The Revised F-1 Student Regulations:
Analysis and Implications for Practice

IHELG Monograph 88-2

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Introduction

On May 22, 1987 the Immigration and Naturalization Service (INS) began implementation of regulations which affect parts of 8 CFR 214.2(f) and 214.3(g).¹ In promulgating these regulations, INS's stated intent was to "eliminate burdensome paperwork and maintain control over the students by more effective institutional sponsorship of the students by the schools."²

The major areas affected by the regulations are: a new and substantial delegation of authority

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² Special thanks to Dyann DelVecchio, Legal Assistant to the immigration department of Grabill & Ley and former International Student Advisor at Berklee College of Music, Boston, for her invaluable assistance in preparing these materials.

¹ These regulations will not affect students or scholars in the "J" visa category.

² Proposed regulations published August 4, 1986, Federal Register, page 27867
the Designated School Official to approve periods of Practical Training; an additional 12 months of available Practical Training time for most students; a revised definition of Duration of Status which carries with it the imposition of time limits within which students must complete their program; and, finally, changes in the transfer procedure which de-emphasize the INS's adjudicatory role and result in a shift of responsibility from the student's former school to the school to which the student is transferring. In addition, in an action that surprised many, the bar denying a change of status from Post-Graduate Practical Training to an H-1 visa that appeared in the original regulation was eliminated in the final rules.

Unlike previous periods of regulatory change which responded to a more restrictionist spirit, these regulations are the direct result of a concentrated effort on the part of the National Association for Foreign Student Affairs (hereinafter "NAFSA") to bring about regulatory reform.

First published in proposal form in the Federal Register of August 4, 1986, the new F-1 regulations represent a major breakthrough for students and Designated School Officials (hereinafter DSO). In presenting these regulations INS has allowed a significant amount of authority to the DSOs. While maintaining the District Offices' control, it has also re-routed a

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3 The term "Designated School Official" (DSO) is defined in 8 CFR 214.3(l)(1). Each certified institution is entitled to list five individuals as DSOs with INS. Only these individuals are permitted to sign the I-20, I-538, and I-721. The person or persons who the institution designates may include the Registrar, the Provost, the Dean of Students, members of the office of Admissions or Financial Aid, as well as the Foreign Student Advisor.

Not all schools have a Foreign Student Advisor. Other schools might have International Student Offices with a dozen "Foreign Student Advisors" on staff. However, a Foreign Student Advisor may not be listed with INS as a Designated School Official. Thus, a DSO is not always an FSA and an FSA may not necessarily be a DSO.
great amount of paperwork to its Data Processing Center in London, Kentucky. As part of the new regulations, we will also see revised versions of Forms I-20 AB\textsuperscript{4} and I-538.

This article will briefly discuss the history and purpose of the foreign student program in the United States and the trends which led up to this latest change in the F-1 regulations. Against this background, a detailed explanation will be given of the substantive changes brought about by the new regulations.

\textbf{History}

A discussion of the new regulations affecting foreign students would not be complete without an understanding of the substantial benefits the United States derives from the presence of those students in this country. Beginning with the codification of a national policy 60 years ago, the United States has had three important objectives in admitting nonimmigrant foreign students.\textsuperscript{5}

First, the foreign student program furthers U.S. foreign policy aims by exposing and hopefully winning the loyalty of citizens of other countries, including the elite (and future elite) of the developing world, to our culture and institutions.

This general acculturation goal of the foreign student program complements its second major aim: the creation of foreign markets for U.S. industry through the transfer of U.S. knowledge.

\textsuperscript{4} The I-20AB form (also called Certificate of Eligibility) is necessary for application for the F-1 visa and is issued by the school which the student plans to attend. Once granted the F-1 visa, the student must still present a valid I-20 form at the point of entry. The form is also used for transfer purposes.

\textsuperscript{5} For 60 years there has been a national policy to admit nonimmigrants to study in the United States. This admission policy was first codified in the 1924 Immigration Act which provided for their admission as "non-quota immigrants." The 1952 Immigration and Nationality Act codified this policy.
and skills. When the student returns home and possibly reaches a position of leadership and power, his educational experience in this country and attachment to its institutions will inure to the benefit of U.S. foreign policy makers and business interests. It follows that the foreign student, familiar with the methods of U.S. business and with U.S. technology, will conceive and execute projects in an "American way", using U.S. products and the services of U.S. firms.

