.

To clarify, schools that begin using SEVIS prior to the mandatory compliance date must issue a SEVIS Form I-20 to any new student. Additionally, these schools must issue a SEVIS Form I-20 to any current student requiring a new Form I-20 because of a reportable action (e.g., extension of status, practical training, or employment authorization, or for a new F-1, F-3, M-1, M-3 nonimmigrant visa). A current student with a previously issued non-SEVIS Form I-20 and a current nonimmigrant F or M visa will not be required to obtain a SEVIS Form I-20 for travel purposes and may use his or her current non-SEVIS Form I-20 with proper annotation for reentry until the date that all students must be entered in SEVIS. In order to comport with the required update events of § 214.2(f) and § 214.2(m) and the reporting requirements of § 214.3, including registration, schools need only update SEVIS as to those students whose information has been entered into SEVIS. These schools are not required to enter any of their current students into SEVIS or report on these students in SEVIS prior to the mandatory compliance date except for those current students who need a new Form I-20 for a reportable action or other reason.

After the mandatory compliance date is reached, schools must issue SEVIS Forms I-20 to all new students and all provisions and processes related to non-SEVIS schools will become void. At that time, schools must issue SEVIS Forms I-20 to current students requiring a reportable event. For students whose records have not been entered into SEVIS, schools are still required to comply with the recordkeeping and reporting requirements contained in section 214.3(g)(1) and (2). Lastly, schools must enter the record of all F or M students that are currently enrolled as of August 1, 2003, in SEVIS and report the enrollment for such nonimmigrants by August 1, 2003.

On a related topic, many commenters requested that the Service continue to accept, for a reasonable period of time, Forms I-20A-B, Certificate of Eligibility For Nonimmigrant (F-1) Student Status, For Academic and Language Students,

Forms I-20M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status, For Vocational Students, and Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, that were issued prior to the mandatory compliance date. In response to this request, the Service has added provisions in § 214.2(f), (j) and (m) of this rule to allow F, J, and M nonimmigrants who were issued such documents prior to the mandatory SEVIS compliance date, to continue to be admitted to the United States using these documents for a limited period of time. As of August 1, 2003, however, all non-SEVIS Forms I-20 and DS-2019 will no longer be acceptable, and F, J, and M nonimmigrants must be in possession of a SEVIS Form I-20 or DS-2019.

Additionally, commenters stated that the proposed rule did not address the process by which the dependents of F-1 or M-1 students are to be issued the SEVIS Form I-20. The Service notes that section IV of the supplementary information in the proposed rule contains a discussion of this process. However, the Service agrees that the process as described in the proposed rule should be codified in the pertinent provisions of § 214.2 (f) and (m) and § 214.3(k).

Additionally, prior to August 1, 2003, if exigent circumstances can be demonstrated, the Service will allow the dependents of F-1, J-1, and M-1 nonimmigrants in possession of a SEVIS document to enter with a copy of the principal's SEVIS document.

The Service notes that passage of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173 (Border Security Act), necessitates changes to the disposition of the SEVIS Form I-20 at ports-of-entry. The Border Security Act requires the Service to notify approved schools and exchange programs that the F or M nonimmigrant has been admitted to the United States. By on, or about January 1, 2003, the Service anticipates that it will accomplish this notification to schools electronically through SEVIS.

However, for a short period of time, the Service will accomplish this notification to schools and exchange programs using a paper process. Upon the initial admission of the F or M student, the inspector at a port-of-entry will take the SEVIS Form I-20 from the student. The SEVIS Form I-20 will be returned to the school within approximately 10 days of the student's arrival. The school will be responsible for returning the SEVIS Form I-20 to the student or notifying the Service that the student has failed to register. In the case

of a non-SEVIS Form I-20, the student's copy and the school's copy will be appropriately annotated with the admission information. The student's copy will be returned to the student at the port-of-entry and the school copy will be forwarded to the Service's data processing center to be forwarded to the school listed on the Form I-20.

In the case of a SEVIS Form DS-2019, SEVIS will generate an original SEVIS Form DS-2019 and a watermark version of the Form DS-2019. Upon the initial admission of the J-1 exchange visitor, the inspector at the port-of-entry will properly annotate both the original SEVIS Form DS-2019 and the watermark draft copy. The inspector will return the original SEVIS Form DS-2019 to the exchange visitor and the watermark version will be forwarded by the inspector to the Service's data processing center. The watermark version will be returned to the program sponsor within approximately 10 days of the exchange visitor's arrival. The program sponsor will be responsible for notifying the Service and DOS that the exchange visitor has failed to commence program participation by updating the record in SEVIS within 30 days of the program commencement date. Upon the initial admission of a J-1 nonimmigrant, the Service will continue to process the non-SEVIS Form DS-2019 as it has done in the past.

While this paper-based process remains in effect, the Service's data processing center will attach a cover letter to all Forms I-20 and SEVIS Forms I-20 forwarded to schools, indicating that the student has entered the United States using the school's form. Such notification by the Service allows schools to be able to comply with the requirement that they report to the Service any students who fail to register. SEVIS schools must report such "no shows" in SEVIS. Non-SEVIS schools are required to report these "no shows" through the Service's National Customer Service Center at 1-800-892-4829. In accordance with the DOS regulations, program sponsors are also required to report in SEVIS if an exchange visitor has failed to commence participation in his or her program. A "no-show" is a student or exchange visitor who has been issued a Form I-20 or Form DS-2019 by an approved school or designated program, and has been admitted to the United States, but who fails to register at his or her school or commence participation in his or her program within 30 days of the institution's registration deadline. Comments were also received requesting the Service to clarify whether changes could be made in SEVIS to a

student's Form I-20 information prior to the student's registration at the school. Although this is not specifically addressed in the regulations, the DSO may update all Form I-20 information in SEVIS prior to registration, with the exception of major for a student with M nonimmigrant status who is not authorized to change educational objective.

However, once the Service fully implements a data share with the Department of State's consular systems, the DSO will no longer be permitted to update biographic information after visa issuance until after the school has indicated the student has registered. Additionally, after a student has entered the country, the DSO will no longer be permitted to change a student's program start date. Schools will be permitted, however, to update SEVIS to indicate that a Form I-20 has been terminated at any time.

### III. Roles and Responsibilities of School Officials

The Service received many comments on the creation of the two new categories of designated school official, the principal designated school official (PDSO) and the administrative school official (ASO). While some commenters expressed the opinion that the creation of the ASO was helpful, others indicated that the three-tiered proposal imposes another layer of personnel, thereby limiting accountability. Several commenters were also opposed to the requirement that PDSOs and DSOs be United States citizens or lawful permanent residents. A primary source of concern for the majority of these commenters was the limitation on the number of DSOs per school or campus, citing the need for more personnel resources to input data in SEVIS. Commenters viewed the Service's limitation as arbitrary and suggested that schools should be left to determine the number of DSOs necessary to carry out their responsibilities. Others suggested that the number of DSOs be based upon the number of F-1, M-1, and J-1 nonimmigrants at a particular school.

The primary purpose of SEVIS is to provide access to current, accurate information to schools and the Service on all F, J, and M nonimmigrants. The information maintained in the system is only as reliable as those who are entering it. The Service's ability to control access is a customary and critical means of ensuring the integrity of the system. In order to maintain the integrity of the data in SEVIS, the Service has determined, in accordance with applicable Department of Justice

policies governing access to Departmental systems, that PDSOs and DSOs must be either a citizen or lawful permanent resident of the United States.

In response to the comments received, the Service will not adopt the three-tiered category PDSO, DSO and ASO as proposed. The Service finds merit in the commenters' arguments that this is an unnecessary layer that would not improve accountability. As such, once the necessary programming changes have been made to SEVIS, the Service will remove the ASO category. The category of PDSO will remain.

The Service will maintain numeric limits on the number of DSOs per school or campus in order to control access to SEVIS. Under this rule, each school or campus will be allotted one position for the PDSO and up to nine positions for DSOs. However, the Service does find merit in the comments suggesting that the number of DSOs be proportional to the number of nonimmigrant students. Once SEVIS is fully operational and schools have entered all current students in the system, the Service may reconsider the numerical limits on the number of DSOs.

On a related issue, in response to the Service's request, many comments discussed the feasibility of a DSO certification program. A certification process for DSOs was supported by most commenters as a way to strengthen the reliability of the data retained in SEVIS. However, several commenters urged the Service to hold off on establishing a certification program until after SEVIS was fully implemented in order to enable DSOs to focus fully on adjustment to SEVIS. Other commenters stated they did not want the Service to institute another mandatory program and that the Service should leave such training up to schools on a voluntary basis. The Service appreciates the responses received and will review and consider all comments again before making a decision whether to establish a DSO certification program. If a certification program is pursued, the Service may revisit the DSO limitations based on immigration status once such a certification process (including background checks) is in place.

One commenter suggested that the Service make clear that institutions have a right to seek legal counsel in establishing appropriate SEVIS compliance systems. The commenter contended that the Service's use of the PDSO as the point of contact for SEVIS serves to contravene the Agency Practice Act, 5 U.S.C. 500(b). The Service has no intention of denying a school's right to be represented by legal

counsel. In fact, for many years there have been institutions that have designated a legal advisor as a designated school official. This rule does not prohibit a school from choosing to place counsel in the PDSO or DSO position or from conferring with counsel regarding the implementation of SEVIS requirements.

#### **IV. Reduction in a Student's Course Load**

Many comments were submitted regarding the proposed rule's treatment of a reduction in a student's course load. Some commenters suggested that the Service remove the word "prior" in the sentence, "A student who drops below a full course of study without the prior approval of the DSO will be considered out of status." Additionally, commenters asserted that the Service should not consider a student to be out of status due to a reduced course load until the end of the semester or until the DSO is notified.

The Service cannot adopt these suggestions. With the implementation of SEVIS, the Service expects to have accurate, real time, information on all students. To allow a student to act, without first receiving approval from the DSO, undermines the most basic concept of SEVIS. As it is the responsibility of the student to maintain a full course of study in order to remain in compliance with his or her nonimmigrant status, it is reasonable to expect a student to understand this responsibility. Accordingly, the student should consult with, and receive the necessary permission from the designated school official prior to performing an act that affects status.

