

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Parts 103 and 214

[INS No. 2185-02]

RIN 1115-AG55

#### 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:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization Service (Service) regulations governing the retention and reporting of information regarding F, J, and M nonimmigrants. This rule will implement the Student and Exchange Visitor Information System (SEVIS), and establish a process for electronic reporting by designated school officials (DSO) of information required to be reported to the Service. This is necessary to improve and streamline the reporting and record keeping of F, J, and M nonimmigrants. This rule also proposes to amend the existing regulations relating to F and M students to improve accountability and to implement reasonable and clear standards governing the maintenance, extension and reinstatement of student status.

**DATES:** Written comments must be submitted on or before June 17, 2002.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2185-02 on your correspondence. Comments may also be submitted electronically to the Service at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically, please include INS No. 2185-02 in the subject heading.

Comments may be inspected at the above address by calling (202) 514-3048 to arrange for an appointment.

#### FOR FURTHER INFORMATION CONTACT:

Maura Deadrick, Assistant Director, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514-3228.

#### SUPPLEMENTARY INFORMATION:

##### *Who Are F, J, and M Nonimmigrants?*

The Immigration and Nationality Act (Act) provides for the admission of various classification of 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 State 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 a college, university, seminary, conservatory, academic high school, private elementary school, other academic institution, or language training program in the United States that has been approved by the Service to enroll foreign students. 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 (under the age of 21) 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 (DOS) (formerly the United States Information Agency (USIA)) to participate in an exchange visitor program in the United States. The J-1 classification includes, among others, aliens participating in programs under which they will receive graduate medical education or training. For purposes of this rule, "exchange visitor program" refers to all organizations or institutions designated by the Department of State to conduct an exchange program. A J-2 nonimmigrant is a foreign national who is the spouse or qualifying child (under the age of 21) of a J-1 nonimmigrant.

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 school or other recognized nonacademic institution (other than in language training programs) in the United States. The term "school" for the purposes of this proposed rule also encompasses all institutions approved for attendance by M-1 students. An M-2 nonimmigrant is a foreign national who is the spouse or qualifying child (under the age of 21) of an M-1 nonimmigrant.

(Among the kinds of schools approved for attendance by M-1 students 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 a 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 M-1 students. The Department of Justice has already published public notices pertaining to section 113 at 67 FR 2238 (Jan. 16, 2002) and 67 FR 6051 (Feb. 8, 2002), and the Department will be promulgating implementing rules in a separate proceeding.)

#### I. Description of the New Process

##### *What Is the Student and Exchange Visitor Information System (SEVIS)?*

Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C (Sept. 30, 1996), directs the Attorney General to develop and conduct a program to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange aliens during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable.

SEVIS implements this requirement. SEVIS is an internet-based system that provides users with access to accurate and current information on nonimmigrant foreign students, exchange aliens, and their dependents. SEVIS will enable schools and exchange programs to transmit electronic information and event notifications, via the Internet, to the Service and the Department of State throughout a

student's or exchange alien's stay in the United States.

Currently, for F-1 and M-1 students, schools are required to maintain local records on each nonimmigrant student, and to produce such information upon request by the Service. In order to enroll a nonimmigrant student, a school, at the time of offering acceptance, must complete and send a multi-copy paper Form I-20A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students, or Form I-20M-N, Certificate of Eligibility for Nonimmigrant (M-1) Student Status For Vocational Students. A copy of the Form I-20 is maintained by the school, a copy is provided to the nonimmigrant, and a copy is routed to the Service for data-entry into a mainframe database, processed, and then returned to the school for inclusion in its local record. Other than entry into a mainframe database, which is not accessible for use by the school, the current process is entirely manual and paper-based.

SEVIS creates a means for information collection and reporting via the Internet and a reduction in data latency and paper record maintenance and routing. In order to create a Form I-20, the school will now access SEVIS and enter the information electronically, thus instantly collecting the data in a central database before the form is ever printed. There will no longer be a need for multiple copies of the forms, since the Service will not need a copy to be routed for data-entry. Likewise, the school will no longer be required to maintain its own paper copy of the record, since it will be accessible to the school through SEVIS. Once it is fully operational and all affected schools are mandated to utilize the system, SEVIS will completely replace and aggregate the Service's existing mainframe database, the Student/School system (STSC).

Similarly, at present, an exchange visitor program admitting J-1 exchange aliens currently must complete a Form DS-2019 (previously Form IAP-66). Under SEVIS, exchange programs will use SEVIS to enter information electronically and generate a Form DS-2019 for their participating exchange aliens. For clarification purposes, sections of this text that refer specifically to a Form I-20 or DS-2019 issued from SEVIS will refer to the forms as a SEVIS Form I-20 or SEVIS Form DS-2019.

#### *Must All Schools and Exchange Visitor Programs Participate in SEVIS?*

Currently, SEVIS is anticipated to begin implementation for participation on a voluntary basis on July 1, 2002.

Participation in SEVIS at first will be voluntary, but will become required on January 30, 2003. The Department of State will issue separate regulations establishing a compliance date for all exchange visitor programs.

Once use of SEVIS is mandatory, all schools approved by the Service must be using SEVIS in order to continue accepting foreign students and all exchange visitor programs must be using SEVIS to enroll exchange aliens. Thereafter, only SEVIS Forms I-20 for F-1 or M-1 students or SEVIS Form DS-2019 for J-1 exchange aliens can be used for entry into the United States, change of nonimmigrant classification, reinstatement, transfer, extension, or any other immigration benefit.

The Service recognizes that the compulsory date of January 30, 2003, may pose challenges for schools as there may be changes to existing systems and processes required of schools in order to be in compliance. Therefore, the Service is soliciting comments from the schools regarding the amount of time the schools believe will be necessary to convert to the SEVIS system. Commenters should state specifically the steps that must be taken before being able to fully convert to SEVIS and indicate particular problems or obstacles that may be faced in trying to meet the proposed deadline. The Service will consider the information provided in the comments in the drafting of the final rule.

In the meantime, there will be schools and exchange visitor programs that continue to use the existing paper-based processes and others that begin to use SEVIS, as they choose. This phased-in approach will allow schools and exchange visitor programs sufficient time to conform their internal processes to a system that will successfully interface with SEVIS.

Accordingly, this proposed rule amends § 214.2(f) and (m) of the Service's regulations to allow for different reporting processes for schools prior to the final SEVIS implementation date, depending upon whether or not they have been enrolled in SEVIS. These alternative processes are clearly distinguished in the text of this proposed rule. The Service will publish a rule when SEVIS becomes mandatory to remove all references in the regulations to paper-based processes.

The Department of State's separate rule will provide the appropriate processes for exchange visitor programs to follow with respect to J nonimmigrants, depending on whether or not those programs have been enrolled in SEVIS during the time

before use of SEVIS becomes mandatory.

Although IIRIRA section 641 mandates the development of a new information collection program, the Service is also pursuing this system as a result of its recognition that the current reporting process for foreign student and exchange aliens is not an effective means to maintain timely information on F, J, and M nonimmigrants. Under the current paper-based system, the Service is unable to provide expedient responses to benefit requests, such as for employment authorizations and reinstatements. By reengineering the information reporting program from a paper-based process to one that is automated, the Service anticipates an improved system for the Service and DOS, for the schools and exchange visitor programs subject to their authority, and for the foreign students and exchange aliens coming to the United States to attend them.

#### *What Is the Monetary Impact That SEVIS Will Have on Schools?*

The Service believes that SEVIS will have a positive impact on schools and will make the oversight of foreign students on their campuses and administration of international student programs easier for most DSOs. Schools using SEVIS will no longer have to print out, file, and mail as many paper forms. However, each institution is different and will have processes and systems that are unique. For schools that do not require or desire the use of batch capability, there should be little to no additional cost, and in fact, some savings may result from the efficiencies that SEVIS will provide. These schools will access SEVIS through the Internet and in all likelihood will have to make no changes or upgrades to their existing systems. As long as the school has an Internet browser, MS Internet Explorer 5.0 or better, or Netscape 4.7 or better, they can access SEVIS.

The monetary impact on schools that desire to use batch capability may be greater. These schools may need to pay the cost of whatever modifications are necessary to make their existing systems compatible with that of SEVIS. However, that one-time start-up cost might be highly cost-effective in the long run because, once the electronic interface is complete, the process of maintaining student records for purpose of SEVIS will be highly automated, thereby reducing the future personnel costs. Moreover, these decisions as to cost/benefit tradeoffs will be made by each school in light of their own circumstances. The use of the batch

mode will be entirely optional. Even if schools use only the Internet mode, the process should be considerably more efficient than it is at present.

In order for the Service to better gauge what monetary impact, if any, there will be on schools, the Service is soliciting comments specifically related to this issue. Schools are requested to comment on what they believe will be the cost to bring their existing equipment and systems into compliance with SEVIS and on any increases or decreases necessary for staff.

#### *Will a School Need To Be Recertified Prior To Enrolling in SEVIS?*

In order to maintain the integrity of the data that is initially being entered into SEVIS, all schools will need to be recertified by the Service. The Service will be publishing a separate notice in the **Federal Register** to allow schools that meet a specific criteria to be eligible for preliminary enrollment in SEVIS. In addition, the Service will promulgate a separate rule that will require each school authorized to accept F-1 or M-1 students who did not apply for or qualify for preliminary enrollment to be reviewed and re-approved. Such preliminary enrollment or re-approval must be completed before a school will be granted authorization to use SEVIS.