The U.S. profits broadly from American-trained individuals who return to their countries having learned our business and cultural habits. The U.S. has a characteristic way of conducting itself, from the business table to the political arena. It is much easier for U.S. companies to transact business, for the U.S. government to negotiate politically and ultimately achieve its international goals, if the people with whom it deals have been trained in the United States.

Finally, the most tangible benefit of the foreign students' presence in the United States is their consumption of our goods and services; perhaps their most salient contribution is as consumers of the education process itself. Foreign students are a major source of tuition revenue at many large universities, including some of our most prestigious institutions. As the U.S. domestic student population has reduced in size during the last decade, the financial significance of the foreign students for U.S. institutions of higher learning has grown commensurately.

During the 1985-86 school year there were 343,777 foreign students enrolled in U.S. colleges and universities. Although only comprising 2.8% of the total enrollment, this reflects a substantial increase from the 1.7% in 1970. Educational institutions find these students a particular blessing since the overwhelming majority of them (67.1%) are supported by personal or family funds and a mere 2.0% receive aid from the U.S. government.6

An increasing number of schools have become dependent on their foreign student population for a large source of their revenues. Major institutions such as the University of Southern California, Ohio State, Columbia University, and Boston University, which for a long time have been international, have greatly expanded their foreign student programs in recent years. In fact, the institutions just cited have respectively the second, fifth, sixth, and seventh largest number of foreign students enrolled in the nation. That great scientific training ground, Massachusetts Institute of Technology (M.I.T.), has a foreign student population comprising 19.4% of the total student body.  

The changes in the numbers and significance of the foreign student population have occurred in parallel with the development of a new and critical national consciousness of their role in the United States. Until recent years, the foreign student program was uneventfully administered, with students causing few problems or public embarrassments: they quietly received an education and returned home. During this period (early to mid-1970's) F-1 students were admitted to the United States with a "date certain" endorsement on their I-94 arrival/departure card; that is, INS officials would attempt to gauge how long a student would need to complete his studies and would issue an expiration date accordingly. Students who needed to exceed the period of time noted on their I-94 would have to apply to INS for an extension of stay. During this period post-graduate Practical Training was granted by INS with relative ease and a minimum of documentary requirements. The late 70's saw a further liberalization when INS changed to the "Duration of Status" (D/S) system whereby students were allowed to remain in the United States for as long as they needed to complete their educational program.

7 Ibid.
At this time most Americans were not concerned with the issue of the presence of foreign students in the United States. If an average American had an image of the foreign student, it was typically that of a law-abiding, hard-working, intelligent individual, friendly to the U.S. and not a drain on our domestic resources, since he was supported by personal funds or would benefit from money specifically designated as foreign aid. It was understood that the U.S. would benefit particularly when the student returned home and assisted in the spread of U.S. cultural norms and political ideology.

This vision was shattered in the late 1970's as some foreign student groups emerged as angry and insistent political forces on the volatile college campuses of those years, at times creating incidents which upset the careful diplomacy between their governments and the United States. Politically vocal Iranians, Chileans, Filipinos, and Ethiopians surfaced on campuses, expressing opposition to the policies of their home governments. Many of these students did not confine their criticisms to their own governments, but exposed the ties between their governments and the United States. They actively assisted resistance movements at home; they marched and picketed at their countries' embassies and consular offices in the U.S., and clashed in the classroom and on the streets with their opponent compatriots.

The Iranian students were especially visible in the United States in 1978 and 1979, as the Shah's government was faltering in Iran. In early 1979, major media attention was directed at an incident in which a group of Iranian students attacked the home of the Shah's mother and sister in Beverly Hills, California.

Suddenly, foreign students became front page news. Americans, faced with a constricting domestic economy and a deteriorating international image, found in these students an easy target for their collective discontent. Who were these foreign activists but ungrateful guests taking advantage of the privileged freedoms of U.S. institutions to attack their hosts? The rhetoric of
emotion took over as Americans asked questions concerning who had invited these foreigners and how these students were able to support themselves when an increasing number of Americans were not able to afford the cost of a college education. Furthermore, foreign students were swept within the emerging anti-alien hostility directed at undocumented workers and other "illegal aliens." Powerful emotions and a lack of knowledge clouded many Americans' ability to feel sympathy for the conditions of brutality and repression in the home countries involved.