The Service understands that there may be situations in which a student is unable to maintain a full course load and has made allowances for such situations, provided the student receives permission first. The Service also understands there may be some situations in which a student's incapacitation may render it impossible for the student to request permission from the DSO prior to reducing his or her course load (e.g., a student who is hospitalized for an extended period of time as the result of an accident). In such cases, the student will not be considered out of status.

Many commenters stated that the Service did not clearly indicate in the proposed rule whether DSOs could authorize a nonimmigrant student to drop below a full course of study more than once during his or her course of study. To clarify, during the course of study within one program level, an F-1 nonimmigrant can only be authorized

on one occasion to reduce his or her course load due to academic difficulties, and must resume a full course at the start of the next available term or session, excluding a summer session. An F-1 student taking a reduced course load for academic reasons must still be taking at least one class or half the clock hours required for a full course of study. A DSO may not authorize an M-1 student to reduce his or her course load based on academic difficulties.

Commenters also argued that the Service's requirement allowing an F-1 student to drop below a full course of study only where he or she faces "initial" difficulties should be expanded to include other legitimate reasons as determined by the DSO. The Service does not adopt this suggestion to permit the DSO to make a determination based on personal or academic reasons. Such a determination is extremely vague and is open to abuse.

Several commenters also suggest that the Service allow a DSO to authorize a reduced course load if students are unprepared or in jeopardy of failing a course. The Service notes that the current regulations already provide for this situation. For example, a student may be authorized to drop below full time study due to improper course level placement.

In the case of an illness or medical condition, an F-1 student may be authorized to reduce course load for a period not to exceed 12 months in aggregate. The DSO may also authorize a student to refrain from taking any courses due to medical condition or illness if the severity of the condition warrants such authorization. Although a student may be authorized for up to 12 total months of a reduced course load in this case, a school official must reauthorize the reduction each term or session, and must update this authorization in SEVIS. The 12 month limit on authorization to reduce course load for illness or medical condition is applied per each particular program level. If the student completes one program, and advances to a different program level, the student will be allowed a second aggregate 12-month period in which he or she may be authorized to reduce course load.

An F-1 nonimmigrant who has already received authorization to reduce course load for academic difficulties remains eligible for the aggregate 12-month period to reduce his or her course load due to illness or medical condition.

A student who is unable to resume a full course of study within the time limits previously specified will either have to leave the U.S. and reapply when

he or she is able to resume a full course of study, or change to a more appropriate nonimmigrant classification to continue medical treatment in the U.S.

The Service recognizes that there may be cases in which an F-1 student may need authorization to reduce his or her course load for more than 12 months while pursuing a single program level (for example, while studying for an undergraduate college degree). However, to allow a student to pursue less than full time study for an extended period of time with no limits opens the student program to a greater possibility for abuse. Furthermore, such extended authorization would run counter to the definition of a student as set forth in section 101(a)(15)(F) of the Act which requires that a student pursue full-time study.

As specified in the proposed rule, an M-1 student may only be authorized to reduce course load for a reason of illness or medical condition, and such authorization may not exceed an aggregate of 5 months. A school official must verify the continuation of the authorization at each term or session by updating the authorization in SEVIS. However, as previously noted, the Service cannot permit an institution to authorize a student to pursue less than full-time study for an extended period of time.

On a related topic, many commenters suggested that the documentation required to support authorization to drop below a full course of study for illness or medical condition be expanded to include documentation submitted by counselors, psychologists, and other alternative medical practitioners. The Service adopts this suggestion and will allow DSOs to accept medical documentation provided by licensed medical doctors, doctors of osteopathy, or licensed clinical psychologists to substantiate a student's reason for dropping below a full course of study for illness or medical condition.

Some comments contended that students with long-term medical conditions, chronic illnesses, or learning disabilities may require a longer-term reduction in course load. The Service cannot, however, permit an unlimited reduction in course load, as this would undermine the premise of the F-1 and M-1 nonimmigrant student program. The Service believes that the existing minimum requirements for defining a "full course of study" are broad enough to accommodate students that may not be able to take a rigorous course load.

Finally, one commenter suggested that the Service include a specific provision in § 214.2(f)(6)(iii) to allow a DSO to authorize a reduced course load for graduate students enrolled in less than full time coursework. The Service does not believe that such a provision is necessary. The current regulation at § 214.2(f)(6)(i)(A) allows the DSO to make the determination of whether the graduate student is pursuing a full course of study. The determination is left to the DSO in this case because even though graduate students may not be enrolled in full-time classes, the school may still consider them to be a full-time student while they conduct research or work on their dissertation, for instance. As long as the student is pursuing what the institution considers to be a full time graduate program, the student is maintaining a full course of study. If the student is not pursuing full time study as determined by the DSO, then the student would not be maintaining lawful student status unless the DSO has authorized a reduced course load in accordance with the provisions of § 214.2(f)(6)(iii).

#### V. Transfers

Several commenters suggested that the Service permit F-1 students to transfer schools during the 60-day grace period following completion of studies or after completion of optional practical training. Although not explicitly authorized in previous regulations, the Service has accommodated school transfers within the 60-day period and has designed SEVIS to continue this practice. The final rule explicitly permits the transfer of student records in SEVIS during this 60-day period in § 214.2(f)(5)(iv). However, to clarify, the DSO must indicate the school to which the student intends to transfer in SEVIS. Therefore, the initiation of a student record transfer in SEVIS can only be carried out after the student has completed the application and acceptance process and has determined the school to which he or she is transferring.

The Service is also limiting the length of time a student may remain in the U.S. while transferring between schools. The student may not remain in the U.S. between programs if the student will not resume classes within 5 months of transferring out of the current school, or within 5 months of the program completion date as indicated on the Form I-20 issued by the current school, whichever date 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 current school that recommended OPT or the date the OPT authorization ends, whichever is earlier. For example, in instances where a DSO initiates a transfer within the 60-day period following completion of studies, in order to remain in the United States between transfer of programs or schools, the 5 month period begins tolling on the date the program was completed, not the date the DSO initiated the transfer. The initiation of a transfer out date occurs when the DSO enters a date for the release of the student's record to the transfer school. While the DSO may enter any date reasonable and appropriate for a student's circumstances, in most instances, the DSO will want to enter the release date as the date the student completes the last day of the academic term at the current school.

The Service also received many comments stating that SEVIS should not prevent transferring F-1 students from applying to more than one school. In response to these comments, the Service wishes to clarify that this final rule does not place any limit on the number of schools to which a transferring F or M student may apply. The transferring student may apply to and be accepted by any number of schools. However, the rule restricts the number of SEVIS Forms I-20 that may be issued to a transferring student. For purposes of fraud prevention, as well as privacy and paperwork reduction concerns, SEVIS will allow a student's record to be available only to one school at a time. Once the student decides which school he or she intends to transfer, the DSO of his or her current school will update SEVIS to reflect this choice and will enter the release date for the student. The student's name will then appear in SEVIS at the transfer school as an "alert" containing the student's name and release date. When the release date is reached, the transfer school will be able to issue the transferring student a new SEVIS Form I-20. In most cases, schools will be not be sending the acceptance letter and the SEVIS Form I-20 at the same time. If the student changes his or her mind prior to the release date, the DSO at the current school may cancel the transfer request. If the transfer request is cancelled the student may continue studies at the current school or make a new request to be transferred to another school. However, once the release date has been reached, the DSO at the current school may no longer access the student's record in SEVIS. Therefore, a student who changes his or her mind after the release date must work with the DSO of

the transfer school to accomplish a second transfer to another Service-approved school. In such cases, the DSO of the transfer school must complete the transfer process for the student in SEVIS and then initiate any subsequent transfer that the student may request.

The transfer process for M students differs from that of F students, in that M students must apply directly to the Service in order to transfer schools. In order to ensure that the M transfer student may continue in his or her studies without significant interruption, the M nonimmigrant transfer process allows the M transfer school to issue a SEVIS Form I-20 prior to the transfer student's release date. The initiation of the SEVIS student transfer process still requires that the current school enter the name of the M transfer school, and it is only the transfer school indicated in the system that can issue the SEVIS Form I-20 prior to the release date. The M student may then apply to the Service for a transfer without having to wait for the release date, which will most likely be at the end of the academic term. However, the transfer school will not have complete access to the student's SEVIS record until the release date is reached.

The M student may begin attending the transfer school pending the adjudication of his or her transfer request. However, if the transfer request is denied by the Service after the student has begun his/her program at the transfer school, the SEVIS student record will be automatically terminated and the student will be considered out of status. Therefore, students are strongly encouraged to file their applications for transfer approval with the Service Center as soon as they are able. As stated above, the initial SEVIS Form I-20 from the transfer school can be issued as soon as the current school indicates in SEVIS that the student intends to transfer to that school. The student will be notified by mail of the Service's decision. The DSO will be notified of the Service's decision on an M transfer via a system alert.

Additionally, the DSO may view the status of any transfer request by either accessing the student's record or by viewing the list provided of pending/adjudicated applications in SEVIS. The process for a SEVIS transfer for both F and M students allows the students to apply to multiple schools but places the burden on the students to weigh their options and decide on one particular school before the issuance of a new SEVIS Form I-20 by the transfer school.

Several commenters stated that the limited time frame imposed by the SEVIS transfer process will adversely

affect current business practices at some schools. Commenters indicated that, because a transfer school can only issue a new SEVIS Form I-20 on the student's release date, there will not be enough time for the transfer school to issue a SEVIS Form I-20 prior to the start of the new semester, especially in instances where the transfer student is returning home for a vacation.

In response, the Service notes that a transfer student who is traveling abroad for a vacation and who plans to attend a different school upon his or her return must make arrangements with the transfer school to ensure that all necessary documentation is received in a timely manner. For example, the student may obtain his or her SEVIS Form I-20 prior to departure, or request that the transfer school forward the SEVIS Form I-20 to his or her address abroad (just as the schools now do for newly-applying students).

Some commenters suggested that the Service allow the student's SEVIS record to be accessible by both the current and transfer schools until the transfer is complete.

The Service cannot adopt this suggestion. In its outreach efforts, the Service found that privacy was of the utmost concern to the education community. Schools did not want other schools to have access to any of their students' school information. The SEVIS transfer process was designed with such concerns in mind. To allow students' records to be open to both schools would allow one school to have access to another school's data. One commenter noted that the reporting time frames for transfer for non-SEVIS schools were different from those for SEVIS schools and suggested that the Service use a standard 30-day reporting time period. For the sake of consistency in the transfer process, the Service adopts this suggestion in the final rule and allows non-SEVIS schools to send notification of transfer to the Service data processing center within 30 days.