#### *How Does a School or Exchange Program That Is Not Currently Approved by the Service or by the Department of State Enroll in SEVIS?*

This rule proposes a process by which a school may use SEVIS to maintain its authorization for attendance at that school by F-1 and M-1 nonimmigrant students. To gain access to SEVIS, the school must first contact the SEVIS system administrator to receive a temporary User ID and password by logging onto the SEVIS Web site. The temporary ID and password will be valid for 30 days from issuance by the system administrator.

After receiving the temporary ID and password, the school will complete the Form I-17 petition in SEVIS and print it for submission by mail to the appropriate Service office with supporting documentation. Upon making a decision, the Service will update SEVIS to show the status of the application as approved or denied and an email notification will be sent to the school. Every school using SEVIS must immediately update SEVIS to reflect any material modification to its name, address or curriculum for a determination of continued eligibility for approval.

As stated earlier, the Service will be promulgating a separate rule to

implement the recertification process that a school needs to complete prior to being given authorization to use SEVIS. With these future rulemakings it is the Service's intention to move toward a paperless process for institutions to submit petitions for approval to the Service. In drafting these subsequent rules, the Service will consider streamlined electronic processes in use at other agencies. Where possible, the Service will make efforts to share information electronically with the Department of Education to refine the approval criteria and supporting documentation to allow for this paperless submission process.

The Department of State's separate rule will describe the process for exchange visitor programs to enroll in SEVIS.

#### *When a School or Exchange Program Enrolls in SEVIS Prior to the Final SEVIS Implementation Date, Must All Current Students or Exchange Aliens Be Enrolled Into SEVIS at That Time?*

This rule proposes that schools that enroll in SEVIS prior to the final SEVIS compliance date may utilize SEVIS initially only for newly-enrolled students; they will not be required to enter all data for their current students into the SEVIS system at the same time, but may do so. However, if a current student needs a new Form I-20, the school must enter the student into SEVIS at that time in order to issue a SEVIS Form I-20 to the alien. The current student is entered into SEVIS as a "continuing" student to transition from a paper to a SEVIS record and is thereafter under SEVIS processes. Such a "continuing" indicator will eventually be deactivated in SEVIS since all students will be included in SEVIS within the next academic cycle after the compliance date and there will not be any non-SEVIS students that would require a "continuing" functionality for the DSO to convert. Moreover, once a school is utilizing SEVIS, the school will be required to report the enrollment of any F-1 or M-1 nonimmigrant every semester, term or session thereafter. In addition, the school will be required to report, in SEVIS, the current students that fail to enroll, maintain status, or complete his or her program.

The substantive regulations governing the approval of exchange visitor programs and the granting of J nonimmigrant visas are promulgated by the Department of State, and will be addressed in a separate rule. Accordingly, much of the following discussion in this preamble focuses specifically on the F and M nonimmigrants who are subject to the

Service's authority, and the Service-approved schools authorized to enroll them.

## **II. Issues Relating to F and M Nonimmigrants**

### *What Does 8 CFR 214.3 Currently Require a School to Report?*

Section 214.3(g) requires that the school maintain records of the student's name, date and place of birth, country of citizenship, address, status, date of commencement of studies, degree program and field of study, practical training, termination date and reason, documents related to the student's admission, the number of credits completed per semester, and a photocopy of the student's Form I-20. A school is responsible for maintaining this information on every student to whom it has issued a Form I-20 while the student is attending the school and until the Designated School Official (DSO) notifies the Service that the student is no longer attending the school. Schools are also required to furnish the information to the Service upon request. Under the current process, a DSO is only required to notify the Service if a student is no longer attending the school when the Service sends a list of all F-1 and M-1 students who, according to Service records, and attending the school.

SEVIS, as implemented by this rule, will alleviate some of the problems faced by the DSO by facilitating the process of notifying the Service of a change in information in a timely way. It will also assist the Service by providing access to current data. All of the information that the DSO is currently required to maintain will still be required. However, the information will now also reside in SEVIS rather than at each individual school.

The maintenance of the information in SEVIS begins with the creation of the student's SEVIS Form I-20. Any subsequent updates to the SEVIS Form I-20, or other changes of information pertaining to the student, will also be captured in SEVIS. This will reduce the DSO's workload and the need for a Service officer to contact the school for access to these records.

### *What Are the New Reporting Requirements for Schools?*

The Service has incorporated the requirements of Section 641 of IIRIRA, which mandates collecting the current address and current academic status of the student, as well as any disciplinary action taken by the school against the student as a result of the student being convicted of a crime. Schools will use

SEVIS for issuance of SEVIS Form I-20, and tracking extensions, transfers, authorized employment, and reduced course loads. In addition, schools will not be specifically required to update the Service through SEVIS of the occurrence of the following events:

- A student's enrollment at the school;
- The start date of the student's next term or session;
- A student's failure to enroll;
- A student dropping below a full course of study without prior authorization by the DSO;
- Any other failure to maintain status or complete the program;
- A change of the student's or dependent's legal name or address;
- Any disciplinary action taken by the school against the student as a result of the student being convicted of a crime; and
- A student's graduation prior to the program end date listed on the Form I-20.

Additionally, within 21 days of a change in the name, address, or curriculum of a school, this rule requires that a DSO update SEVIS with the current information. In certain instances SEVIS will send a "tickler" to a DSO when a student's record has not received any action for an extended length of time. When a DSO receives such a notification request by SEVIS with regard to the current status of the student, the DSO must review the student's record and update SEVIS to indicate that the student is enrolled or take other appropriate action.

The Service also notes that legislation currently pending before the Congress, section 501 of H.R. 1885 (as passed by the House of Representatives on March 12, 2002), would impose a requirement for schools and exchange visitor programs to report additional items of information with respect to students and exchange aliens, namely:

- Within a thirty-day period, the failure of the student or exchange visitor to enroll or commence participation;
- Date of entry and port-of-entry;
- The date of the alien's enrollment in an approved institution or exchange program;
- Degree program and field of study; and
- The date of the termination of enrollment and the reason for termination.

Although not identical, all of these data elements are reflected in the current SEVIS requirements. If this legislation is enacted, the Service will review it to determine what, if any new statutory reporting requirements are created. If necessary, the Service will

impose any such additional requirements after this proposed rule is published by incorporating those statutory requirements (without further rulemaking notice) into any interim or final rule implementing SEVIS.

#### *What Changes Would This Rule Make With Respect to Designated School Officials?*

Currently, 8 CFR 214.3 allows a school (or each campus of the school) to have up to five Designated School Officials. This rule proposes to create a new category of Designated School Official, the Principal Designated School Official (PDSO), and a new support position, the Administrative School Official (ASO). Each school may have five DSOs, one of which is the PDSO, and up to five ASOs. In a multi-campus school, each campus may have up to five designated officials at any one time, one of which is the PDSO, and up to five ASOs. In an elementary or secondary school system, however, the entire school system is limited to five designated officials at any one time, one of which is the PDSO, and up to five ASOs.

Another alternative that the Service is considering is to correlate the number of DSOs allowed to the size of the school's F-1 and M-1 student population. Comment is invited on the general feasibility of such an approach, particularly with respect to the proportion of DSOs to international students currently existing and the proportion that would be optimal for schools.

In SEVIS, the PDSO will be the contact person for the original submission of the Form I-17. The PDSO will also be the responsible party for any updates to the PDSO, DSO or ASO information. In all other respects, the PDSO will have the same responsibilities as the other DSOs.

The functions of the ASO will be limited to clerical duties and data entry. The ASO may not sign or issue either a current or SEVIS Form I-20, authorize curricular practical training, or provide any update to SEVIS. The access of the ASO will be limited in SEVIS to purely data entry of SEVIS Form I-20 information which must then be reviewed and submitted to SEVIS by a PDSO or DSO.

This rule also proposes a new requirement that any DSO, including the PDSO, must be a United States citizen or Lawful Permanent Resident (LPR) of the United States.

This rule proposes to require that an approved school update SEVIS for any changes in PDSO, DSO or ASO within 21 days of such change. The update of

the new official must include the name and title of the new official, as well as the official's certification of compliance with the regulations. This update can be made only by the PDSO.

This rule also proposes to clarify that, as part of the Service's authority over a school's ability to enroll foreign students, the Service has authority to reject the submission of a particular individual as a DSO, PDSO, or ASO as well as to withdraw an individual's designation as a DSO, PDSO, or ASO. Examples of when the Service would exercise this authority include situations in which a DSO is not a U.S. citizen or LPR, or in which a PDSO, DSO or ASO is not complying with the relevant regulations and program requirements as attested to on Form I-17A, Designated School Officials.

Finally, although the Service is not making a specific proposal at this time, the Service is seeking public suggestions and input on how a program for educating and certifying DSOs might be structured, and whether such certification should be a requirement for all PDSOs, DSOs, and/or ASOs. DSOs are the link between the Service and the nonimmigrant student population for which the Service is responsible. It is not practical or feasible for the Service to have a presence at all schools. These factors, along with the Service's desire to preserve the integrity of data submitted through the SEVIS system, have highlighted the need for a process that can certify DSOs.