Then, in November 1979, the hostages were seized in Iran. As one of its retaliatory measures, the Carter administration authorized the INS to promulgate a special Iranian reporting and verification regulation. INS was asked to account, by providing statistical information, for the foreign student population in general and the Iranians in particular. INS, the then discredited stepchild of the Department of Justice, was unable to produce the answers. It had no hard data on the numbers of foreign students in the United States, where they were attending school, and whether they actually did return home after completing their studies. In light of the record-keeping regulations and institutional responsibilities that have since developed, it is especially significant that only seven years ago this information was not obtainable.

The facts did not matter, not even later when it was apparent that the overwhelming majority of Iranians were in status. Nor was the problem viewed as simply one of bureaucratic ineptitude--INS's perceived ineffectualness was seen as a symptom of the very American weakness that had resulted in the takeover of the U.S. Embassy in Teheran. The symbolic content

8 The President's Management Improvement Council on Foreign Students in the United States, July 1981. Actually, INS was doing a much better job than thought and it was later ascertained that students were not flagrantly abusing the law by working without authorization, transferring school without permission, or simply not returning home after completion of studies.

The results of the Iranian student status verification project revealed that as of May 18, 1981, an impressive 88% of them had been in status and 8% had applied for asylum. Only 4% were found to be in violation of their status.
of the issues was strong: the foreign student program was out of control and the responsible U.S. agency, INS, had neither the will nor the enforcement tools to manage the guests in our own home while in our guests’ home, Americans were literally held hostage.

In 1980, INS, greatly embarrassed by its part in the Iranian crisis, revoked the liberalized Duration of Status regulations and reverted to the "date certain" system, clearly with the intention of better monitoring the foreign student population. Other policy changes took place at this time: it became more difficult to obtain off-campus work authorization; students saw some increase in the denial rate of Practical Training applications, and (perhaps most telling of all), INS began to require semesterly reports from all institutions as to the status of each foreign student. In so doing, INS was placing the FSA in a new and enigmatic situation—expecting them to be both a student advocate and an enforcement agent of INS.

INS then underwent three years of internal self-examination, attempting to develop a forceful response to the perceived foreign student "problem". The result was the August 1, 1983 foreign student regulations which have as their centerpiece comprehensive monitoring and control over the foreign student population. With the 1983 regulations came a sophisticated computerized monitoring system; in compliance with this new database, INS introduced the Form I-20 I.D. Copy and the corresponding Admissions Number. The database was intended as a centralized source for the monitoring of all of students’ activities: entries, changes of program, transfers, Practical Training, etc.

9 The I-20 I.D. Copy (also called the I-20 I.D. Card) is a yellow (approx. 3" x 8") card used to identify the visaholder. Information regarding transfers, employment authorization, and Practical Training are logged on this card. Each F-1 student is assigned a unique Admission Number, which is noted on this card. Unlike the I-94 (arrival/Departure card) which may be surrendered upon departure, the I-20 I.D. is maintained by the student for the duration of his F-1 status.
With the 1983 regulations came the Form I-721. A computer-generated status report, it was intended to simplify what was then the DSO's semesterly burden of "reporting" each student's enrollment status to INS. The record-keeping system that had been in place in the early 80's was a way for the DSO to "clean house" on a semesterly basis and to regularly comply with INS record-keeping requirements. The 1983 regulations, however, state that schools were not required to submit reports to INS until/unless they receive the Form I-721. The problem has been that, while INS in its 1983 regulations touted the I-721 as enabling the agency to track students, the form has not been sent out to schools on a regular basis. In fact, nearly fours years after the promulgation of the regulation, some schools have yet to receive their first I-721. There is no logical explanation as to why some schools have received the I-721 and others have not. It is, however, clear that large institutions with enormous foreign student enrollments, once they receive their forms, will have an inordinately cumbersome task of completing this form in the roughly three month time period allowed. This is because of the fact that, for many schools, much time has elapsed since since the last administrative "housecleaning".