Finally, commenters suggested that the Service use consistent terminology in its description of schools. The Service agrees with the comment and in the final rule adopts the terms "current school" and "transfer school."

#### VI. Thirty-day Advance Admission

Many commenters stated that the 30-day limit prior to the program start date is unreasonable. Commenters cited a student's need to find adequate housing, attend orientation, and begin research projects as reasons why a student might need additional time prior to the program start date.

The Service, however, does not agree with the commenters. The DSO is already able to take account of a student's obligations pertaining to orientation, research projects, etc., prior to the start of classes. Form I-20 states, "The student is expected to report to the school not later than (date) and complete studies not later than (date)." A DSO may enter a date that would accommodate the beginning of research projects or allow a student to attend an orientation session. The DSO is permitted to set a program start date that accommodates the need for students to be in attendance at the school for such required activities.

Information pertaining to student housing is readily available to prospective students and in many cases housing is arranged by the school. Although the Service recognizes that students need some time to find suitable housing, the Service does not believe that the advance admission period needs to be extended beyond 30 days for this reason. A period of 30 days prior to the time the student is expected to be in attendance at the school, as provided by this rule, should be adequate for students to make arrangements for housing.

Finally, the Service is considering a change to the SEVIS Form I-20 to capture two distinct dates: (1) the date by which the student is expected to enter the country (e.g., to begin research or on-campus employment, attend orientation), and (2) the date that classes will commence.

#### VII. Grace Periods

Many comments were received on the proposed rule's effect on students who fail to maintain status by withdrawing from classes. Commenters suggested that the Service consider reasons other than medical conditions as a legitimate basis for withdrawing from classes, thereby entitling students to a reasonable grace period.

The Service agrees with these comments, in part, but must distinguish between instances where a student notifies the DSO and receives authorization to withdraw versus those where a student never attends or stops attending classes without DSO authorization. In instances such as a death in the family, unforeseen financial hardship, or a determination that the educational program is not appropriate for the student, a DSO may authorize the student to withdraw from classes. In such cases, the student will be afforded a 15-day grace period in which he or she may make and complete arrangements for travel and departure. In instances where the student has never registered

at the school or withdraws without DSO authorization, the student may not be afforded the 15-day grace period.

The importance of notifying the DSO and obtaining permission for withdrawal from classes cannot be overemphasized. A solid relationship and line of communication must be established between the student and the DSO to avoid adverse consequences to a student affecting his or her nonimmigrant status.

#### VIII. Concurrent Enrollment

Several commenters requested that the Service clarify the language for concurrent enrollment. The commenters indicated that it was common for a student to be enrolled in an English language program as well as a university program. In such instances, the requirements for maintaining a full course of study vary. For English language programs, the Service definition requires clock hours, while for university programs the requirement is for credit hours. The commenters requested the Service allow the DSO to make the determination as to what constitutes a full course of study in such cases. The Service agrees with the commenters and has added clarifying language to the rule allowing the DSO to make these determinations.

#### IX. On-line and Distance Education Courses

Some commenters suggested that the Service's proposed restriction of one class or three credits per semester of on-line or distance education courses is a restriction that should be made by schools, not by the Service. Other commenters stated that eliminating any distance education or on-line courses for English language programs or elementary and secondary students is too restrictive. Additional commenters stated that the Service's intended restriction will have a negative impact on their programs as more programs add on-line courses.

Service finds merit in the argument against prohibiting distance education and on-line courses for elementary and secondary students. Accordingly, the Service has removed the restriction and will allow elementary and secondary students to count distance education and on-line courses in their determination of a full course of study.

The Service does not agree with the commenters that this rule restricts schools from enrolling any student they wish in an on-line or distance education course. The rule does restrict a student in the United States in an F-1 nonimmigrant status from being able to consider more than one distance

education or on-line class or three credits per semester towards his or her full course of study requirements. Furthermore, the rule restricts vocational students and English language students from being able to consider any on-line or distance education courses toward the full course of study requirements. Such restrictions do not prohibit international students from completing programs that are offered on-line, as the students can enroll in the course without being admitted to the United States.

To clarify, the restriction that this rule places upon distance education or on-line courses is that no more than one course or three credits can be counted toward the full course of study requirements. A student currently pursuing a full course of study may add as many distance education or on-line courses as he or she wishes in addition to the courses counting toward the full course of study. In the case of M-1 students and English language students, although these courses cannot be counted toward the full course of study requirement, these students are not prohibited from taking additional courses on-line or through distance education.

#### X. Practical Training

Several commenters requested that the Service change the language in the optional practical training provision from "9 consecutive months" to "one full academic year." The commenters stated that many schools do not operate on a 9-month calendar and, therefore, the Service's 9-month requirement does not adequately address their needs. The Service agrees with the commenters and notes that the term "one full academic year" is already used in other parts of the Service regulations pertaining to practical training. The final rule will, therefore, incorporate the term "one full academic year" throughout the appropriate sections of § 214.2(f) and § 274a.12.

Although commenters were generally supportive of the Service allowing students involved in a study abroad program to use that time toward the 9-month requirement (now "one full academic year") for practical training, the Service must make one point of clarification to the rule. For a student to use the time spent studying abroad toward the one full academic year requirement, the student must have spent at least one full academic term in a full course of study in the United States prior to going abroad to study.

Some commenters requested that the Service broaden the provision even further to allow graduate students

conducting research abroad the same benefit. The Service cannot adopt this suggestion at this time. In the case of students involved in a study abroad program, there is a defined curriculum with courses that must be taken. However, the Service is not satisfied that the same is true for graduate students conducting research abroad. The Service may consider this in a future rulemaking.

Several commenters pointed out that the proposed rule eliminated § 214.2(f)(10)(ii)(A) (3) and (4). The Service notes that this was an unintentional error. This final rule combines those two clauses and revises the language for clarity.

Many commenters suggested that the Service allow students to apply for practical training prior to fulfilling the 9-month limit (now one "full academic year") but not be allowed to commence practical training prior to that time. The commenters indicated that such a provision is necessary for those students who want to participate in practical training in the summer following their first academic year but whose requests for practical training cannot be adjudicated in time for the students to begin in the summer. Other commenters made similar suggestions for students enrolled in one-year programs who, due to the new limitation that optional practical training be applied for prior to the completion of studies, would be unable to apply.

Although the Service believes that changing the term "9 months" to "one full academic year" will resolve most of the problems cited by the commenters, the Service will allow F students requesting optional practical training to submit their application up to 90 days prior to completing "one full academic year." In such cases, the DSO must indicate on the Form I-20 and/or update SEVIS to show that the "from date" in which the DSO is certifying is the date that the student completes a full academic year of enrollment. While the Service may adjudicate the request prior to the student's completion of one full academic year, employment authorization will only be granted from the date that the student actually completes a full academic year. The student may not begin working until the date specified on the employment authorization document. The Service, therefore, does not adopt the commenters' suggestion that the Service allow DSOs to approve optional practical training or give a type of interim employment authorization until the student completes one full academic year of enrollment.

Several commenters also requested that the Service clarify whether students, other than F-1 nonimmigrants, who have been lawfully enrolled in a Service-approved school for one full academic year, could also be eligible for optional practical training. However, while the Service agrees that this issue needs clarification, this was not an issue addressed in the proposed rule and the Service needs more time to consider these issues. The Service may consider such clarification in a future rulemaking.

One commenter requested that the Service clarify the responsibility of a DSO with regard to a student to whom the DSO has issued a Form I-20 and certified for optional practical training following completion of studies. The Service appreciates the opportunity to clarify these responsibilities in the final rule. Section 214.2(f)(10)(ii)(E) provides that a DSO who recommends a student for optional practical training remains responsible for maintaining the student's records in SEVIS during the time that training is authorized. During the period in which a student is authorized by the Service to engage in optional practical training following completion of studies, a student must notify the DSO if his or her name or address changes, or if the student wishes to discontinue training. Similar to the provision in current regulations that a student engaged in optional practical training have a Form I-20 endorsed within the last 6 months by the DSO for reentry, the DSO is responsible for updating the SEVIS record of any student participating in post-completion practical training. The DSO and student must continue to communicate in order to ensure that the student does not take any action that would adversely affect his or her nonimmigrant status. For example, if the student indicates that he or she has changed address or terminated employment for any reason prior to the period authorized by the employment authorization document and does not intend to resume employment, the DSO must notify the Service by updating SEVIS.

Finally, one commenter requested that the Service allow students to use a school's address for purposes of receiving employment authorization documents. While this practice will not be authorized by this final rule, the Service is considering incorporating this practice into the operating procedures of the Service centers.

#### **XI. Employment**

Commenters also noted that the Service did not include a description of

the process for endorsing employment in SEVIS other than practical training. In response, the Service has added language to the final rule incorporating procedures for the endorsement in SEVIS of employment authorization based upon severe economic hardship and internships with an international organization. At this time there are no such update requirements for on-campus employment.

Another commenter requested that the Service clarify when an F-1 student may begin working on-campus incident to status prior to the beginning of classes. The commenter suggested that the Service distinguish between work associated with being a Teacher's Assistant or Resident Assistant and, for example, working in the campus bookstore.

The Service agrees that this provision needs clarification. The Service will permit an F-1 student to begin on-campus employment prior to the start of classes. While it is the responsibility of the DSO to indicate a program start date that accommodates the student's particular needs for employment, the DSO is not permitted to indicate a program start date more than 30 days prior to the start of classes for the purpose of on campus employment. However, the Service does not impose any limitation on the type of on-campus employment in which a student may engage prior to the start of classes.

For off-campus employment based on severe economic hardship, the current rules require that the student apply to the Service based on a favorable recommendation of the DSO. Some commenters requested that the Service allow DSOs to grant F-1 students permission to work based on severe economic hardship without any review by the Service. That suggestion is beyond the scope of the proposed rule, and the Service is not prepared to change existing processes at this time to allow a DSO to grant such a benefit. However, the Service may consider this suggestion when it reviews student employment issues at a future date.