#### *Will the Form I-20 Continue To Be Used?*

This proposed rule discusses the differences in the Form I-20ID, Form I-20A-B, and Form I-20M-N that are currently in use and the Form I-20 that will be issued by SEVIS. The current Form I-20 has two copies, one for the student, and one for the school. Currently, the entire Form I-20A-B/I-20ID or Form I-20M-N/I-20ID is referred to as the Form I-20A-B or Form I-20M-N, and the student copy is referred to as the Form I-20ID.

The SEVIS Form I-20 will eliminate the need for the school copy, as the information will be retained in SEVIS and easily accessible by the school or by the Service for updating and record keeping purposes. The student will retain his or her copy in the same manner as the process currently in use for travel and employment purposes. The SEVIS Form I-20 will also maintain the distinction between the Form I-20A-B that is issued to F-1 students and the Form I-20M-N that is issued to M-1 students. The SEVIS Form I-20 can be further identified by the word SEVIS

located in the upper right hand corner of the document and by a two-dimensional barcode on the right hand side of the document.

#### *What Is the SEVIS ID Number?*

Each SEVIS Form I-20 that is issued by a school to a student will contain a system-generated identification number. This number is referred to as the SEVIS ID number. The SEVIS ID number will remain the same as long as the student maintains his or her valid, original nonimmigrant status. This number will remain the same regardless of any changes or updates made by the DSO to the student's record.

When a student is inspected for admission, he or she will show the SEVIS Form I-20 to the inspecting officer. Once SEVIS is fully operational, the inspecting officer will record the number for transition to SEVIS. The inspector will then return the student's copy to the student with the appropriate entry stamp. The officer will have not to forward a copy on to the Service's data processing center for data entry, as the information will already be transmitted to SEVIS.

#### *How Will SEVIS Track the Issuance of Multiple Forms I-20 and Deter Misuse of Form I-20?*

SEVIS will decrease the potential for the fraudulent misuse of the SEVIS Form I-20. Prior to issuance of a student visa to a prospective student, it is not uncommon for an alien to have been accepted at more than one school, and therefore to have been issued a Form I-20 from each of those schools offering acceptance. However, a student can obtain an F-1 or M-1 student visa, and be admitted to the United States, under only one Form I-20. The alien must present one Form I-20 to the consular officer, reflecting the student's decision as to which school to attend.

To help avoid the risk of having the remaining Forms I-20 fall into the hands of someone who might use them fraudulently, SEVIS will be able to track the issuance of multiple SEVIS Forms I-20 based upon numerous data elements in order to link the multiple forms to the same individual. SEVIS will then cancel the other SEVIS Forms I-20 issued by other schools with respect to the same individual once the student uses one of the forms to obtain student status.

As an additional deterrent to misuse, once a Form I-20 is used to a prospective student for initial eligibility, the DSO may not modify the Form I-20 until the DSO updates SEVIS to verify that the student's registration has been completed. However, a DSO may cancel or terminate a Form I-20 at any time.

Furthermore, the Form I-20 is issued for a specific program start date. SEVIS will automatically terminate any Form I-20 that has not been used as the basis for issuance of a student visa, or for change of status to F or M status, by the program start date.

#### *How Does This Rule Address Distance Education or On-Line Programs?*

While on-line and distance education programs can be highly innovative means to augment or even conduct an educational program, the entry of a foreign student into the United States becomes unnecessary if the bulk of the program does not require the student's physical presence. Therefore, this rule proposes to limit the enrollment of F-1 and M-1 students in courses that are on-line or through distance education programs and do not require the student's actual presence. The rule also provides a definition of on-line courses and distance education programs that is similar to the definition provided by the Department of Education for telecommunications courses.

Under proposed § 214.2(f)(6)(i)(F), those students for whom on-line or distance education credits can be counted toward the obligation to maintain a full course of study will be limited to counting one class or three credits per semester toward the obligation, provided that the class is accepted for credit at the school that the student is currently attending. No on-line or distance education classes taken by an M-1 student, or by an F-1 student in a language program or elementary or secondary school program, can be counted as being part of the student's full course of study, given the limited duration or focus of those programs.

#### *What Other Changes Are Being Made Regarding a Full Course of Study?*

This rule proposes to limit the amount of time during which an F-1 or M-1 student who is authorized to drop below a full course of study because of illness or medical condition, the current requirement is only that the student resume a full course of study when he or she recovers. Such an open-ended standard can invite abuse.

Therefore, this proposed rule allows a DSO to authorize an F-1 student, who is currently in status, to drop below a full course of study only for the periods of time set forth in proposed § 214.2(f)(6)(iii) and (M)(6)(vi). Except for students experiencing illness or other medical condition, the DSO cannot authorize an F-1 student to drop below a full course of study for more than one semester or term (excluding a summer session). A DSO may not

authorize a reduced course load for an M-1 student for more than 5 months. In any event, a DSO may not authorize a student, other than one experiencing illness or other medical condition, to completely withdraw from all classes; the student's reduced course load must include at least some classes in order for the DSO to grant authorization.

A student who is unable to resume a full course of study within the allowable time period will not be able to continue that status and will either have to leave the United States or apply for a change of nonimmigrant status to a more appropriate category.

#### *What Are the Reporting Requirements When the DSO Authorizes a Student To Drop Below a Full Course of Study?*

This rule will create an interim reporting requirement for non-SEVIS schools to report to the Service for cases in which the DSO has authorized an F-1 or M-1 student to drop below a full course of study. Within 21 days of the authorization, the DSO must send to the STSC a photocopy of the student's Form I-20 with Form I-538, indicating the reason for the drop to STSC. DSOs are further required to report to the STSC not more than 21 days after the student has resumed his or her full course of study with Form I-20, reflecting the new program completion date, if applicable, and Form I-538 certifying that the student has resumed a full course of study.

For schools enrolled in SEVIS, this rule requires the electronic updating of SEVIS whenever a student is authorized to drop below a full course of study or has resumed a full course of study. A DSO must immediately update SEVIS when a student has been authorized to drop below a full course of study with the current date, the start date of the next term or session, and the reason for the authorization. The DSO must also update SEVIS within 21 days of the student's re-commencement of a full course of study in accordance with the new registration reporting requirement of 8 CFR 214.3(g)(3). If an extension is necessary, the DSO must also use SEVIS to update the SEVIS Form I-20 with the new completion date.

#### *How Are F-1 Student Transfers Handled Using SEVIS?*

This rule makes clear that, prior to issuance of any Form I-20, the DSO at the school to which the student is transferring is responsible for determining that the student has been maintaining status at his or her previous school and is eligible for transfer to the new school. This includes cases in which the student graduates from one

educational level (e.g., bachelors to masters or masters to doctorate) at the same school, as well as transfers to a different school.

The student must notify his or her current school of the intent to transfer and indicate the school to which he or she intends to transfer. Upon notification by the student, the current school's DSO will update the student as a "transfer out" to the intended new school in SEVIS. The DSO will indicate in SEVIS a release date, which would usually 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 access to and will remain responsible for the student in SEVIS until the release date. The student must then notify the school to which the student intends to transfer of the student's intent to enroll in the transfer school. Upon reaching the release date, the new school will be granted full access to the student's SEVIS record and may then issue a new SEVIS Form I-20, becoming responsible for that student's record. The current school conveys authority and responsibility over that student to the new school, and will no longer have full SEVIS access to that student's record. The new school may not issue a new SEVIS Form I-20 until after the release date, thus managing the issuance of multiple SEVIS Form I-20 within the United States. The student is then required to report his or her presence to the new school within 15 days of the program start date indicated on SEVIS Form I-20, so that the DSO at the transfer school can acknowledge the student's attendance, obtain the student's current address, and confirm that the student has completed the transfer process. The transfer is effected when the transfer school notifies SEVIS, within 30 days, in accordance with 8 CFR 214.3(g)(3)(iii), that the student has enrolled in classes.

#### *What Are the Changes for M-1 Student Transfer?*

This rule proposes to amend the current regulations in several ways:

- An M-1 student must be currently in status in order to apply for a transfer;
- The M-1 student must file Form I-539, Application to Change/Extend Nonimmigrant Status, with the Service Center having jurisdiction over the school he or she is currently authorized to attend;
- The date of approval of an M-1 transfer will be determined as of the program start date listed on the Form I-20, rather than the date of filing the application; and

- An M-1 transfer student will be allowed to enroll in classes at the transfer school at the next available term or session.

This rule proposes a process for the electronic update of SEVIS for the transfer of an M-1 student that is generally similar to the process for F-1 student transfer. The process differs, however, because the Service must approve all M-1 student transfers, based on the recommendation of the DSO.

After the transfer school issues a SEVIS Form I-20 to the student, the M-1 student must then submit Form I-539 to the Service Center with jurisdiction over the school which the student is currently authorized to attend. Upon submission to the Service of the application for transfer, the student may enroll in the transfer school at the next available term or session, but must notify the transfer school within 15 days of beginning attendance so that the school can obtain the necessary information for its records. The transfer school will then update SEVIS to indicate that the student has enrolled in classes in accordance with the new reporting requirement.