Nonetheless, it should be acknowledged that INS has made substantial progress in its data collection mission: INS now has fairly accurate knowledge of all F-1 students who have entered the U.S. (by this time, nearly all F-1 students have received the I-20 I.D. Copy and a corresponding Admissions Number and have been captured onto the INS Data base). On the other hand, an equally important component of the 1983 regulations was that INS be aware of each student's status through use of the Form I-721. And, because of the infrequency of issuance of

10 The I-721 contains the following information that has been captured on the INS database for each F-1 student: name, date of birth, place of birth, country of citizenship. The DSO must confirm this or correct any errors in data. Also, the DSO must certify that the student is in one of the following categories: enrolled as a full time student or pursuing a period of Practical Training (allowable exceptions include reduction of course load due to medical reasons or student being on an authorized vacation period); attending school only part-time [ie: in violation of the F-1 regulations]; not enrolled in the school; obtained an I-20 to attend the school but never reported to classes at the school; changed visa status to that of permanent resident or another nonimmigrant category.
the I-721 to an institution, this particular goal has been only partially accomplished. Still, it
must be acknowledged that an INS officer can now enter a student's Admission Number into the
computer and receive important information regarding that student's history— a feat unheard

In promulgating these new regulations INS has relinquished much of its power to the DSO by
permitting that individual to adjudicate periods of Practical Training as well as reducing the
transfer procedure to a mere notification rather than a request for INS approval. Most
significantly, for the first time we see INS admitting that most students do not abuse the
system.\textsuperscript{11} As a result, INS now wishes to concentrate its perennially limited energy on the
few students who are the perpetrators. Thus, the regulations are a progressive step for both
DSOs and the students they counsel.

The next part of this article is a detailed explanation of the terms and provisions of the new
regulations, grouped according to section.

\footnotesize
11 Supplementary Information to the Regulations published April 22, 1987,
\textit{Federal Register}, page 13225
DURATION OF STATUS

8 CFR 214.2(f)(5)

Duration of Status is now defined as the period of time necessary to complete a full course of study in any educational program plus any period of Practical Training following completion of that program plus 60 days in which to depart the United States.

The revised definition of Duration of Status represents a liberalization of the rules. This is because Duration of Status is the period during which a student is enrolled in a full course of study in any educational level (e.g. Bachelor's, Master's, Doctoral, or post-Doctoral). Thus, an Extension of Stay is no longer required to go from one educational level to another. INS has also doubled the period of time that a student has to prepare to depart the United States or to apply for another valid visa status—60 days, as opposed to 30 days.

On the other hand, new restrictions have been placed on the amount of time a student may take to complete a particular educational level (see Extension of Stay section). As a result, the regulations do eliminate the need for students progressing from one educational level to another to obtain INS permission to extend their stay, and this is in keeping with INS's stated desire to reduce some of the "paper burden" for DSOs and students. But in introducing a "time frame" system (as explained in the Extension of Stay section), new guidelines will now have to be observed by students and DSOs.
Reduction In Course Load

8CFR 214.2 (f)(5)(i)

The regulations allow a student who is compelled by illness or other medical condition to withdraw from school or to reduce his course load provided that he resume a full course of study upon recovery. During this break in studies or full-time coursework, he will be considered to be in valid F-1 status.

The Service further empowers the DSO where it states that the DSO may advise an F-1 student to engage in less than a full course of study for valid academic reasons, limited to: English language difficulties, unfamiliarity with American teaching methods or reading requirements, or improper course level placement [8 CFR 214.2(f)(6)(v)].

These two new regulations indicate INS's willingness to take a more humanitarian approach to the special needs of students involved in international educational exchange. Where the proposed regulations would have restricted students to only one semester of a reduced course load based on academic or medical reasons, the final regulations clearly show that the Service has reconsidered its previously restrictive stance. However, the Service explains in its Supplementary Information section introducing the final regulations that, although they did expand the original language of the proposal, "to extend this provision even further to individuals who have a family emergency [as some commentators requested] would leave the provision open to too wide an interpretation and would lead to inconsistency, and [the Service] therefore rejected that recommendation."
FULL COURSE OF STUDY

8CFR 214.2(f)(6)

Enrollment in a full course of study is necessary for the maintenance of lawful F-1 status under both the previous and the new regulations. It is generally defined (for undergraduates) as 12 semester or quarter hours of instruction per academic term, when such a course load requires payment of full tuition or is otherwise (for administrative purposes) considered full-time.

Both the old and the new regulations allow students to fall below the 12 credit line "when the student needs a lesser course load to complete the course of study during the current term" [8CFR 214.2(f)(6)(ii)].