Finally, this final rule makes conforming amendments to § 214.2(f)(9) and § 274a.12 to remove the reference to filing a wage and labor attestation for off-campus employment. As indicated in the proposed rule, the requirement for a wage and labor attestation was part of a pilot program that has sunset. The final rule also amends references in § 274a.12 to include the current DOS Certificate of Eligibility, Form DS-2019 and to cite to current exchange visitor program designation regulations.

#### **XII. Extensions**

Several commenters requested that the Service amend the language of § 214.2(f)(7)(i) to remove the reference to a student being "unable to complete a full course of study in a timely manner," indicating that this phrase implies that a student has done something wrong. Commenters cited illness and family emergencies as possible reasons why a student may take longer to complete his or her program, but should still be considered to be pursuing his or her program in a timely way. The Service has no objection to the removal of this language and has included a more neutral description in the final rule.

#### **XIII. Reinstatement**

Many commenters contended that the provisions in the proposed rule for reinstatement were unnecessarily strict. Commenters urged the Service to provide relief for students who are adversely affected by "technical or computer errors" in SEVIS, and suggest that the Service adopt provisions similar to the provisions in DOS regulations that allow for a correction of "minor or technical infractions." Commenters stressed that DSOs will make mistakes occasionally, especially when dealing with a new computer system. Other commenters stated that to punish students for mistakes on the part of the DSO is overly punitive.

The Service agrees that there may be a possibility that errors on the part of SEVIS or other technological failures may cause a student to fall out of status. Therefore, the Service has added § 214.3(g)(4) to allow for a student's record to be administratively corrected in situations where the error in question resulted from technological errors or errors on the part of SEVIS. To administratively correct a student's record in instances of SEVIS error or technological failure, the DSO must contact the SEVIS system administrator to explain the circumstances that caused the correction to be requested, with documentation if necessary, as provided in § 214.3(g)(4). An administrative correction by the system administrator will be completed without fee.

However, while the Service recognizes that a DSO may make a mistake in a student's record that causes the student to fall out of status, the Service does not believe that such errors merit an administrative correction. Ultimately, it is the student's responsibility to ensure that he or she remains in status and is in compliance with the regulations at all times. That is not to say that the student will not be

afforded a remedy in these situations. On the contrary, in instances where the DSO was neglectful or inadvertently failed to update or extend a student's status, the student is permitted to file for reinstatement and establish that the actions on the part of the DSO were beyond his or her control. Where the Service finds that a DSO has repeated violations of Service regulations or finds malfeasance on the part of a DSO, the Service may withdraw the approval of the designated school official.

Other commenters stated that the Service should abandon the proposed 5-month period as the demarcation of the outer limit for reinstatement and instead consider the overall record of the student. While the Service believes that 5 months is generally sufficient time for a student who has fallen out of status, unintentionally or otherwise, to become cognizant of this fact and to attempt to remedy the situation, the Service also recognizes that there may be legitimate situations in which this is not possible. In fairness to these students, the Service has created a provision in the final rule for a rebuttable presumption that a student who has been out of status for more than 5 months is ineligible for reinstatement unless the student can provide a substantial reason for the delay and an explanation of how the student filed the request for reinstatement as promptly as possible under the circumstances. If the student provides sufficient documentation, the presumption of ineligibility may be rebutted. Such a provision strikes a balance between the Service's desire to establish a limit on reinstatement requests while still accommodating those students with extenuating circumstances.

#### **XIV. Reporting Current Name and Address**

Several commenters requested that the Service consider allowing students who live on-campus to list a mailing address in place of a physical address. Commenters noted that many students living on-campus, including boarding students in secondary schools, may only be able to receive mail via a mailing address. The Service agrees with the commenters, and has made a provision permitting students who physically reside on campus, but cannot receive their mail at a campus address, to list a mailing address that they use at the school rather than a physical address, provided that the school maintains a record of and, upon request, provides the exact location of the alien's residence. Likewise, in order to accommodate limited situations where similar circumstances might exist for

students living off-campus, or for exchange visitors, a student's or exchange visitor's mailing address may be listed. The school or exchange visitor program, however, must maintain a record of and, upon request, provide the exact location of the alien's residence. The Service intends to modify SEVIS to accept both a mailing address and physical address. 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 current mailing and current physical address in SEVIS.

Additionally, commenters stated that requiring students to report changes of address to their DSO rather than directly to the Service on Form AR-11 may result in the DSO being accused of failing to update a student's SEVIS record when, in fact, the student failed to report his or her address change to the DSO. The commenters suggested that students be required to report address changes directly to the Service.

The Service, however, cannot adopt this suggestion. To do so would undermine the primary purpose of SEVIS; namely, to maintain current, accurate information on all F and M nonimmigrants. Currently, all nonimmigrants are required to report a change of address to the Service by submitting Form AR-11. The notification of the change of address is submitted by the nonimmigrant through the mail. The Service is not stipulating what interaction must take place between the student and the DSO to document notification of address change by the student. To avoid the type of situation cited by the commenters, schools may establish business processes to document when a student reports a change of address. For example, a school may require students to submit a completed Form AR-11 to be kept on file in the international office, in addition to the school updating SEVIS as required.

Finally, the Service wishes to clarify that, while the timely reporting and update of a student's address in SEVIS satisfies the alien student's requirement to notify the Service of a change of address as specified in 8 CFR 265.1, such notification does not necessarily exempt the student from reporting a change of address as required by other applicable regulations, statutes or programs. Specifically, a nonimmigrant student required to report under the National Security Entry-Exit Registration System (NSEERS), 8 CFR 264.1(f), must report a change of address as mandated by that program, in addition to complying with SEVIS reporting requirements.

#### **XV. Relating to Reporting Requirements of § 214.3(g)(3)**

One commenter requested that the requirement in section § 214.3(g)(3) for schools to report, "any other notification request made by SEVIS to the DSO with respect to the current status of the student," be removed based on the assertion that the requirement is overly broad.

The Service does not adopt this suggestion. The primary purpose of SEVIS is to maintain complete and up-to-date information on all foreign students. For this reason, the DSO needs to respond in a timely fashion to requests from the Service relating to the current status of any particular student.

Another commenter associated with independent, secondary schools asked the Service to consider allowing such schools to report on students only one time per year. The commenter stated that it is time-consuming to update student records each term because students at such schools register only once a year.

The Service does not adopt this suggestion. The requirement in question applies only to academic terms that run longer than 6 months. The DSO for such schools will be sent an electronic message from SEVIS requesting the DSO to verify that the students are still enrolled. To allow the DSO in such schools to update student records only at the time of initial registration would undermine the effectiveness of SEVIS.

Another commenter stated that the requirement of § 214.3(g)(3)(iii)(C), which requires schools to report the start date of the student's next term, is burdensome and inherently impossible because it requires the DSO to know the student's intent. The Service does not agree with this commenter. The Border Security Act requires that all schools to report in SEVIS each academic term as to whether a student has registered or not registered. This requirement is one of the most essential requirements in SEVIS because it enables SEVIS to identify those students who have failed to return to school following a term or vacation.

Finally, one commenter questioned the effect, if any, that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (FERPA) has on the information collected and reported in SEVIS. Although FERPA restricts the ability of an educational agency or institution that accepts certain Federal funding to disclose personal information contained in a student's educational record, this final rule makes clear that FERPA does not relieve any approved school or designated exchange

program of the duty to comply with the SEVIS reporting requirements.

Section 641 of IIRIRA requires approved schools and designated exchange visitor programs to collect the information specified in section 641(c). Section 641(d) makes it clear that schools may not enroll F or M nonimmigrant students and that exchange visitor programs may not accept J nonimmigrants unless the school or exchange program collects the information and reports it to SEVIS as required.

The general rule is that two statutes that relate to the same issue must be read so as to give effect to both. Thus, section 641 of IIRIRA can properly be considered an exception to FERPA, such that an educational agency or institution does not violate FERPA by disclosing only so much as section 641 of IIRIRA requires the agency or institution to disclose. Section 641(c)(2) of IIRIRA expressly provides that FERPA does not apply to F, J, or M nonimmigrants, to the extent that the Attorney General determines that waiving FERPA is necessary to implement SEVIS. The Commissioner has authority to make this determination on the Attorney General's behalf. That the Commissioner has made this determination was implicit in the proposed rule since the proposed rule required approved schools and designated exchange programs to provide the information, or risk the loss of ability to enroll or accept F, J, or M nonimmigrants. The final rule includes new language in 8 CFR 214.1 to make this determination explicit. This new provision is stated in § 214.1, rather than § 214.3 to make clear that the FERPA waiver applies to J nonimmigrants as well as to F and M nonimmigrants.

#### **XVI. Dependents of F-1 and M-1 Nonimmigrants**

Many commenters stated that F-2, J-2, and M-2 nonimmigrants should be allowed to enroll in full-time study, without being required to change status. The Service does not adopt this suggestion. The need to monitor nonimmigrants being educated and trained in the United States is of vital importance to the national security of the United States. The value of SEVIS would be undermined if the Service were to adopt the commenters' suggestion.

Other commenters suggested that the Service remove the language "avocational or recreational" from the types of study that may be permitted by F-2 and M-2 dependents as DSOs may have difficulty determining what study is avocational or recreational and what

is not. While the Service will not remove such language from the rule, the Service provides the following clarification. 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. The concept of avocational or recreational is not new, but is a long-standing policy applied by both the DOS and the Service for the interpretation of the B-1/B-2 nonimmigrant visa.

It should be noted that this regulation permits F-2 and M-2 nonimmigrants to attend elementary, middle and high school on a full-time basis. Furthermore, if a dependent of an F-1 or M-1 wishes to pursue his or her education full time, beyond what is avocational or recreational, or at the elementary, middle, or high school level, he or she has the option to change status to that of an F-1 or M-1 nonimmigrant.

One commenter requested that the Service clarify the status of those F-2 or M-2 dependents enrolled in a school in a full course of study prior to the effective date of this final rule. In response, the Service will allow an F-2 or M-2 dependent enrolled in a full course of study prior to January 1, 2003, to continue studies provided they apply for a change of status on or before March 11, 2003.

Finally, many commenters stated that the Service should allow F-2 and M-2 nonimmigrants to be authorized for employment. The existing regulations, § 214.2(f)(15) and (m)(13), prohibit employment for F-2 and M-2 dependents. The Service did not propose any change relating to employment authorization for dependents in the proposed rule and, therefore, this suggestion is beyond the scope of this rulemaking proceeding. The Service will not incorporate any changes relating to this issue in the final rule.