Once SEVIS is fully operational and interfaced with INS' CLAIMS 3 benefit processing system, the Service officer will transmit to SEVIS the approval of the transfer 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 a transitional process until that time, the student is required to notify the DSO at the transfer school of Service's decision within 15 days of the receipt of the adjudication by the Service. Upon notification by the student, the DSO must immediately update the student's record in SEVIS to reflect the proper decision of the Service Center. If approved, the DSO will update SEVIS to indicate the approval and print an updated SEVIS Form I-20 for the student indicating that the transfer has been completed. If denied, the DSO shall terminate the student's status in SEVIS indicating the transfer denial as the termination reason.

Finally, the Service notes that current § 214.2(m)(6), (7), and (8) relate to students who converted from F-1 status to M-1 status, prior to June 1, 1982, and are therefore no longer applicable to any current M-1 student. Accordingly, this rule proposes to remove these provisions as well as the reference to the school code suffix in § 214.2(m).

#### *What Changes Does This Rule Make With Regard to Practical Training?*

This rule proposes to clarify several issues with regard to practical training.

First, this rule clarifies that practical training is available to F-1 students who were involved in a study abroad program during their course of study at an approved school. Although part of the alien's study in such a case was conducted outside the United States, these students remain enrolled at their school and have earned credits toward their degree. The Service believes that the time spent abroad, after the student has begun attendance at the school, should count towards the 9 consecutive months required to apply for practical training under 8 CFR 214.2(f)(10).

The rule also proposes to amend § 214.2(f)(10) to clarify that an F-1 student may be authorized for up to 12 months of practical training for each program level that he or she undertakes. For example, a student who has engaged in 12 months of practical training during study for an undergraduate degree becomes eligible for another 12 months of practical training when he or she changes to a higher educational level, such as a master's degree.

*Curricular practical training.* This rule requires that schools using SEVIS update SEVIS any time that DSO authorizes a student's request for curricular practical training (CPT), that is, a work/study program, internship or practicum that is an integral part of an established curriculum. The DSO must verify that the student meets the eligibility requirements and must also update SEVIS to show whether the work is full- or part-time, the start and end date of the employment, and the name and location of the employer. The DSO will then print SEVIS Form I-20 that indicates that curricular practical training authorization has been granted, and sign, date and return the SEVIS Form I-20 to the student prior to the student's commencement of employment. A student is not eligible to begin work until the DSO has updated SEVIS to show that curricular practical training is authorized and has printed the SEVIS Form I-20 for the student to provide to the employer. Schools using SEVIS will no longer need to send Form I-538 to STSC when authorizing an F-1 for curricular practical training.

*Optional practical training.* This rule proposes to require a SEVIS update for an F-1 student who requests optional practical training, that is, temporary employment for practical training directly related to the student's major area of study. Unlike curricular practical training, which is approved by the DSO, optional practical training is approved by the Service, based on the recommendation of the DSO, and the student must also file Form I-765,

#### Application for Employment Authorization.

Under this rule, the DSO will recommend the student for optional practical training in SEVIS and print the SEVIS Form I-20 with the recommendation to be sent to the appropriate Service Center in conjunction with a completed Form I-765. A DSO using SEVIS will no longer need to submit a copy of Form I-538 to STSC in cases where optional practical training is recommended, since the SEVIS update will accomplish the necessary notification.

This rule also proposes to amend the period of time in which an F-1 may apply for optional practical training. Under the current rules, an F-1 student must apply for post-completion optional practical training no later than 60 days after completion of their full course of study, with the training to be completed within 14 months following completion of study. The requirement that the training be completed in a 14-month period often is problematic for students who wait to apply for optional practical training until close to the end of the 60-day period, since they must then wait for receipt of the Form I-766, Employment Authorization Document (EAD), before they can begin work. This process often results in the student not being able to receive the full 12 months of training.

The current rules also provide, in some cases, that an F-1 student may receive an extra 60 days of authorized stay in the United States. For example, a student can wait to apply for optional practical training until the 60th day after completion of studies, and, at the end of the training period, the student is entitled to a second period of 60 days to prepare to depart the United States. This rule proposes to amend § 214.2(f)(10)(ii) to require that F-1 students must apply for optional practical training prior to completion of all course requirements or completion of studies, thereby allowing only one 60-day period for departure. The students have only a limited period of time after the program end date in which to complete their training, and cannot begin the training until they have received an EAD from the Service Center. The student must apply before the program end date to ensure that the student will have received his or her EAD in time to commence optional practical training immediately after completion of study. This requirement will ensure that the students can continue to pursue the purpose for which they were admitted, without a gap, for the entire amount of time for which they are eligible.

Similarly, this rule will require that an M-1 student must apply for practical training prior to the completion date of his or her program. However, the request cannot be made more than 90 days prior to the program completion date shown on the Form I-20.

Finally, this rule provides that authorization to engage in practical training is terminated when the student changes to another educational level. The current regulations provide for automatic termination of such authorization for an F-1 or M-1 student only when the student transfers schools.

#### *What Change Does This Rule Make With Respect to Internships With International Organizations?*

This rule proposes to amend § 214.2(f)(9)(iii) to specify that an F-1 student who has been offered employment by a recognized international organization submit must apply for employment authorization to the Service Center having jurisdiction over his or her place of residence, rather than applying in person at a local Service office. Also, to make this provision consistent with the other practical training processes, the requirement for DSO endorsement of the Form I-20 ID within the last 30 days is being removed.

This rule also deletes obsolete references in § 214.2(f)(9)(ii) for filing a wage-and-labor attestation with the Department of Labor for off-campus employment, since the pilot program sunset on September 30, 1996. Under the current rules, F-1 students seeking off-campus employment (other than an internship with an international organization as discussed above) must satisfy the requirements for demonstrating severe economic hardship caused by unforeseen circumstances beyond the student's control.

#### *What Changes Does This Rule Make With Respect To Extension of Student Status?*

This proposed rule amends the existing regulations to state explicitly the requirement that an F-1 or M-1 student must currently be in lawful status at an approved school in order to apply for an extension of status. A student who is no longer in current status—for example, a student who has dropped out of the school during a current term without authorization, or who remains in the United States after completion of his or her educational program—would not be eligible for an extension of status (although, in some limited circumstances, the student may be eligible for reinstatement of status, as discussed below).

*Implementation of SEVIS.* Under current procedures, to apply for an extension, an F-1 student must obtain a new Form I-20 from the authorized school and submit Form I-538 for certification by the DSO. The DSO must then submit Form I-538 to STSC. If the extension is accomplished by the student's reentry into the United States, the DSO does not need to send Form I-538 to STSC as the inspector will submit the Form I-20 to STSC when the student enters the country.

Under SEVIS, the DSO will update SEVIS any time the DSO grants an extension for an F-1 nonimmigrant, and will then enter the new program end date. The DSO will then print the new SEVIS Form I-20 for the F-1 nonimmigrant reflecting the new program end date. SEVIS will eliminate the need for the DSO to submit Form I-538 to STSC.

Unlike extensions of status for F-1 students of status for M-1 students are adjudicated by the Service based on the recommendation of the DSO. This rule also provides for the electronic updating of SEVIS in the event of an M-1 program extension request and requires the DSO to update SEVIS to recommend that a student be approved for extensions. 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 Forms I-94 and I-539. Once the Service grants an extension the DSO will print out a new Form I-20 for the student.

*Other changes with respect to F-1 students.* This rule also proposes several changes to the rules for extension of status for F-1 students.

First, the rule would eliminate the existing limitation that the student must file for an extension of status during the 30-day period prior to the program end date. Instead, an F-1 student would be allowed to apply for a program extension at any point prior to the program end date listed on the Form I-20.

Second, this rule would eliminate the provision in § 214.2(f)(7)(ii) which allows a DSO to add up to a one-year grace period in addition to the period of time the DSO estimates will be needed for each F-1 student to complete his or her program of study. Instead, the DSO will issue a Form I-20 to each F-1 student for the period of time reasonably necessary to complete the particular program of study. If additional time is needed, then the DSO will be able to authorize an extension of status through the regular process, which does not

require any adjudication by the Service. This regulatory change is particularly appropriate with the use of SEVIS, which will reduce the paperwork burdens on DSOs at the time they authorize extensions of status.

Third, the rule will make clear that an F-1 student attending a public high school cannot apply for an extension with his or her DSO for continued attendance at his or her current school or to transfer to another public high school. Section 214(m) of the Act prohibits an F-1 student from attending a public high school for more than 12 months in the aggregate, and requires that the alien, prior to being issued the F-1 visa, demonstrate that he or she has reimbursed the local school district for the full, unsubsidized per capita cost of providing the education for the period of the alien's attendance. Because of the statutory limitation, an F-1 student at a public high school can only be admitted for an aggregate of 12 months of study and is not admitted for duration of status, as is the case for other F-1 students.

Fourth, the rule provides that such a public high school student *is* eligible to apply to the Service for an extension of status if he or she is accepted for attendance at a private high school or at a post-secondary school. The student must use Form I-539 and apply to the Service Center with jurisdiction over the school the student is currently attending.

*Other changes with respect to M-1 students.* The rule proposes to add the requirement that an M-1 student show a compelling academic or medical reason which resulted in a delay to his or her course of study in order to be eligible for extension of status. Additionally, the rule will propose to amend the language of the current regulations to indicate that an M-1 student requesting an extension should file a Form I-539 at the Service Center with jurisdiction over the school the student is currently attending.