This a point on which many DSOs have admitted they are uncertain---does this mean that the student may fall below a full-time course load only once during his educational program (such as in his final semester) or does it mean that the student might be allowed to fall below full-time enrollment on several occasions, providing that each time he needs a lesser course load to complete the course of study? There are many academic programs that mandate that for several consecutive semesters students take a part-time course load. For example, a student may have already taken all of the general ("foundation") course requirements for his program and may now have remaining only the "concentrate" (upper-level classes and/or classes specific to his major) courses. The student may not be eligible to take these concentrate courses concurrently, because one level of the course may be a prerequisite to the next level. In the meantime, the remaining courses that he needs to take in such a semester might not total 12 credits (or a corresponding "full-time" course load). Or, another student in a similar situation may find that he too needs several concentrate courses to complete his graduation requirements, but the necessary course(s) are not offered that particular semester. In both of these cases, it may not
be convenient for the student to take extra courses to "round out" his course load, especially if these courses are not required for graduation and are of no use to him as far as applicable credits are concerned. Also worthy of note is the fact that many students do not have the finances required to take "extra" courses simply for the sake of maintaining a 12 credit course load.

Recent communication with the INS Central Office has confirmed that, although there is an understanding of many students' legitimate needs to be part-time for several consecutive semesters, the INS interpretation of this regulation is that a student may fall below the full time course load only once due to circumstances that require he take less than a full course load to complete the program and that is in the final semester of the program. It is hoped that in the Operations Instructions to the new regulations INS might review its current interpretation of this regulation and consider a more pragmatic approach to the understanding of the various curricular inconsistencies that confront students, many of which are beyond the student's control.
EXTENSION OF STAY

8 CFR 214.2 (f)(7)

Request After Eight Consecutive Academic Years

8 CFR 214.2 (f)(7)(i)

Under the new regulations, students who take more than a total of eight consecutive academic years to complete their educational plans [at whatever educational level(s)] must apply to INS for an extension of stay on Form I-538\(^{12}\). This new provision is an example of INS's desire to prevent foreign students from becoming "professional," long-term students. The student in such a situation would have to request an extension and would be allowed to continue in student status while awaiting a reply. It should be noted that short breaks in the eight-year time period (such as vacation periods and short trips abroad) do not "stop the clock" with regard to the eight-year period.

Academic Program Time Limits

The regulations introduce a new concept: although Duration of Status is still used, students now have time limits as to how long they have to complete a given educational program at a given level [8 CFR 214.2 (f)(7)(ii) (A)(B) and (C)].

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\(^{12}\) The forthcoming Operations Instructions should address what students should do if they have been in F-1 status over 8 years or are approaching the 8-year mark.
These time limits correspond to the date that is stated on the student’s Form I-20AB for the academic program he is currently pursuing. Students will be given the time period noted at number 3 of the I-20AB plus a "grace period". Academic programs will now be classed into three categories:

• **Program of two years or less** (Typically Associate's Degree or Master's Degree programs): students will have two years plus a six month "grace period" to complete their studies.

• **Program of more than two but less than four years** (Typically a Bachelor's Degree or Diploma program): students will have four years plus a one year "grace period" to complete their studies.

• **Program of more than four years** (Typically a combined program or a double major): students will have the period of time stated at number 3 of the I-20 AB plus an 18 month "grace period" to complete their studies.

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13 The date no later than that which the student is expected to complete studies is found at number 3 of the I-20AB.
When a student changes to a different level academic program, the period of time he will be given to complete his studies will correspond to the new academic program category.

Students exceeding the academic time limit plus the "grace period" would have to request an extension on a Form I-538 and present valid academic reasons for going beyond the time limits.

In attempting to restrict the amount of time that students take to complete a given educational program or series of programs, INS is clearly attempting to exert control over those students who it believes may be intentionally prolonging their stay in the United States. However, questions arise concerning the fact that, according to the regulation, the anticipated length of the student's educational program is stated on the Form I-20AB issued at the beginning of his academic program. Thus, it is essential that great attention be paid by the FSA to the student's I-20AB issued at the beginning of that particular academic program in order to monitor when the student should be completing his studies.

In reality, not all initial I-20s are monitored this closely. As of this writing, many schools do not file copies of the initial I-20 AB form that they send to students; many students lose their initial I-20AB and obtain a replacement from the FSA. In order for these regulations to work smoothly, both the DSO and the student will have to pay special attention to the date and time period indicated at number 3 on the initial I-20AB. Further, when a student transfers schools this is one more piece of vital information that the DSO at the new school must obtain (for discussion, see Transfer of Schools section).