#### **XVII. Electronic Filing Issues**

The Service incorporates many processes electronically into SEVIS and that are addressed in this final rule. For example, the requirement to complete and submit a paper Form I-538 attached to paper copies of the Form I-20 for updates has been completely eliminated. Furthermore, the Form I-17 is filed electronically in SEVIS and fee payment is made through Pay.gov on the Internet.

While SEVIS is a significant step forward in the transformation to e-Gov, there remain certain processes related to nonimmigrant students that are not incorporated into SEVIS, primarily

because such processes are in regard to a broader range of nonimmigrants, not specific to F, M, or J visa classifications. As noted in this final rule, the Form I-765, Application for Employment Authorization, utilized for application for Optional Practical Training and other work authorization by a nonimmigrant student, is a hybrid process that includes SEVIS, but also the Service's benefit application process. Likewise, the Form I-539, Application to Extend/Change Nonimmigrant Status, is utilized for the M-1 transfer, M-1 extension, and the reinstatement processes. These are also hybrid processes that are used not merely in connection with SEVIS, but also for other Service processes.

The Service is currently in the process of establishing and implementing a new enterprise architecture to its information technology systems and business processes Service-wide. In order to further adjust business processes and fully take advantage of e-Gov systems and efficiencies, the Service will promote the electronic filing of applications. The Service wishes to take advantage of e-Gov and the Internet, while remaining flexible in order to best utilize emerging and future technologies to better serve the public. Accordingly, the Service hopes to be able to offer e-filing of the Form I-765 in fiscal year 2003, and e-filing of the Form I-539 by fiscal year 2005.

Currently the Form I-17 is filed electronically, but in accordance with the Service's full certification rule for SEVIS (67 FR 60107) there are certain supporting documents and signatures physically collected during an on-site visit to the school. The Service is looking at the potential to enhance SEVIS to accommodate electronic attachments of supporting documentation to the electronic Form I-17. In addition, the Service will be examining the issue of electronic signatures.

The Service also wishes to note that SEVIS addresses more than just the collection of data for monitoring and tracking of foreign students. In addition to providing efficiency to the Service's processes for the review and adjudication of items such as Form I-17 educational institution application and reinstatement, the system also provides value-added features that should prove useful to the school user. For example, SEVIS provides "ticklers" and system alerts to the school, such as when a foreign student is issued a visa (once data share with DOS Consular Affairs is in effect), or when a nonimmigrant student enters through a port-of-entry (once data share with entry data is in

effect). There are also system alerts for when a student is coming to the end of their program, as well as a selection of numerous reports available to the school user. Furthermore, the system provides a search engine functionality to enable direct queries based upon the SEVIS ID# from the Form I-20 issued by the school, as well as enhanced search capability to search by multiple parameters and data elements.

#### *Good Cause Exception*

This rule is effective on January 1, 2003. The Service finds that good cause exists, under 5 U.S.C 553(d), for making this rule effective with less than the usual 30-day effective date. The USA PATRIOT Act, Public Law 107-56, mandates that SEVIS be fully implemented and expanded prior to January 1, 2003. Because of vital national security concerns that underpin the USA PATRIOT Act, and the Enhanced Border Security Act, Public Law 107-173, promulgation of this rule with a 30-day delayed effective date would be contrary to the public interest. This final rule does not vary greatly from the proposed rule published on May 16, 2002. Many of the changes in this final rule were made at the request of the affected community. As such the final rule provides more flexibility and imposes less of a burden upon the affected community. While the Service will not give the entire 30-day period prior to the effective date of this rule, the difference in the amount of time between the date of publication of this rule and the effective date of this rule still affords the affected community with sufficient notice for compliance.

#### *Regulatory Flexibility Act*

The Commissioner, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although some schools may be considered small entities, the use of SEVIS as a means for recordkeeping and reporting will streamline the processes currently in existence.

SEVIS uses technology already in place at most schools, and has been designed for use over the Internet. Institutions need only have access to a web-browser to gain access to the Internet and will not require any software to download. The Service will not charge a subscriber or user fee in order to use SEVIS. However, while there is no charge for access to SEVIS, there might be undetermined, individual, organizational costs to

upgrade vendor software or campus information technology systems to use the batch-method interface with SEVIS.

The Service has taken this cost into account and has developed SEVIS to utilize common standards. As previously discussed in the supplementary information, schools using SEVIS will no longer have to print out, file, and mail as many paper forms. Indeed, there should be little to no additional cost for schools that do not choose to use the optional batch processing capability. In fact, these schools may experience some savings as a result of the efficiencies that SEVIS will provide. Moreover, while the initial monetary impact on schools that choose to use batch capability may be greater, those schools might experience long-term savings because the automated process of maintaining student records for purposes of SEVIS would likely reduce future personnel costs. These decisions as to cost/benefit tradeoffs will be up to the discretion of each school. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in 5 U.S.C. 601(6).

#### *Unfunded Mandates Reform Act of 1995*

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

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

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

#### *Executive Order 12866*

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

#### 1. Purpose for Regulation

For close to twenty years, Service regulations have required the use of the Form I-20 and have required schools to maintain records on nonimmigrant students enrolled at their institution. These regulations also have required schools to furnish such information to the Service upon request. Schools have been required to maintain records and updates on student information such as the student's name, date and place of birth, country of citizenship, address, status, date of commencement of studies, and a photocopy of the student's Form I-20. This final rule incorporates similar collection and reporting requirements, with some additional information collection and reporting procedures that are mandated by IIRIRA, the USA PATRIOT Act, and the Enhanced Border Security Act. This rule is necessary to improve and streamline the reporting and recordkeeping of F, J, and M nonimmigrants by establishing a process for the electronic reporting DSOs of information required to be reported to the Service, and providing clear standards governing the maintenance, extension and reinstatement of student status.

Schools will be required to report some additional information that they were not required to maintain in the past, and there are changes to reporting requirements as a result of the above statutory authority and this final rule. However, the implementation of SEVIS (an electronic and e-Gov system) mitigates the new elements and frequency of reporting. In order to create or update any student or exchange visitor related form (e.g., Form I-20, Form DS-2019), the school or sponsor will now access SEVIS and enter the information electronically. Thus, the data is instantly collected in a central database before the form is ever printed. Because the information will be collected electronically, there will no longer be a need for multiple copies of forms. Neither the Service nor the DOS will need a separate paper copy for data entry because both agencies can access SEVIS in real time. Likewise, schools and sponsors will no longer be required to maintain their own paper copy of the record, because it will be accessible through SEVIS.

#### 2. Assessment of Costs

a. *One-time transition costs associated with continuing students and exchange visitors.*

The Service has set January 30, 2003, as the date by which all schools must use SEVIS in order to issue a new Form

I-20. However, in order to allow schools sufficient time to enter all current students in SEVIS, the Service has determined August 1, 2003, to be the date upon which all current or continuing students must be entered into SEVIS, unless such students require a new Form I-20 because of a reportable action such as new visa issuance.

While some percentage of current or continuing students may graduate or complete their programs prior to August 1, 2003, those students that are continuing a course of study as of August 1, 2003, must be entered into SEVIS by that date and issued a SEVIS Form I-20. This requirement for schools to input all current or continuing students will be a one-time event in the first year for transition to SEVIS.

The following estimate is based upon the amount of time it would take to complete a Form I-20 in order to enter a continuing student in SEVIS.

Continuing student reporting burden	
a. Number of Continuing Students .....	625,000
b. Number of Continuing Exchange Visitors .....	275,000
c. Number of Responses per Respondent .....	1
d. Hours per Response .....	.52
e. Total One-time Reporting Burden .....	468,000
f. Total Public Cost .....	\$4,680,000

The following estimate is based upon the amount of time it would take to complete a SEVIS Form I-20. This one-time reporting burden for continuing students and exchange visitors is based upon a standard requirement and process for each response. As such, the school or exchange program should not require much time to familiarize or refresh themselves on the relevant regulatory provision and process. The projected hours per response were derived by breaking the process into two basic components:

	Minutes
Learning about the Law and the Program .....	1
Data Collection and Input .....	30
Total Hours per Response	1 31

<sup>1</sup> .52 hours.

The total one-time reporting burden was derived by multiplying the number of applicant respondents (estimated continuing student plus estimated continuing exchange visitors = 900,000) × frequency of response (1) × average response time of 31 minutes (.52 hours) per response. The estimated one-time

public cost estimation is based on the number of respondents (900,000) × 31 minutes (.52 hours) per response × \$10 (average hourly rate).

The number of applicant respondents, 625,000 students, is the Service's best estimate based upon experience, statistics, and industry sources such as the 2001 Open Doors Report on International Educational Exchange produced by the Institute of International Education. The number of applicant respondents, 275,000 exchange visitors, is the best estimate provided by the Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs.

b. *Operational costs.*

The Service has worked closely with the Department of State as well as the American Council on Education (ACE), NAFSA-Association of International Educators, and others to obtain their views on the availability of data, frequency of collection, clarity of instructions, disclosure and the data elements to be reported. In addition, the educational community has attended several working group sessions and high-level policy discussions. As a result of these consultations, the Service has incorporated many suggestions in the SEVIS requirements.

The following estimate is based upon the amount of time it would take to complete a SEVIS Form I-20. As the information being collected by SEVIS will differ for each individual depending on the event being updated, the data required for entry into SEVIS cannot be determined on a consistent basis. As such, the Service is using the SEVIS Form I-20 as the standard, and averaging the amount of data entry in SEVIS per response across initial SEVIS Form I-20 entry and subsequent update response.

Annual reporting burden	
Number of Students .....	625,000
Number of Exchange Visitors .....	275,000
Number of Responses per Respondent .....	5
Hours per Response .....	.333
Total Annual Reporting Burden .....	1,498,500
Total Public Cost .....	\$14,985,000

The projected hours per response for this collection of information were derived by first breaking the process into three basic components:

	Minutes
Learning about the Law and the Program .....	10
Data Collection and Updates .....	5

	Minutes
Adjudication, notification, reports ...	5
Total Hours per Response .....	20

The Service anticipates that the initial data entry may require 30 minutes. However, once the records are uploaded into SEVIS, the updates and maintenance of the information will require considerably less time. Included in this estimate is time associated with each response for the school or exchange program to familiarize or refresh themselves as to the relevant regulatory provision and process.