Finally, the Service proposes to place a limit on the extensions that may be granted to an M-1 student. There is currently no limit on the number of extensions for which an M-1 is eligible, nor a limit on the cumulative amount of time that can be granted under extensions.

This rule proposes to limit the cumulative time that extensions can be granted to an M-1 student to a period of 3 years from the Social Security student's original start date, plus 30 days. Thus, no extension could be granted to an M-1 student if he or she is unable to complete the course of study within 3 years of the original

program start date, plus 30 days. This limit includes extensions that have been granted due to a drop below full course of study, a transfer of schools, or reinstatement.

#### *What Are the Changes to Eligibility for Reinstatement of Student Status?*

Under the current rules, § 214.2(f)(15) and (m)(16), upon demonstrating eligibility for attendance at an approved school, and F-1 or M-1 student who is out of status may apply to the Service for reinstatement, with no specified limit on the length of time the student has remained in the United States out of status. A student can lose current student status in several ways, for example, by remaining in the United States beyond the authorized period after completion of his or her course of study, engaging in employment without authorization, or dropping out of school.

It is important that nonimmigrant students in the United States remain cognizant of their obligations to maintain their status. Past rules, designed to maintain flexibility for the academic community and to make allowance for the youth of some of the individuals in question, appear to have resulted in an atmosphere that could have led some to believe that they could violate their status with impunity. In fact, such violations can and do have serious consequences.

Accordingly, this rule proposes to amend the regulations to provide that an F-1 or M-1 student will not be eligible to apply for reinstatement unless he or she applies for reinstatement within five months of being out of status.

Moreover, the rule also proposes to limit the circumstances under which reinstatement is available. Unless the violation of status relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and the student can demonstrate that failure to receive reinstatement would result in extreme hardship, the student must establish that the need for reinstatement resulted from circumstances beyond the student's control. Such circumstances may include circumstances such as serious injury or illness, closure of the institution, or a natural disaster. Circumstances beyond the student's control would NOT include cases where inadvertence, oversight, neglect, or a willful failure on the part of the student or the DSO resulted in the need for reinstatement.

The Service has drawn the general timeframe from § 214.2(f)(4), which allows an F-1 student who has been temporarily absent from the United States for no more than five months to

be readmitted in F-1 status to continue his or her course of study. Of course, the situation of an alien who has violated his or her student status and remains in the United States is not the same as a student in lawful F-1 status who is temporarily absent from the United States. On the other hand, the Service recognizes that there may be reasons why a student may violate nonimmigrant student status without necessarily abandoning his or her educational plans.

Reinstatement of student status is distinct from processes for a current student to transfer from one school to another, or for an F-1 student to temporarily maintain a reduced course load, while remaining in status. Since transfers or reduced course loads will only be available for students who obtain approval from their school's DSO, the reinstatement rule will cover those students who have recently lost their student status but desire to continue their education (either at their prior school or another school) in the immediate future.

An F-1 or M-1 student who is ineligible for reinstatement cannot remain in the United States unless he or she has some other lawful immigration status. Such an alien would be free, if eligible to do so, to apply for a new nonimmigrant student visa at a consular office abroad to resume his or her studies in the United States. The Service wishes to emphasize the importance of complying with academic requirements and wishes to emphasize that reasons for reinstatement will be closely scrutinized. Reinstatement is intended to be a rare benefit for exceptional cases and is not intended to remedy situations within the student's control.

In the case of a student seeking reinstatement at a SEVIS school, the school that the student most recently attended will update the student's record in SEVIS and print out a new SEVIS Form I-20 which indicates that the student is requesting to be reinstated. The student should then submit the new SEVIS Form I-20 and Form I-539, by mail, to the district director. Once the request has been adjudicated, the student will receive his or her SEVIS Form I-20 with the decision of the district director. The district office will also update SEVIS to indicate the decision on the request for reinstatement. SEVIS will provide notification to the school of the reinstatement decision.

This rule also makes technical corrections in the regulations governing F-1 and M-1 reinstatement to reflect the redesignation of section 241 of the Act as section 237 of the Act.

*What Other Provisions of IIRIRA Have Been Incorporated Into This Rule?*

Section 214(m) of the Act, as amended by sections 625 and 107(e)(2) of IIRIRA, Public Law 106-386, Div. C (Sept. 30, 1996), states that a nonimmigrant may not be accorded status as an F-1 student to pursue a course of study at a public elementary school or a publicly funded adult education program.

Accordingly, 8 CFR 214.3 is proposed to be amended to clarify that in no case will a public elementary school, a publicly funded adult education program, or a home school be approved for attendance by a nonimmigrant student. The proposed rule would also amend 8 CFR 214.2(f)(6) to make clear that an alien may not be admitted as an F-1 student to enroll in a course of study at a school or program that is not approved by the Service as provided in § 214.3.

Section 214(m) of the Act does not define "a publicly funded adult education program." The proposed rule adopts a definition based on section 203(f) of the Adult Education and Family Literacy Act, Public Law 105-220, 20 U.S.C. 9202(l) Section 203(l) of Public Law 105-200 defines an adult education program as:

"services or instruction below the postsecondary level for individuals—

"(A) who have attained 16 years of age;

"(B) who are not enrolled or required to be enrolled in secondary school under State law; and

"(C) who—

"(i) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

"(ii) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

"(iii) are unable to speak, read, or write the English language."

Under the proposed rule, an F-1 nonimmigrant may not enroll in such a program if the 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.

*Why Will the Service Remove the \$70 Fee Associated With the Form I-538?*

This rule proposes to remove the fee for the Form I-538, Certification by Designated School Official, from 8 CFR 103.7(b)(1). The Form I-538 is currently used by DSOs to notify the Service of updates to the student's record in the case of approved curricular practical

training or extensions for F-1 students. The Form I-538 is also used in conjunction with applications for Form I-765, Employment Authorization Document (EAD). As the form is used simply for the purpose of certification by the DSO as to the current record of the student, a fee should not be required to accompany the form. Form I-538 will continue to be used until all schools enrolling foreign students are enrolled in SEVIS.

**III. Issues Relating to All F-1, J-1 and M-1 Nonimmigrants**

*What Are the Requirements for Reporting Changes of Address by F-1 and M-1 Students and J-1 Exchange Aliens?*

IIRIRA mandates collection of the current name and address of the students in the United States. Moreover, section 265(a) of the Act requires that all aliens who are subject to registration requirements (including all students and exchange aliens and their dependents who remain in the United States for 30 days or more) are required to provide a current name and address to the Attorney General within 10 days. The obligation to notify the Service of each change of address applies to all F, M or J nonimmigrants (indeed, all nonimmigrants other than those in A or G status) who remain in the United States for more than 30 days, regardless of whether their continue stay is pursuant to their initial admission or as a result of change or extension of status.

Although the change of address requirements are already set forth in 8 CFR 265.1, the Service is amending the rules relating to F, J, and M nonimmigrants regarding the relationship with SEVIS. This rule requires that each 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. The address provided by the student or dependent must be the actual physical location where the student or dependent resides. In no case may the address of the DSO at the school be used as the address of the student. Similar rules are provided for exchange alien to provide notice to the Service and the responsible officer at the exchange visitor program.

A student enrolled at a SEVIS school will satisfy the requirement of section 265(a) of the Act by providing a notice of a change of address within 10 days to the DSO. As with other changes the DSO is required to report under § 214.3(g)(3), the DSO must then update SEVIS to reflect the change in the student's or dependent's address within

21 days of notification by the student. For schools enrolled in SEVIS, the students will not need to provide a separate notice of change of address to the Service. Similarly, a J-1 exchange alien can satisfy the legal requirements by providing a change of address within 10 days to the responsible officer at an exchange visitor program that is enrolled in SEVIS.

An F, M, or J nonimmigrant enrolled at a non-SEVIS institution must submit Form AR-11, Alien's Change of Address Card, to the Service within 10 days of the change. Moreover, any nonimmigrant student or exchange alien, or a dependent, who fails to report a change of address within 10 days to the DSO or to the responsible officer, in the case of a J-1 nonimmigrant, is obligated to file Form AR-11 with the Service within 10 days.

*What Are the Limits on Advance Admission of F, J or M Nonimmigrants Prior to the Beginning of Their Attendance at an Approved School or Exchange Visitor Program?*

The present Service regulations, § 214.2(f)(3) and (m)(3), suggest that an F-1 or M-1 student with a valid Form I-20, and his or her F-2 or M-2 dependents, may be admitted to the United States up to 60 days prior to the beginning of the course of study, as noted on the Form I-20. The rules governing J nonimmigrants do not specify a maximum period of advance admission.

The Service believes that a long period of admission, prior to the beginning of the approved course of studies or program for an F, J, or M nonimmigrant, and his or her dependents, is not consistent with the national interest, is not necessary to meet the needs of such aliens in coming to the United States, and is subject to abuse. However, some advance period is necessary so that the student or exchange alien has time to find a place to live and prepare for the studies or program ahead. Accordingly, this rule proposes to limit the period of advance admission to an "advance grace period" of 30 days.

*When Are "Grace Periods" Available to F-1, M-1, and J-1 Nonimmigrants at the Conclusion of Their Course of Studies?*

This rule will clarify that an F-1 student's duration of status only includes an additional 60 days to depart the country when the F-1 student has completed his or her course of study or after completion of authorized practical training after completion of studies. The 60-day "grace period" does not apply to an F-1 student who does not complete

his or her program, who fails to maintain a full course of study, or who falls out of status for any other reason.