Strangely enough, the time limit idea runs contrary to the previous regulatory definitions of Duration of Status because it imposes "date certain" restrictions on the amount of time a student can take to complete a program. Further, it presumes that the reason why a student has exceeded the time limitations placed on his course of study is only due to a student's lack of
educational progress, (brought about, assumedly, by a willful desire to unnecessarily prolong his stay) and not owing to other issues such as economic contingencies, unforeseen changes in curriculum, or personal crises.

TRANSFER OF SCHOOLS

8 CFR 214.2 (f)(8)

The Transfer of Schools section of the regulations represents a significant change in INS policy because, where previously INS retained the right to approve or deny a transfer, it is now content to have its Data Processing Center in London, Kentucky simply be notified of the transfer by the DSO at the new school. The previous regulations required a student to notify INS each time he wished to transfer from one school to another (within the same educational program) or to begin another educational program after having completed his present program (i.e. Bachelor’s to Master’s degree program). Different forms were required, and specific time frames had to be observed. The responsible school was the "old" (or current) school; however, in order for the procedure to run smoothly, the cooperation of both the "old" and the "new" school (for receipt of the necessary form I-20AB) was absolutely required. This system, although in place for over three years, was cause for confusion for students and DSOs, and often generated inordinate amounts of paperwork. Because of the complicated nature of the old regulations, many students unwittingly fell out of status because they or their FSAs were not aware of the fact that they needed to obtain INS approval in order to transfer or because they were unaware as to what the appropriate deadlines or procedures were.

The major thrust of the new regulation is that the responsibility for processing a transfer (i.e., notifying INS) now clearly rests with the "new" school rather than the "old" school and only one piece of paper will have to be mailed to the Service--notification of the student's transfer on a
Form I-20 AB. Since the definition of Duration of Status has now been expanded to include enrollment in any educational program— even if the student is now entering a higher academic level— no application for extension of stay is required.

Although not specifically stated, it is clear from a reading of the regulation and its Supplementary Information section that it is now the new school that must ascertain whether or not the student was maintaining status at the old school. The regulations indicate that the preponderance of responsibility now rests with the DSO of the new school to process the I-20 AB. This regulation will inevitably place a new and unfamiliar burden on the Admissions offices of many institutions who at the moment are not responsible for administering transfers for their new students due to the fact that the “old” school carried this responsibility in the past. It will be necessary for many institutions to formulate policies as to how they will ascertain that the incoming student is in valid F-1 status.

As suggested in the Supplementary Information, one way to accomplish this is by reviewing the student’s transcript or through personal communication with the FSA at the previous school (although this can be a costly method). Many schools have developed a form called a “Foreign Student Advisor’s Form” (or some similar nomenclature) which is sent to all prospective foreign students. The student completes a section of this form and then passes it on to their FSA or DSO to complete the necessary information regarding their enrollment status. When completed, the form is returned to the Admissions Office or International Student Office at the new school. Such a form is also useful in determining the student’s financial status (for example, does he owe money to the old school?) academic standing, special needs, etc. This is the type of information that is not always found in a student’s transcript, and is therefore extremely useful. Also, such a form might be a helpful instrument in obtaining the information from number 3 of the I-20 which is needed to assist the DSO in ascertaining the time limits of the student's program.
In order to successfully complete a transfer, the following seven steps must be followed:

1) Student obtains I-20 AB from new school

2) Student must inform DSO at old school of intention to transfer

3) The student himself must complete Page 2 of the I-20AB and submit it to a DSO at the new school within 15 days of the student beginning classes at the new school

4) DSO at the new school signs I-20 ID and returns it to student

5) Old school name is added to front page of I-20AB (number 2c) and DSO at the new school initials the addition

6) Page 1 of the I-20AB is submitted by the DSO at the new school to INS Data Processing Center In London, Kentucky within 30 days of receipt of form from student

7) Copy of I-20 must be sent to old school [INS is developing a new form with an additional page to meet this need]

Note that no Form I-538 is submitted if student is only transferring and does not need an Extension of Stay.
Notification of Commencement of New Program at Same School

Although not contained in the regulations, INS has stated that students beginning a new academic level program at the same institution (such as, for example, completing a Bachelor's degree program and beginning a Master's program) do need to have their DSO notify INS of their entry into the new program by submitting an I-20AB to the Data Processing Center.

Transfer of School Through Re-Entry Into the U.S.