Unlike section (a) above, updates and other processes beyond the initial data entry of a Form I-20 (or Form DS-2019) may be varied, and as such may require a small amount of time to learn about the law. We estimate approximately 10 minutes for the update of these records. In calculating the hours per response, we considered both the initial data entry of the Form I-20 and the update of information and estimated an average of 20 minutes per response. The Services estimates 5 responses per year for each respondent based upon a generalization that each student will require an initial Form I-20, the school will likely need to report registration of the student twice a year, and there may be one or two further responses such as a change of address, change of major, or request for employment.

The total annual reporting burden hours was derived by multiplying the number of applicant respondents (900,000) × frequency of response (5) × average response time of 20 minutes (.333 hours) per response. The estimated annual public cost estimation is based on the number of respondents (900,000) × 20 minutes (.333 hours) per response × \$10 (average hourly rate).

c. *SEVIS Batch functionality.*

The use of SEVIS batch processing is a choice to be made voluntarily by each individual school. Therefore, any school cost to create, purchase, or upgrade technology to use batch processing is a business decision to be made by each school in context with their business processes, infrastructure, and cost/benefit assessment. Batch functionality is an optional method made available to schools and is not a requirement for SEVIS compliance.

Other than personnel costs to input and update student records in SEVIS, there is virtually no cost to schools as real time interactive capability only requires that the school have Internet access and a free browser. There is no other software necessary to use the real time interactive capability and there are

no recurring access fees. Therefore, for real-time interactive, there is no programming costs, server costs, and no software required to download or provide via CD-ROM, since SEVIS is accessed through the Internet similar to many commonly used Web sites.

In addition, those schools that do elect to incur any costs to create or purchase software to take advantage of SEVIS batch functionality would likely then not incur personnel costs and burden as described in section (a) above. Batch functionality entails school technology systems uploading larger amounts of data directly to SEVIS. As such, the cost of the one-time requirement of entering all continuing students in SEVIS may be substantially reduced since existing electronic records would be entered into SEVIS via a batch system-to-system upload. Furthermore, any start-up and maintenance costs incurred by schools using the SEVIS batch functionality might be highly cost effective in the longer term because, once the electronic interface is complete, the process of maintaining student records for purposes of SEVIS would be highly automated, thereby likely reducing the future personnel costs.

#### d. Estimation of Total Cost

The Service estimates that the total cost to implement and operate SEVIS the first year will be approximately \$20 million. After the initial implementation costs are incurred, the Service estimates that the schools will incur yearly costs of less than \$15 million to fulfill their ongoing SEVIS requirements. As schools become more adept at fulfilling these requirements, the Service expects that these costs may drop.

### 3. Assessment of Benefits

SEVIS implements IIRIRA, which requires the INS to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States. Furthermore, the President issued Homeland Security Directive No. 2 (HS PDD-02) that, in part, directs an end to the abuse of international student status. In addition, the USA PATRIOT Act amended IIRIRA to require full implementation and expansion of SEVIS prior to January 1, 2003. Furthermore, the Enhanced Border Security Act adds to and clarifies the collection of information and specifically requires an educational institution to report any failure of an alien to enroll not later than 30 days after registration deadline.

SEVIS enables schools and exchange program sponsors to transmit electronic

information and event notifications, via the Internet, to the Service and DOS throughout a student or exchange visitor's stay in the United States. SEVIS will be informed of status events for students and exchange visitors including, but not limited to, entry/exit data, changes of address, program extensions, employment notifications, and changes in program of study. SEVIS will also provide system alerts, event notifications, and reports to the schools and exchange programs, as well as for Service and DOS offices.

Implementation of SEVIS will revise and enhance the process by which foreign students and exchange visitors gain admission to the United States. SEVIS will increase the Service's ability to track and monitor foreign students and exchange visitors in order to ensure that they arrive in the United States, show up and register at the school or exchange program, and properly maintain their status during their stay as valued guests in this country. SEVIS provides a proper balance between openness to international students and exchange visitors and the security obtained by enforcing the law.

SEVIS addresses more than the collection of data for monitoring and tracking of foreign students. In addition to providing efficiency to Service processes for the review and adjudication of items such as Form I-17 educational institution application and reinstatement, the system also provides value-added features that are useful to the school. For example, SEVIS provides "ticklers" and system alerts to the school, such as when a foreign student is issued a visa (once data share with DOS Consular Affairs is in effect), or when a nonimmigrant student enters through a port-of-entry (once data share with entry data is in effect). There are also system alerts for when a student is coming to the end of their program, as well as a selection of numerous reports available to the school user. Furthermore, the system provides a search engine functionality to enable direct queries based upon the SEVIS ID# from the Form I-20 issued by the school, as well as enhanced search capability to search by multiple parameters and data elements. SEVIS itself includes many self-help features for the end-user. Elements include an online tutorial, frequently asked questions, and system help and index.

This rule also increases the number of DSOs that a school is authorized from five to ten per school or campus. This increase in the number of SEVIS authorized DSOs is intended to provide schools with greater flexibility to address needs for personnel in the short

or longer term for managing their international student programs and for properly reporting and updating records in SEVIS.

Another benefit and a Paperwork Reduction Act element is that SEVIS will eliminate the need for and use of the Form I-538 that formerly was used by schools to notify the Service in cases of the approval of an F-1 for extension or curricular practical training. The former process required a school to mail the Form I-538 to a Service contractor in London, KY for data entry. With SEVIS this notification can be made in real-time, through the update of the student's record in SEVIS. Ultimately, it is the intent of the Service and DOS to phase out the paper submission of all student and exchange visitor related forms in favor of completely electronic submissions, updates, and reporting.

### 4. Conclusion

The Service believes that the benefits of this rule far outweigh its costs. SEVIS will benefit both the approved schools and the Service by implementing an effective e-Gov system to replace what is currently a poorly performing paper-based reporting system. This rule improves and streamlines the reporting and recordkeeping of F, J, and M nonimmigrants and provides clear standards governing the maintenance, extension and reinstatement of student status. SEVIS also will be used as a tool for ensuring that F, J, and M nonimmigrant students are complying with their applicable regulatory requirements. This rule will provide the Service a means of determining whether nonimmigrant students and exchange visitors are currently enrolled in an approved course of study or exchange visitor program. Thus, SEVIS will serve as means of protecting both the public and national security. Therefore, the benefits of this rule outweigh any economic costs that will be incurred during its implementation and operation.

#### *Executive Order 13132*

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*Executive Order 12988 Civil Justice Reform*

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

*Paperwork Reduction Act*

The Service is adding new electronic reporting requirements using SEVIS which is considered an information collection under the Paperwork Reduction Act. Accordingly, this information collection requirement has been approved by the Office of Management and Budget. The OMB control number for this information collection is 1115-0252.

**List of Subjects***8 CFR Part 103*

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

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements, Students.

*8 CFR Part 248*

Aliens, Reporting and recordkeeping requirements.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

**PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

**§ 103.7 [Amended]**

2. Section 103.7(b)(1) is amended by removing the entry for "Form I-538" from the listing of fees.

**PART 214—NONIMMIGRANT CLASSES**

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

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with

the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

4. Section 214.1 is amended by adding a new paragraph (h) to read as follows:

**§ 214.1 Requirements for admission, extension, and maintenance of status.**

\* \* \* \* \*

(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 § 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 § 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 § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) requires the educational agency or institution to report information.

5. Section 214.2 is amended by:

- a. Revising paragraph (f)(1)(i);
- b. Adding new paragraphs (f)(1)(iii);
- c. Revising paragraph (f)(3);
- d. Revising paragraphs (f)(4)(i) and (ii);
- e. Revising paragraph (f)(5)(i);
- f. Revising paragraph (f)(5)(iv);
- g. Revising paragraph (f)(6)(i) introductory text and paragraph (f)(6)(i)(E);
- h. Adding paragraphs (f)(6)(i)(G) and (f)(6)(i)(H);
- i. Revising paragraph (f)(6)(iii), and by adding a new paragraph (f)(6)(iv);
- j. Revising paragraph (f)(7);
- k. Revising paragraph (f)(8)(i) and adding paragraphs (f)(8)(ii)(A), (B), (C), and (D);
- l. Adding two sentences to the end of paragraph (f)(9)(i);
- m. Removing and reserving paragraphs (f)(9)(ii)(B) and (E);
- n. Revising paragraphs (f)(9)(ii)(D), (f)(9)(ii)(F)(1), and (f)(9)(iii);

o. Revising paragraph (f)(10) introductory text;

- p. Revising paragraph (f)(10)(i);
  - q. Revising paragraphs (f)(10)(ii)(A) and (B);
  - r. Revising the paragraph heading for paragraph (f)(10)(ii)(D);
  - s. Adding a new paragraph (f)(10)(ii)(E);
  - t. Revising paragraph (f)(11)(ii);
  - u. Revising paragraph (f)(12);
  - v. Revising paragraphs (f)(15) and (f)(16); and by
  - w. Adding a new paragraph (f)(17).
- The additions and revisions read as follows:

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

\* \* \* \* \*

- (f) \* \* \*
- (1) \* \* \*

(i) *Eligibility for admission.* A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(F) of the Act, if:

(A) The student presents 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);

(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);

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, 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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(3) *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 30 days, enrolled in a full course of study, or 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 with a SEVIS Form 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 F-1 student's current information.

(4) \* \* \*

(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 has been no substantive change to the most recent Form I-20 information; or

(ii) A new SEVIS Form I-20 (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 a substantive change in the

information on the student's most recent Form I-20 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.

(5) \* \* \*

(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 study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, 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 study.

\* \* \* \* \*

(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.

\* \* \* \* \*

(6) \* \* \*

(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:

\* \* \* \* \*

(E) Study in a curriculum at an approved private elementary or middle school or public or private academic high school 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 toward graduation.

\* \* \* \* \*

(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.

(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.

\* \* \* \* \*

(iii) *Reduced course load.* The designated school official may allow an F-1 student to engage in less than 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.

(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 by the DSO 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 medical condition as provided for in paragraph (B) of this section.

(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 course of study 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.

(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.