Similarly, the authorization for an M-1 or a J-1 to remain in the United States only includes an additional 30 days to depart the country when the M-1 or J-1 student has successfully completed his or her course of study or authorized practical training following completion of studies. The 30-day "grace period" does not apply to an M-1 student or J-1 exchange alien who does not complete his or her program, who fails to maintain a full course of study, or who falls out of status for any other reason.

Note that allowing a 60-day grace period for F-1 students, but only 30 days for M-1 students, is consistent with the current regulations at 8 CFR 214.2(f)(5)(i) and 214.2(m)(5). Allowing a longer grace period for F-1 students recognizes the fact that, in most cases, F-1 students remain in the United States longer than most M-1 students. A longer sojourn makes it reasonable to assume that F-1 students, generally, would need a longer period at the conclusion of their program to wind up their affairs and leave the United States in an orderly manner.

*What Continuing Obligations do all F, M, and J Nonimmigrants Have During the Time They Remain in the United States?*

The Service notes that an existing law, section 222(g) of the Act, provides for the automatic voidance of a nonimmigrant visa at the conclusion of an authorized period of stay if the alien remains in the United States longer than the period of authorized admission. All F, J and M nonimmigrants should be aware of this provision of the law and are responsible for remaining in lawful nonimmigrant status while within the United States.

Any nonimmigrant admitted to the United States bears the burden of maintaining legal status during the period of admission that has been granted by the inspecting Service officer. The Service cannot emphasize enough the importance of maintaining lawful status while in the United States. See section 212(a)(9)(B) of the Act for more information on the important and far-reaching implications of unlawful presence and the impact that unlawful presence may have on an alien's future ability to reapply for a nonimmigrant visa, for admission to the United States, or for adjustment of status to that of a lawful permanent resident.

**IV. Issues Relating to F-2, J-2 and M-2 Dependents**

*How Will Information Regarding Dependents Be Included in SEVIS?*

Under SEVIS, the DSO will enter all required dependent information in a record that is linked to the principal alien's. A dependent record can be created at the same time that the principal record is initially created, or as an update to an active principal's record.

Each dependent of an F-1 or M-1 nonimmigrant will receive his or her own SEVIS Form I-20, with a unique identification number, that specifies that they are a dependent. The information on the SEVIS Form I-20 relating to the dependent will be: the first and last name of the dependent, date and country of birth, and relationship to the student. The dependent SEVIS Form I-20 will also contain all of the information contained on the principal's SEVIS Form I-20 with the exception of the principal's unique SEVIS identification number. Additional information that will also be collected in SEVIS as part of the dependent record includes: the dependent's country of citizenship, gender and physical address, since this information can differ from the principal's. All active dependent records can be updated by the DSO to reflect changes in address or other dependent information.

*Are There new Restrictions on the F-2 Spouse or Child?*

Currently, there is no restriction on the classes or course of study that can be undertaken by the F-2 spouse and child. As such, an F-2 alien can take a full course of study at any school without the school having to meet any of the reporting requirements that are required for an F-1 nonimmigrant.

This rule proposes to prohibit full-time study by F-2 and M-2 spouses and to restrict such study by F-2 and M-2 children. The restriction is necessary to prevent an alien who should be properly classified as an F-1 student, and so subject to IIRIRA section 641 and other F-1 laws and regulations, from coming to the United States as an F-2 and, yet, attending school full time.

Under the proposed rule, an F-2 or M-2 spouse or child can enroll in avocational or recreational courses. If an F-2 or M-2 spouse, however, wants to enroll in a full course of study, the proposed rule would require the spouse to apply for and obtain a change of his or her nonimmigrant classification to that of an F-1, J-1, or M-1. Which classification is appropriate will depend

upon the program the alien seeks to enroll in.

A similar rule would apply to F-2 or M-2 children. As noted, however, section 214(m) of the Act prohibits the enrollment of F-1 students in public elementary schools, and sets strict requirements on the enrollment of an F-1 student in a public high school.

The Service notes that section 101(a)(15)(f)(ii) of the Act permits an F-1 student to bring his or her children to the United States, and education is one of the chief tasks of childhood. It would be unreasonable to assume that Congress would intend that a bona fide F-1 student could bring his or her children to the United States, but not be able to provide for their education. Section 214(m) of the Act, moreover, only applies to F-1 status, and does not preclude an F-2 nonimmigrant's enrollment.

The proposed rule will, for this reason, allow the F-2 and M-2 child to be enrolled full-time in an elementary or secondary school (kindergarten through twelfth grade). An F-2 or M-2 child who wants to enroll in a full course of study, other than an elementary or secondary school, must change status to that of an F-1, J-1, or M-1 nonimmigrant, as appropriate based upon the child's educational program.

*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 record keeping 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 discussed above 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 purpose of SEVIS likely would 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 impact on a number of small entities as that term is defined in 5 U.S.C. 601(6).

The Service, however, welcomes comments related to the monetary impact of this electronic reporting process. In particular, schools are requested to comment on the costs they will incur to bring their existing equipment and systems into compliance with SEVIS and any resulting changes in personnel.

#### 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, or \$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 of 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.

#### Executive Order 13132

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

#### Executive Order 12988 Civil Justice Reform

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

#### Paperwork Reduction Act

The information required by this rule is considered an information collection and subject to review and clearance under the Paperwork Reduction Act procedures. The Service is adding new electronic reporting requirements using SEVIS which is a new collection. Accordingly, the information collection requirements contained in this rule will be submitted to the Office of Management and Budget under the Paperwork Reduction Act for review and approval.

#### 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.

#### 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, 552(a); 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 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1282; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; sect. 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Removing "and" at the end of paragraph (f)(1)(i)(B), and by removing the period at the end of paragraph (f)(1)(i)(C) and adding in its place "; and", and by adding a new paragraph (f)(1)(i)(D);

b. Adding new paragraphs (f)(1)(iii) and (iv);

c. Revising the term "sixty days," in paragraph (f)(3) to read "30 days,";

d. Revising paragraph (f)(5)(i);

e. Removing and reserving paragraph (f)(5)(iv).

f. Revising paragraph (f)(6)(i) introductory text and paragraph (f)(6)(i)(E);

g. Adding new paragraphs (f)(6)(i)(G) and (H);

h. Revising paragraph (f)(6)(iii), and by adding a new paragraph (f)(6)(iv);

i. Revising paragraphs (f)(7) and (f)(8)(ii);

j. Removing and reserving paragraphs (f)(9)(ii)(B) and (E), and;

k. Revising paragraphs (f)(9)(ii)(D)(4), (f)(9)(ii)(F)(1), and (f)(9)(iii);

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

m. Revising the last two sentences of paragraph (f)(10)(i) introductory text, and by revising paragraphs (f)(10)(i)(A) and (B);

n. Revising paragraph (f)(10)(ii)(A) introductory text, and paragraph (f)(10)(ii)(A)(1) and (2);

o. Removing paragraph (f)(10)(ii)(A)(3) and (4);

p. Revising the heading for paragraph (f)(10)(ii)(B);

q. Revising the heading for paragraph (f)(10)(ii)(D)

r. Adding a new paragraph (f)(10)(ii)(E);

s. Revising paragraph (f)(11)(ii);

t. Revising paragraphs (f)(15) and (f)(16); and by

u. 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) \* \* \*

(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) *Uses of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory. As of that date, the student must present a Form I-20 issued through SEVIS in order to be admitted under this paragraph (f).

(iv) *Disposition of SEVIS Form I-20.* SEVIS will generate a Form I-20. When an F-1 student applies for admission with a complete SEVIS Form I-20, the inspecting officer shall transcribe the alien's admission number from Form I-94 onto his or her SEVIS Form I-20 (for students seeking initial admission only); endorse the SEVIS Form I-20; and return the SEVIS Form I-20 to the alien.

\* \* \* \* \*

(5) \* \* \*

(i) *General.* Duration of status is defined as the time during which an F-1 student is pursuing a full course of study at an educational school 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 twelve 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 start of the course of study. An F-1 student who has completed a course of study will be allowed an additional 60-day period to prepare for departure from the United States, but an F-1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for this additional 60 days. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of studies. Duration of status also includes the period designated by the Commissioner as provided in paragraph (f)(5)(vi) of this section.

\* \* \* \* \*

(iv) [Reserved]

\* \* \* \* \*

(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" means:

\* \* \* \* \*

(E) Study in a curriculum at an approved elementary school or 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 if taken on-line or through distance education in a course that 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, or elementary or secondary school, no on-line or distance education classes may be considered to count toward classroom hours or credit.

(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). A reduced course load must still consist of some course of study, unless the reduction is for reasons of illness or medical condition. A student who drops below a full course of study without the prior approval of the DSO will be considered out of status.

(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 American 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.

(B) *Medical conditions.* The DSO may authorize a reduced course load due to a student's illness or medical condition. If the student has provided medical documentation from a licensed doctor to the DSO to substantiate the

authorization. The DSO is required to reauthorize the drop below full time for each new term, session, or semester. However, in no case may the authorization exceed one year. The student must resume a full course of study within one year from the date of the original authorization in order to maintain student status.