8 CFR 214.2(f)(4)(ii)

A noteworthy liberalization involves cases where students have already received an I-20AB from the new school and travel outside of the U.S. prior to commencing studies at the new school. These students may re-enter the U.S. without having to go to a U.S. Consulate and have the name of the new school endorsed on the F-1 visa page of their passport. The INS officer will endorse the students' I-20 I.D. to indicate the name of the new school, and will accordingly endorse the I-20AB and send it to the INS Data Processing Center.

PRACTICAL TRAINING

8 CFR 214.2(f)(10)

Introduction

In perhaps the most significant change found in the new regulations, INS empowers the DSO to authorize periods of Practical Training. In doing so, however, INS has built in controls to ensure that the DSO act with the recommendation of an academic advisor or a department chairman.
Previously, INS had absolute power to determine a student's Practical Training future. The notion that an INS officer (whose knowledge of the student's educational field or country might be limited) had greater control in determining a given country's employment training conditions than the student from that country, the professor who specialized in that field of study, or the government representative of that country, had always been a source of great frustration for students and their advisors. The new regulations will eliminate that frustration by placing the responsibility for making that determination squarely on the shoulders of the academic and/or administrative officials of the school—individuals who, collectively, are best qualified to determine how the student's specific curriculum relates to current conditions in that field in the student's home country. Further, there had been many cases of inconsistency from one INS district to the other (and even within districts!) as to exactly what documentation had to be presented in order to convince INS of the unavailability of similar opportunities in the home country. The new regulation will make that problem a thing of the past.

Under the old regulations the Service was not always able to adjudicate Practical Training applications in a timely fashion. This was the cause of major difficulties for many students who not only lost out on employment opportunities but also experienced economic hardship as a result of having to remain in the United States with no income while awaiting an answer from INS. As of this writing, there are several students from the Boston district who have yet to receive answers on Practical Training applications that were filed up to 9 months ago. Students seeking summer Practical Training often filed applications 2-3 months in advance of the beginning of summer vacation; in many cases, the summer was half over before the student received an answer. In both situations, students have lost jobs because the employer could wait no longer to fill the open training position. Such administrative inefficiency clearly ran counter to the purpose of Practical Training. The new regulations will eliminate the problem of lengthy adjudication time.
New Regulations

The new regulations represent a major shift in the role of the FSA (or DSO), largely reducing INS's "absolute" power over determining a student's future vis-a-vis Practical Training and placing it in the hands of the DSOs. In fact, the most sweeping and dramatic changes in the new regulations are those involving Practical Training. The new regulations include two major breakthroughs:

1) A DSO now has the authority to approve periods of pre-graduation (e.g. "summer" vacation") Practical Training as well as the first 6-month period of post-graduate Practical Training.

2) Most students will now be eligible for a total of 24 months' Practical Training time (double the current time): 12 months to be used prior to completion of studies and the other 12 months to be used in post-graduate Practical Training.

By placing adjudication in the hands of the DSO, the new rules will also speed up adjudication time, heretofore a major concern for students in many INS Districts.
Practical Training Prior to Completion of Studies

8 CFR 214.2(f)(10)(i)(A)

For the first time INS introduces the concept of "Curricular Practical Training". This may be a source of confusion for DSOs attempting to understand the Service's various approaches to the various forms of pre-graduation Practical Training. Although it is not readily apparent from a cursory reading of the regulations, recent communication with the INS Central Office has confirmed that INS classifies pre-graduation, study-related "work" into three categories:

1) "Summer Vacation" Practical Training: This is when Practical Training is not required or mandated by the institution's program or curriculum. Students in "traditional" programs will engage in this type of Practical Training during their summer vacation or their annual authorized vacation period [8CFR 214.2(f)(10)(i)(A)(3)].

2) Practical Training After Completion of Courses Excluding Thesis: This is when a student is in a Bachelor's, Master's or Doctoral degree and has completed all required coursework but has yet to complete his thesis or equivalent [8CFR 214.2(f)(10)(i)(A)(1)].

3) Curricular Practical Training: The concept of Curricular Practical Training is introduced for the first time in the new regulations [8CFR 214.2(f)(10)(i)(D)]. This is when a student attends an institution which requires or makes optional periods of off-campus Practical Training related to his field of studies. The following two types of Curricular Practical Training are found in the regulations:
• Practical Training that is required by only one or several classes in the student's entire program of studies - the training is part of an isolated course (or several courses) but not required as part of the entire curriculum [8CFR 214.2(f)(10)(i)(A)(2)]. Examples might include Student Teaching or a Practicum during a student's senior year; in such cases, the student will be working five or ten hours a week in conjunction with an upper level class (concurrent coursework). This last example is termed by INS a "parallel program" and is explained in 8CFR 214.2(f)(10)(D).