(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 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 students' 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.

(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.

(iv) *Concurrent enrollment.* An F-1 student may be enrolled in two different Service-approved schools at one time as long as the combined enrollment 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.

(7) *Extension of stay.*—

(i) *General.* An F-1 student who is admitted for duration of status is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completion of 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 his or her course of study by the program end date on the Form I-20, must apply prior to the program end date for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Report date and program completion date on Form I-20.* When determining the report date on the 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. When determining the program completion date on Form I-20, the DSO should make a reasonable estimate based upon the time an average student would need to complete a similar program in the same discipline.

(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 may be granted an extension by the DSO if the DSO certifies 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. 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.

(iv) *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.

(8) \* \* \*

(i) 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 programs 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 an F-1 student authorized to engage in post-completion optional practical training (OPT), the student must be able 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.

(ii) \* \* \*

(A) *Non-SEVIS School to Non-SEVIS school.* To transfer from one non-SEVIS school to a different non-SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a 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. The transfer will be effected only if the student completes the Student Certification portion of the Form I-20 and returns the form to a DSO 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 the DSO's remarks, thereby acknowledging the student's attendance at the transfer school; return the Form I-20 to the student; submit the School copy of the Form I-20 to 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.

(B) *Non-SEVIS school to SEVIS school.* To transfer 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 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 transfer school updates SEVIS indicating that the student has registered in classes within the 30 days required by § 214.3(g)(3)(iii).

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

(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's status 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 the 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 student completes the Student Certification portion of the Form 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 do as follows: note "transfer completed on (date)" in the space provided for the 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.

\* \* \* \* \*

(9) \* \* \*

(i) \* \* \* In the case of a transfer in SEVIS, the student may only engage in on-campus employment 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.

(ii) \* \* \*

(B) Reserved.

\* \* \* \* \*

(D) *Procedure for off-campus employment authorization due to severe economic hardship.* The student must request a recommendation from the DSO for off-campus employment. The DSO at a non-SEVIS school must make such a certification on Form 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 for work off-campus for one year intervals by certifying 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) 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) of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) Reserved.

(F) \* \* \*

(1) The applicant should submit the economic hardship 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. 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 (f)(9)(i) of this section. Students enrolled in a SEVIS school should submit the SEVIS Form I-20 with the employment page demonstrating the DSO's comments and certification.

\* \* \* \* \*

(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 to the service 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, Form I-20 ID or SEVIS Form I-20 with employment page completed by DSO certifying eligibility for employment, and a completed Form I-765, with required fee as contained in § 103.7(b)(1) of this chapter.

(10) *Practical training.* Practical training 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 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 student may request employment authorization for practical training in a position that is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training.* An F-1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that 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 academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. 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 Form 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: certify

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 Form I-20ID 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 employment page of the 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.

(ii) \* \* \*

(A) *General.* A student may apply to the Service for authorization for temporary employment for optional 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 authorization to engage in 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 after 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:

(1) During the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, 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 20 hours a week while school is in session; or

(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.

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

\* \* \* \* \*

(D) *Action of the DSO-Non SEVIS schools.* \* \* \*

(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 student must 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.

(11) \* \* \*

(ii) A DSO's recommendation for optional 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 interruption 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.

\* \* \* \* \*

(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).

(i) *Employment.* The F-2 spouse and children of an F-1 student may not accept employment.

(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.

(16) *Reinstatement to student status.*—

(i) *General.* The district director may consider reinstating a student who makes a request for reinstatement on Form I-539, Application to Extend/Change Nonimmigrant Status, 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:

(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);

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

(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;

(D) Has not engaged in unauthorized employment;

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

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

(1) 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

(2) 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 approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I-20 to indicate the student has been reinstated and return the form to the student. If the Form I-20 is from a non-SEVIS school, the school copy will be forwarded to the school. 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, if the Service does not reinstate the student, the student may not appeal that decision.

(17) *Current name and address.* A student must inform the DSO and the Service of any legal changes to his or her name or of 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 of notifying the Service 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.

\* \* \* \* \*

#### § 214.2 [Amended]

5. Section 214.2 is further amended by revising the term "IAP-66" to read "DS-2019" wherever that term appears in the following paragraphs:

- Paragraph (j)(1)(iv)
- Paragraph (j)(2)
- Paragraph (j)(3)
- Paragraph (j)(4)(i).

6. Section 214.2 is further amended by revising paragraphs (j)(1)(i) and (ii), and by adding new paragraphs (j)(1)(vii) and (j)(1)(viii) to read as follows:

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

\* \* \* \* \*

(j) \* \* \*

(1) *General*—(i) *Eligibility for admission*. A nonimmigrant exchange visitor and his or her accompanying spouse and minor children may be admitted into the United States in J-1 and J-2 classifications under section 101(a)(15)(J) of the Act, if the exchange visitor and his or her accompanying spouse and children each presents a SEVIS Form DS-2019 issued in his or her own name by a program approved by the Department of State for participation by J-1 exchange visitors. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an exchange visitor possessing a SEVIS Form DS-2019 to enter the United States using a copy of the exchange visitor's SEVIS Form DS-2019. However, where the exchange visitor presents a properly completed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, which was issued to the J-1 exchange visitor by a program approved by the Department of State for participation by exchange visitors and which remains valid for the admission of the exchange visitor, the accompanying spouse and children may be admitted on the basis of the J-1's non-SEVIS Form DS-2019.

(ii) *Admission period*. An exchange alien, and J-2 spouse and children, may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS-2019. The initial admission of an exchange visitor, spouse and children may not exceed the period specified on Form DS-2019, plus a period of 30 days for the purposes of travel or for the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section. Regulations of the Department of State published at 22 CFR part 62

give general limitations on the stay of the various classes of exchange visitors. A spouse or child may not be admitted for longer than the principal exchange visitor.

\* \* \* \* \*

(vii) *Use of SEVIS*. At a date to be established by the Department of State, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for designated program sponsors. After that date, which will be announced by publication in the **Federal Register**, all designated program sponsors must begin issuance of the SEVIS Form DS-2019.

(viii) *Current name and address*. A J-1 exchange visitor must inform the Service and the responsible officer of the exchange visitor program of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the program sponsor. A J-1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the responsible officer, who in turn shall enter the information in SEVIS within 21 days of notification by the exchange visitor. A J-1 exchange visitor enrolled at a non-SEVIS program must submit a change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of an exchange visitor who cannot receive mail where he or she resides, the address provided by the exchange visitor must be the actual physical location where the exchange visitor resides rather than a mailing address. In cases where an exchange visitor provides a mailing address, the exchange visitor program must maintain a record of, and must provide upon request from the Service, the actual physical location where the exchange visitor resides.

\* \* \* \* \*

7. Section 214.2 is further amended by:

- a. Revising paragraph (m)(1)(i);
- b. Adding new paragraphs (m)(1)(iii);
- c. Revising the paragraph heading and the introductory text in paragraph (m)(3);
- d. Revising paragraph (m)(5);
- e. Removing and reserving paragraphs (m)(6), (m)(7), and (m)(8);
- f. Adding new paragraphs (m)(9)(v) and (vi);
- g. Revising paragraphs (m)(10), (m)(11)(ii), (m)(13), and (m)(14)(ii) introductory text;
- h. Adding a new paragraph (m)(14)(vi);
- i. Revising paragraph (m)(16);

j. Revising paragraph (m)(17); and by k. Adding new paragraph (m)(18).

The additions and revisions read as follows:

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

\* \* \* \* \*

(m) \* \* \*

(1) *Admission of student*. (i) *Eligibility for admission*. A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(M) of the Act, if:

(A) The student presents a SEVIS Form I-20 issued in his or her own name by a school approved by the Service for attendance by M-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-20M-N/I-20ID, if that 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-20M-N/I-20ID); and

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I-20 (or the Form I-20M-N/I-20ID)).

\* \* \* \* \*

(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 accepted for admission to the United States 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.

\* \* \* \* \*

(3) *Admission of the spouse and minor children of an M-1 student*. The spouse and minor children accompanying an M-1 student are eligible for admission in M-2 status if the student is admitted in M-1 status. The spouse and minor children following-to-join an M-1 student are

eligible for admission to the United States in M-2 status if they are able to demonstrate that the M-1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or 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 M-1 student with a SEVIS Form I-20 must individually present an original SEVIS Form I-20 issued in the name of each M-2 dependent issued by a school authorized by the Service for attendance by M-1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an M-1 student in possession of a SEVIS Form I-20 to enter the United States using a copy of the M-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 M-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-20M-N) is required for a dependent where there has been any substantive change in the M-1 student's current information.

\* \* \* \* \*

(5) *Period of stay.* A student in M nonimmigrant status is admitted for a fixed time period, which is the period necessary to complete the course of study indicated on the Form I-20, plus practical training following completion of the course of study, plus an additional 30 days to depart the United States, but not to exceed a total period of one year. An M-1 student may be admitted for a period up to 30 days before the report date or start date of the course of study listed on the Form I-20. An M-1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for the additional 30-day period of stay.

(6) [Reserved]

(7) [Reserved]

(8) [Reserved]

(9) \* \* \*

(v) *On-line courses/distance education programs.* No on-line or distance education classes may be considered to count toward an M-1 student's full course of study requirement if such classes do 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.

(vi) *Reduced course load.* The designated school official may authorize an M-1 student to engage in less than a full course of study only where the student has been compelled by illness or a medical condition that has been documented by a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to interrupt or reduce his or her course of study. A DSO may not authorize a reduced course load for more than an aggregate of 5 months per course of study. An M-1 student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 5 months, may not be authorized by the DSO to reduce his or her course load on subsequent occasions during his or her particular course of study.

(A) *Non-SEVIS schools.* A DSO must report any student who has been authorized by the DSO to carry a reduced course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's Form I-20 to the Service's data processing center indicating the date that authorization was granted. The DSO must also report to the Service's data processing center when the student has resumed a full course of study, no more than 21 days from the date the student resumed a full course of study. In this case, the DSO must submit a photocopy of the student's Form I-20 indicating the date that a full course of study was resumed, with a new program end date.

(B) *SEVIS reporting.* 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.