(C) *Completion of course of study.*

The DOS may authorize a reduced course load in the student's final term, semester, or session needed to complete the course of study, if the student is not required to take additional courses to satisfy the requirements for competition.

(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 STSC 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 STSC indicating the date full course of study was resumed and the new program end date was 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 enrollment to both schools amounts to a full time course of study. In cases where a student is concurrently enrolled, the school from which the student will earn his or her degree or certification should issue the Form I-20, and conduct subsequent certifications and updates to the Form I-20. This DSO is also responsible for all of the reporting requirements to the Service.

(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 completing his or her educational objective. An F-1 student who is currently maintaining status but is unable to complete a full course of study in a timely manner must apply prior to the program end date on the Form I-20 to the DSO for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Completion date of Form I-20.* 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 medically 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 STSC 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) \*\*\*

(ii) *Transfer procedure.*

(A) *Non-SEVIS School to Non-SEVIS school.* To transfer schools, a F-1 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 school the student is transferring to is responsible for determining that the student has been maintaining status at his or her previous school and is eligible for transfer to the new school. The transfer will be effected only if the F-1 student completes the Student Certification portion of the I-20 and returns the Form to a designated school official on campus within 15 days of the program start date listed on Form I-20. Upon receipt of the student's Form I-20 the DSO must note "transfer completed on (date)" in the space provided for in DSO's remarks, thereby acknowledging the student's attendance; return the Form I-20 to the student; submit the School copy of the Form I-20 to STSC within 21 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 schools, an F-1 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 provision 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 school to which the student is transferring is responsible for determining that the student has been maintaining status at his or her previous 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 new 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 print and return an updated SEVIS Form I-20 to the student acknowledging the student's attendance and indicating the current address and that the student has completed the transfer process. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance within the 30 days required by 214.3(g)(3)(iii).

(C) *SEVIS school to SEVIS school.* The student must 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 transfer date specified by the current DSO, the new school will be granted full access to the student's SEVIS record and becomes responsible for that student. The current school conveys authority and responsibility over that student to the new school, and will no longer have full SEVIS access to that student's record. At the point of conveyance at the end of the current semester or the expected transfer date, the new school may issue a SEVIS Form I-20. The student is then required to notify the DSO at the new 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 print and return an updated SEVIS Form I-20 to the student acknowledging the student's attendance and indicating the current address and that the student has completed the transfer process. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance within the 30 days required by § 214.3(g)(3)(iii).

(D) *SEVIS school to non-SEVIS school.* The student must notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student in SEVIS as "a transfer out", enter a "release" or expected transfer date, and update the transfer school as "non-SEVIS". The student must then notify the school to which the student intends to transfer of the student's 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 SEVIS 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 previous school, the transfer school may issue the student a Form I-20, and has notified the transfer school of his or her intent to transfer, the transfer school may issue the student a Form I-20 after determining that the student has been maintaining status at his or her previous school. The transfer will be effected only if the F-1 student completes the Student Certification portion of the I-20 and returns the Form to a designated

school official on campus within 15 days of the program start date listed on Form I-20. Upon receipt of the student's Form I-20 the DSO must note "transfer completed on (date)" in the space provided for in DSO's remarks, thereby acknowledging the student's attendance; return the Form I-20 to the student; submit the School copy of the Form I-20 to STSC within 21 days of receipt from the student; and forward a photocopy of the School copy to the school from which the student transferred.

\* \* \* \* \*

(9) \* \* \*

(ii) \* \* \*

(B) [Reserved]

\* \* \* \* \*

(D) \* \* \*

(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 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, along with 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.

\* \* \* \* \*

(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 certifying eligibility for employment, and a completed Form I-765, with required fee as contained in § 103.7(b)(1) of this title.

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

(i) \* \* \* A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her I-20 ID with the DSO endorsement.

(A) *Paper 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 I-20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and sign and date the I-20 ID before returning it to the student.

(B) *SEVIS process.* To grant authorization for a student to engage in curricular practical training a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the student's SEVIS Form I-20 indicating that curricular practical training has been approved and 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.* An F-1 student may apply to the Service for authorization for temporary employment for practical training directly related to the student's major area of study. Optional practical training must be requested prior to completion of all course requirements for the degree (excluding thesis or

equivalent) or prior to completion of the course of study. Temporary employment for optional practical training may be authorized:

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

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

(3) [Reserved]

(4) [Reserved]

(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. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment. The DSO will then print the employment page of the student's SEVIS Form I-20, and sign and date the form to indicate that optional practical training has been recommended. The F-1 student must apply to the INS Service Center for an Employment Authorization Document, on Form I-765, with 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-20 ID, or, for a SEVIS school, on an updated SEVIS Form I-20.

\* \* \* \* \*

(15) *Spouse and Children of F-1 student.*

(i) *Employment.* The F-2 spouse and children of an F 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.

(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 an F-1 student who makes a request for reinstatement on Form I-539, Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed Form I-20A-B from the school the student is attending or intends to attend (or a properly completed SEVIS Form I-20 from a SEVIS school and indicating the DSO's recommendation for reinstatement). The district director may consider the request if the student:

(A) Has not been out of status for more than 5 months;

(B) 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, or a natural disaster. Circumstances beyond the student's control do not occur where inadvertence, oversight, neglect, or a willful failure on the part of the student or the DSO 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;

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

(D) Has not engaged in unauthorized employment; and

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

(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 Service's processing center for data entry. If the Form I-20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's

decision. In either case, 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. An F-1 nonimmigrant enrolled at a SEVIS school can satisfy the requirement 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. An F-1 nonimmigrant 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. The address provided by the student must be the actual physical location where the student resides, not a P.O. Box or an office address. In no case may the address of the DSO be used as the address of the student.

\* \* \* \* \*

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

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

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(ii) *Duration of status.* Duration of status for a J-1 exchange alien, and his or her J-2 spouse and children, is defined as the time during which a J-1 exchange alien is actively participating in a program approved by the Department of State, or engaging in authorized academic training following completion of studies. An exchange alien, and J-2 spouse and children, may be admitted for a period up to 30 days before the start of the approved program. An exchange alien who has successfully completed his or her program will be allowed an additional 30-day period to depart the United States, but an exchange alien who fails to maintain a valid program status is not eligible for this additional 30-day period. Duration of status also includes the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section.

\* \* \* \* \*

(vii) *Use of SEVIS.* At a date in the future to be established by the Department of State, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory. After that date, which will be announced by publication

in the **Federal Register**, the exchange alien must present a SEVIS Form DS-2019 in order to be admitted under this paragraph (j).

(viii) *Disposition of SEVIS Form DS-2019.* SEVIS will generate a SEVIS Form DS-2019. When an J-1 student applies for admission with a completed SEVIS Form DS-2019, the inspecting officer shall transcribe the alien's admission number from Form I-94 onto his or her SEVIS Form DS-2019 (for students seeking initial admission only); endorse the SEVIS Form DS-2019, and return the SEVIS Form DS-2019 to the alien.

(ix) *Current name and address.* A J-1 exchange alien 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. A J-1 exchange alien enrolled in a SEVIS program can satisfy the requirement 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 student. A J-1 exchange alien enrolled at a non-SEVIS institution must submit a change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. The address provided by the exchange alien must be the actual physical location where the exchange alien resides, not a P.O. Box or an office address. In no case may the address of the responsible officer be used as the address of the exchange alien.

\* \* \* \* \*

6. Section 214.2 is further amended by:

a. Adding new paragraphs (m)(l)(iii) and (m)(l)(iv);

b. Revising the term "sixty days," in paragraph (m)(3) to read "30 days,"

c. Revising paragraph (m)(5);

d. Removing and reserving paragraphs (m)(6), (m)(7), and (m)(8);

e. Adding new paragraphs (m)(9)(v) and (vi);

f. Revising paragraphs (m)(10), (m)(11)(ii), and (m)(14)(ii) introductory text;

g. Adding a new paragraph (m)(14)(vi);

h. Revising paragraphs (m)(16) and (m)(17); and by

i. Adding new paragraph (m)(18).

The additions and revisions read as follows:

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

\* \* \* \* \*

(m) \* \* \*

(l) \* \* \*

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory. As of that date, the student must present a SEVIS Form I-20 in order to be admitted under this paragraph (m).

(iv) *Disposition of SEVIS Form I-20.* SEVIS will generate a Form I-20. When an M-1 student applies for admission with a completed SEVIS Form I-20, the inspecting officer shall transcribe the alien's admission number from Form I-94 onto his or her SEVIS Form I-20 (for students seeking initial admission only); endorse the SEVIS Form I-20; and return the SEVIS Form I-20 to the alien.

\* \* \* \* \*

(5) *Period of stay.* An alien in M-1 nonimmigrant status is admitted for a fixed time period, which is the shorter of a total period of one year or 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, not to exceed one year. An M-1 student may be admitted for a period up to 30 days before the start of the course of study. 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.* Classes taken by an M-1 student that are on-line or through distance education, and that do not require the student's physical attendance for classes, examination or other purposes integral to completion of the class, are not considered as being part of the student's full course of study. 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 advise 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 physician to interrupt or reduce his or her course of study. A DSO may not authorize a reduced course load for more than 5 months. An M-1 student must resume a full course of study within 5 months of the authorization by the DSO in order to maintain his or her status.