(10) *Extension of stay.*

(i) *Eligibility.* The cumulative time of extensions that can be granted to an M-1 student is limited to a period of 3 years from the M-1 student's original start date, plus 30 days. No extension can be granted to an M-1 student if the M-1 student is unable to complete the course of study within 3 years of the original program start date. This limit includes extensions that have been granted due to a drop below full course of study, a transfer of schools, or reinstatement. An M-1 student may be

granted an extension of stay if it is established that:

(A) He or she is a bona fide nonimmigrant currently maintaining student status;

(B) Compelling educational or medical reasons have resulted in a delay to his or her course of study. Delays caused by academic probation or suspension are not acceptable reasons for program extension; and

(C) He or she is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(ii) *Application.* A student must apply to the Service for an extension on Form I-539, Application to Extend/Change Nonimmigrant Status. A student's M-2 spouse and children seeking an extension of stay must be included in the application. The student must submit the application to the service center having jurisdiction over the school the student is currently authorized to attend, at least 15 days but not more than 60 days before the program end date on the student's Form I-20. The application must also be accompanied by the student's Form I-20 and the Forms I-94 of the student's spouse and children, if applicable.

(iii) *Period of stay.* If an application for extension is granted, the student and the student's spouse and children, if applicable, are to be given an extension of stay for the period of time necessary to complete the course of study, plus 30 days within which to depart from the United States, or for a total period of one year, whichever is less. A student's M-2 spouse and children are not eligible for an extension unless the M-1 student is granted an extension of stay, or for a longer period than is granted to the M-1 student.

(iv) *SEVIS update.* A DSO must update SEVIS to recommend that a student be approved for an extension of stay. The SEVIS Form I-20 must be printed with the recommendation and new program end date for submission by mail to the service center, with Form I-539, and Forms I-94 if applicable.

(11) \* \* \*

(ii) *Procedure.* A student must apply to the Service on Form I-539 for permission to transfer between schools. Upon application for school transfer, a student may effect the transfer subject to approval of the application. A student who transfers without complying with this requirement or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be determined to be the program start date listed on the Form I-20, and the student

will be granted an extension of stay for the period of time necessary to complete the new course of study plus 30 days, or for a total period of one year, whichever is less.

(A) *Non-SEVIS school.* The application must be accompanied by the Form I-20ID copy and the Form I-94 of the student's spouse and children, if applicable. The Form I-539 must also be accompanied by Form I-20M-N properly and completely filled out by the student and by the designated official of the school which the student wishes to attend. The student must submit the application for school transfer to the service center having jurisdiction over the school the student is currently authorized to attend. Upon approval, the adjudicating officer will endorse the name of the school to which the transfer is authorized on the student's Form I-20ID copy and return it to the student. The officer will also endorse Form I-20M-N to indicate that a school transfer has been authorized and forward it to the Service's processing center for updating. The processing center will forward Form I-20M-N to the school to which the transfer has been authorized to notify the school of the action taken.

(B) *SEVIS school.* The student must first notify his or her current school of the intent to transfer and indicate the school to which the student intends to transfer. Upon notification by the student, the current school must update SEVIS to show the student as a "transfer out" and input the "release date" for transfer. Once updated as a "transfer out" the transfer school is permitted to generate a SEVIS Form I-20 for transfer but will not gain access to the student's SEVIS record until the release date is reached. Upon receipt of the SEVIS Form I-20 from the transfer school, the student must submit Form I-539 in accordance with § 214.2(m)(11) to the service center with jurisdiction over the current school. The student may enroll in the transfer school at the next available term or session and is required to notify the DSO of the transfer school immediately upon beginning attendance. The transfer school must update the student's registration record in SEVIS in accordance with § 214.3(g)(3). Upon approval of the transfer application, the Service officer will endorse the name of the school to which the transfer is authorized on the student's SEVIS Form I-20 and return it to the student.

(C) *Transition process.* Once SEVIS is fully operational and interfaced with the service center benefit processing system, the Service officer will transmit the approval of the transfer to SEVIS and

endorse the name of the school to which transfer is authorized on the student's SEVIS Form I-20 and return it to the student. As part of a transitional process until that time, the student is required to notify the DSO at the transfer school of the decision of the Service within 15 days of the receipt of the adjudication by the Service. Upon notification by the student of the approval of the Service, the DSO must immediately update SEVIS to show that approval of the transfer has been granted. The DSO must then print an updated SEVIS Form I-20 for the student indicating that the transfer has been completed. If the application for transfer is denied, the student is out of status and the DSO must terminate the student's record in SEVIS.

\* \* \* \* \*

(13) *Employment.* Except as provided in paragraph (m)(14) of this section, a student may not accept employment.

(14) \* \* \*

(ii) *Application.* A M-1 student must apply for permission to accept employment for practical training on Form I-765, with fee as contained in 8 CFR 103.7(b)(1), accompanied by a Form I-20 that has been endorsed for practical training by the designated school official. The application must be submitted prior to the program end date listed on the student's Form I-20 but not more than 90 days before the program end date. The designated school official must certify on Form I-538 that—

\* \* \* \* \*

(vi) *SEVIS process.* The DSO must update the student's record in SEVIS to recommend that the Service approve the student for practical training, and print SEVIS Form I-20 with the recommendation, for the student to submit to the Service with Form I-765 as provided in this paragraph (m)(14).

\* \* \* \* \*

(16) *Reinstatement to student status.*

(i) *General.* A district director may consider reinstating a student who makes a request for reinstatement on Form I-539, Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed SEVIS Form I-20 indicating the DSO's recommendation for reinstatement (or a properly completed Form I-20M-N 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 only if the student:

(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);

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

(C) Is currently pursuing, or intends to pursue, a full course of study at the school which issued the Form I-20M-N or SEVIS Form I-20;

(D) Has not engaged in unlawful employment;

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

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

(1) 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

(2) 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 approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I-20 to indicate that the student has been reinstated and return the form to the student. If the Form I-20 is from a non-SEVIS school, the school copy will be forwarded to the school. 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, if the Service does not reinstate the student, the student may not appeal the decision. The district director will send notification to the school of the decision.

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

(i) *Employment.* The M-2 spouse and children may not accept employment.

(ii) *Study.* (A) The M-2 spouse may not engage in full time study, and the M-2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The M-2 spouse and

child may engage in study that is avocational or recreational in nature.

(B) An M-2 spouse or M-2 child desiring to engage in full time study, other than that allowed for a child in paragraph (m)(17)(ii) of this section, must apply for and obtain a change of nonimmigrant classification to F-1, J-1, or M-1 status. An M-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 M-2 spouse or M-2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (m)(17)(i) and (ii) of this section.

(18) *Current name and address.* A student must inform the Service and the DSO of any legal changes to his or her name or of 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 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, and the DSO in turn shall enter the information in SEVIS within 21 days of notification by the student. A nonimmigrant student enrolled at a non-SEVIS institution 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.

\* \* \* \* \*

8. Section 214.3 is amended by:

- a. Revising paragraph (a)(2)(i)(F);
- b. Adding a new paragraph (a)(2)(v);
- c. Adding a new paragraph (e)(3);
- d. Revising paragraphs (g)(1)(iv) and (g)(1)(v);
- e. Revising the paragraph heading and by adding two new sentences at the end of paragraph (g)(2);
- f. Adding new paragraphs (g)(3) and (g)(4);
- g. Revising paragraph (k) introductory text; and by
- h. Revising paragraph (l).

The additions and revisions read as follows:

**§ 214.3 Petitions for approval of schools.**

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(F) A private elementary school.

\* \* \* \* \*

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

(A) A home school,

(B) A public elementary school, or

(C) An adult education program, as defined by section 203(l) 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.

\* \* \* \* \*

(e) \* \* \*

(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.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iv) Current address where the student and his or her dependents physically reside. In the event 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.

(v) The student's current academic status.

\* \* \* \* \*

(2) *Reporting requirements for non-SEVIS students.* \* \* \* 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.

(3) *SEVIS reporting requirements.*

(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.

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

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

(B) A change of the student's 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.

(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:

(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

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

(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.

\* \* \* \* \*

(k) *Issuance of Certificate of Eligibility.* 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:

\* \* \* \* \*

(l) *Designated official—*

(1) Meaning of term *Designated Official.* As used in §§ 214.1(b), 214.2(b), 214.2(f), 214.2(m), and 214.4, 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.

(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.

(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.

(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 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.

(3) *Statement of designated officials.* A petition for school approval must include a statement by each designated

official certifying that the official 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, 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.

**PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION**

9. The authority citation for part 248 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

10. Section 248.3 is amended by revising paragraph (e)(2) to read as follows:

**§ 248.3 Application.**

\* \* \* \* \*

(e) \* \* \*

(2) An alien classified under sections 101(a)(15)(A) or 101(a)(15)(G) of the Act as a member of the immediate family of a principal alien classified under the same section, or an alien classified under sections 101(a)(15)(E), (H), (I), (J), (L), or (Q)(ii) of the Act as the spouse or child who accompanied or followed-to-join a principal alien who is classified under the same section, may attend school in the United States, provided that the principal alien or spouse or child maintain their nonimmigrant status.

\* \* \* \* \*

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

11. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

12. Section 274a.12 is amended by:
- a. Removing and reserving paragraph (b)(6)(ii);
  - b. Revising paragraph (b)(6)(iii);
  - c. Revising paragraph (b)(11);
  - d. Revising the last sentence of paragraph (c)(3)(ii); and by
  - e. Revising paragraph (c)(3)(iii).

The revisions read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(ii) [Reserved]

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established curriculum) after having been enrolled full-time in a Service approved institution for one full academic year. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's Form I-20. No Service endorsement is necessary.

\* \* \* \* \*

(11) An exchange visitor (J-1), pursuant to § 214.2(j) of this chapter and 22 CFR part 62. An alien in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the Department of State as set forth in the Form DS-2019, Certificate of Eligibility, issued by the program sponsor;

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) \* \* \* The F-1 student must also present a Form I-20 ID or SEVIS Form I-20 with employment page completed by DSO certifying eligibility for employment; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I-20 ID and Form I-538 (for non-SEVIS schools), or SEVIS Form I-20 with employment page completed by the DSO certifying eligibility, and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization.

Dated: December 5, 2002.

**Michael J. Garcia,**  
*Commissioner, Immigration and Naturalization Service.*  
 [FR Doc. 02-31184 Filed 12-6-02; 1:45 pm]  
**BILLING CODE 4410-10-P**