(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 STSC indicating the date that authorization was granted. The DSO must also report to STSC 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 current 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.* An M-1 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.* An M-1 student must apply to the Service on Form I-539 for permission to transfer between schools. Upon application for school transfer, an M-1 student may effect the transfer subject to approval of the application. An M-1 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 thirty days, or for a total period of one year, whichever is less.

(A) *Paper process-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 process.* 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 the student as a "transfer out" in SEVIS. The student must then notify the school to which the student intends to transfer of the student's intent to enroll. After the student completes his or her current term or session and has notified the transfer school of his or her intent to enroll, the transfer school may issue SEVIS Form I-20 to the student. Upon receipt of the SEVIS Form I-20 from the transfer school, the M-1 student must submit Form I-539 in accordance with § 214.2(m)(11) to the Service Center with jurisdiction over the school the student was last authorized to attend. Upon submission of the application for transfer, the student may enroll in the transfer school at the next available term or session and is required to notify the transfer school immediately upon beginning attendance. The transfer school must update SEVIS to indicate that the student has enrolled in classes in accordance with § 214.3. 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) Once SEVIS is fully operational and interfaced with INS' CLAIMS 3 benefit processing system, the Service officer will transmit the approval of the transfer of 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 the 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.

\* \* \* \* \*

(14) \* \* \*

(ii) *Application.* An M-1 student must apply for permission to accept employment for practical training on Form I-765, with fee, 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 and Form I-538 has provided in this paragraph (m)(11).

\* \* \* \* \*

(16) *Reinstatement to student status.*

(i) *General.* A district director may consider reinstating an M-1 student who makes a request for reinstatement on Form I-539, Application to Extend Time of Temporary Stay, accompanied by a properly completed Form I-20A-B or SEVIS Form I-20, from the school the students is attending or intends to attend, only if the student:

(A) Has not been out of status for more than 5 months;

(B) 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, or a natural disaster. Circumstances beyond the student's control do not occur where inadvertence, oversight, neglect, or a willful failure on the part of the student or the DSO 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;

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

(D) Has not engaged in unlawful employment; and

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

(ii) *Decision.* If the district director does not reinstate the student, the student may not appeal the decision. If

the district director reinstates the student, he or she shall endorse the student's Form I-20ID copy or SEVIS Form I-20 to indicate that the student has been reinstated and return the form to the student. The district director will send notification to the school of the decision.

(17) *Study by spouse and children of M-1 student.*

(i) The M-2 spouse of an M-1 student 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 spouse and child may engage in study that is avocational or recreational in nature.

(ii) 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)(i) of this section, must apply for and obtain a change of nonimmigrant classification to F-1, J-1, or M-1 status.

(iii) 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. An M-1 nonimmigrant enrolled at a SEVIS school can satisfy the requirement 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. An M-1 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. The address provided by the student must be the actual physical location where the student resides, not a P.O. Box or an office address. In no case may the address of the DSO be sued as the address of the student.

\* \* \* \* \*

7. Section 214.3 is amended by:

a. Redesignating paragraph (a)(2) as paragraph (a)(3);

b. Adding a new paragraph (a)(2);

c. Revising newly redesignated paragraph (a)(3)(i)(F);

d. Adding in newly redesignated paragraph (a)(3), a new paragraph (a)(3)(v);

e. Adding a new paragraph (e)(3);

f. Revising paragraphs (g)(1)(iv) and (g)(1)(v);

g. Adding a new paragraph (g)(3);

- h. Revising paragraph (I)(1);
  - i. Adding three sentences to the end of paragraph (I)(2);
  - j. Revising the heading in paragraph (I)(3), and by revising the first sentence in paragraph (I)(3); and by
  - k. Adding a new paragraph (I)(4).
- The additions and revisions read as follows:

### § 214.3 Petitions for approval of schools

(a) \* \* \*

(2) *SEVIS filing.* A school or school system filing a petition using SEVIS must submit all of the information required by paragraph (a)(1) of this section. To apply for certification in SEVIS, a school or school system must first contact the SEVIS system administrator via the SEVIS website to receive a temporary user identifications and password. This temporary identification and password will be valid for 30 days from issuance. After receiving the temporary identification and password the school must complete Form I-17 online in the SEVIS application. The form I-17 must then be printed and submitted by mail to the appropriate district office with supporting documentation in accordance with the regulations of this section.

(3) \* \* \*

(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 email 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 any dependents physically reside (not a P.O. Box or an office address).

(v) The student's current academic status.

\* \* \* \* \*

(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 using the SEVIS system 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 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 to the DSO with regard 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.

\* \* \* \* \*

(l) \* \* \*

(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*, *Principal Designated School Official*, or *Administrative School Official* means a regularly employed member of the school administration whose office is located at the school and who is 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.

(i) *Principal Designated School Official (PDSO) and Designated School Official (DSO)*. A PDSO and DSO must

be a United States citizen or Lawful Permanent Resident of the United States. 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. Each school must have a designated PDSO. The Service will 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. Each school may have up to five designated officials at any one time, including the PDSO. In a multi-campus school, each campus may have up to five designated officials at any one time including the PDSO. In a private elementary or public or private secondary school system, however, the entire school system is limited to five designated officials at any one time including the PDSO.

(ii) *Administrative School Official (ASO)*. The president, owner, or head of a school or school system must name any ASO. The ASO may not delegate this designation to any other person. Each school may have up to five ASOs at any one time. The function of the ASO is limited to clerical or administrative tasks. An ASO may not sign any Form I-20, update any event in SEVIS, or perform any other duty that requires authorization of the PDSO or DSO in the regulations. A DSO or PDSO must review and approve any data entered by an ASO.

(2) \* \* \* 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, DSO or ASO 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 principal and designated officials*. A petition for school approval must include a statement by the principal and each designated official certifying that the official is familiar with the Service regulations relating to nonimmigrant students. \* \* \*

(4) *SEVIS update*. At the time the new official is updated in SEVIS in accordance with paragraph (I)(2) of this section, the official must also certify that he or she has read Service regulations and intends to comply with the regulations.

Dated: May 9, 2002.

**James W. Ziglar,**

*Commissioner, Immigration and  
Naturalization Service.*

[FR Doc. 02-12022 Filed 5-15-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-SW-55-AD]

RIN 2120-AA64

**Airworthiness Directives; Eurocopter France Model AS332C, L, L1, and L2; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; AS-365N2; AS 365 N3; SA330F, G, and J; SA-360C; SA-365C, C1, and C2; SA.316B and C; and SA.319B Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332C, L, L1, and L2; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; AS-365N2; AS 365 N3; SA330F, G, and J; SA-360C; SA-365C, C1, and C2; SA.316B and C; and SA.319B helicopters. This proposal would require a one-time measurement of the electrical resistance between the ferry fuel tank (tank) electrostatic ground connector and the tank filler neck before the next refueling of an installed tank or before the first fueling after installing a tank. If the electrical resistance has a value more than 1.5 milliohms, this proposal would prohibit refueling the tank. This proposal is prompted by reports of an inadequate electrical bond between the electrostatic ground connector and its support on several tank installations. The actions specified by the proposed AD are intended to prevent refueling a tank that is not adequately electrically bonded, which could generate an electric arc between the refueling nozzle and the tank, causing an explosion.

**DATES:** Comments must be received on or before July 15, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-55-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to

the Rules Docket at the following address: [9-asw-adcomments@faa.gov](mailto:9-asw-adcomments@faa.gov). Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5125, fax (817) 222-5961.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000-SW-55-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-55-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

##### Discussion

The Direction Generale de L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332C, L, L1, and L2; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; AS-365N2; AS 365 N3; SA330F, G, and J; SA-360C; SA-365C, C1, and C2; SA.316B and C;

and SA.319B helicopters. The DGAC advises of the absence on several tanks of an electric bond between the electrostatic ground connector and its support. During refueling of a tank, the inadequate electrical bonding could generate an electric arc between the refueling nozzle of the tanker and the tank and could cause the tank to explode.

ECF has issued Telex No. 000112 dated June 6, 2000, which specifies a one-time measurement of the electrical resistance between the tank electrostatic ground connector and the tank filler neck to determine if the value is more than 1.5 milliohms. If the value of the electrical resistance of the electrical bonding is more than 1.5 milliohms, the service telex specifies a secondary procedure for measuring the electrical resistance. If the value of the electrical resistance is more than 1.5 milliohms after the secondary measurement, the tank is unusable and the telex specifies a repair. The DGAC classified this telex as mandatory and issued AD 2000-302(A), dated July 12, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The FAA has identified an unsafe condition that is likely to exist or develop on other ECF Model AS332C, L, L1, and L2; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; AS-365N2; AS 365 N3; SA330F, G, and J; SA-360C; SA-365C, C1, and C2 helicopters with a metal tank, part number (P/N) 330A 871310.00, .01, .02, .03, or .04 installed; and Model SA.316B, C; and SA.319B helicopters with a metal tank, P/N 3160S 7375020 or 3160S 7375020-1, installed, of these same type designs registered in the United States. The proposed AD would require, before the next refueling of an installed tank or before the first fueling after installing a tank, a one-time measurement of the electrical resistance between the tank electrostatic ground connector and the tank filler neck to determine if the electrical resistance has a value more than 1.5 milliohms. If the value of the electrical resistance is more