• Practical Training that is part of the regular required curriculum: examples include internships, cooperative education ("co-op"), or alternate work/study programs as explained in 8CFR 214.2(f)(10)(b).

Procedure for Applying for Practical Training

Prior to Completion of Studies

8CFR 214.2(f)(10)(B)and(C)

To obtain Practical Training prior to completion of studies, a student will submit to the DSO a completed Form I-538, their I-20 ID Copy, and a certification from a department chair or academic advisor stating that to the best of his knowledge and belief comparable employment is not available in the student's home country. The DSO must still endorse the Form I-538
(indicating approval) and endorse the I-20 ID Copy\textsuperscript{14} with the dates of the authorized Practical Training. The DSO then sends the I-538 to the INS Data Processing Center. \emph{Because no INS officer is required to adjudicate the application, no $15 fee is required for any Practical Training applications authorized by a DSO.}

Under the new regulation, students in the Curricular Practical Training category \emph{need not} present a certification regarding availability of similar employment opportunities in their home country, since the program itself already mandates that training is necessary \textsuperscript{[8CFR 214.2(f)(10)(i)(B)(3)].}

Students in the Curricular Practical Training category will, however, be subject to two important restrictions:

1) Periods of full-time, off-campus employment (i.e. no concurrent coursework) will be deducted from the total of 12 months Practical Training permitted before graduation. Periods of 6 months or more of any type of pre-graduation Curricular Practical Training make the student \textsuperscript{ineligible for post-graduate Practical Training.}

2) Periods during which a student engaged in coursework and off-campus employment at the same time (so-called "parallel programs") will be deducted from the total of 12 months'

\textsuperscript{14} Although this new regulation may increase the workload of the DSO, for the student there is an advantage. Students engaged in Curricular Practical Training programs will have an I-20 I.D. endorsed with work permission, thereby satisfying the proof of eligibility to work requirements found in the Employer Sanctions section of the recently-enacted Immigration Reform and Control Act.

In fact, if Curricular Practical Training, which requires the DSO to write the authorized period of off-campus work permission on the student's I-20 I.D., had not been created in these regulations, many students would have been unable to be employed in Practical Training because employers would have been fearful of violating the verification to work requirements of the law.
Practical Training at the rate of 50% (one month deducted for every two months of parallel coursework and Practical Training). Again, any such periods totalling 6 months or more render the student ineligible for post-graduate Practical Training.

As an example, let us consider two students who are about to graduate: Student 1 has been enrolled in a "co-op" ("Curricular Practical Training" program) and has already engaged in 6 months' undergraduate Practical Training. Under the old rules, Student 1 would be eligible to apply for the 6 remaining months as post-graduate Practical Training. Under the new rules, he is not eligible for any additional Practical Training. On the other hand, Student 2 has attended a more traditional school and has already used 9 months of "summer vacation" Practical Training. Under the old rules, Student 2 would be eligible for only 3 more months of post-graduate Practical Training; under the new rules, this student is now eligible for an additional 12 months of Practical Training!

INS rationalizes this approach based on their belief that students whose curriculum mandates that they receive extensive work experience or degree-related training as undergraduates do not need additional training upon graduation— for these students, INS believes, post-graduate Practical Training would be redundant. INS acknowledges that some traditional "co-op" programs may have a curriculum that mandates that in order for the student to graduate he must participate in a period of Practical Training that exceeds 12 months. However, it is not INS's intention to force these institutions to restructure their programs and limit these students to 12 months Practical Training prior to completion of studies.\footnote{The Operations Instructions are expected to address this issue.}
Practical Training After Graduation

8CFR 214.2(f)(10)(ii)

Under the new regulations most students are eligible for 12 months of Practical Training after graduation. The process whereby a student applies for Practical after they graduate would be the same as that outlined above for students wishing to obtain "Summer Vacation" Practical Training.

First Period of Post-Graduate Practical Training

8CFR 214.2(f)(10)(ii)(B)

A student wishing to apply for the first period of Practical Training after graduation may submit his application to the DSO starting 60 days before completion of studies until 30 days after the date of completion of studies; thus, as with the previous regulations, a student has roughly three months in which to make this application.

Unlike in the past, there is no provision in the new regulations for a student who wishes to be granted a full year of post-graduate Practical Training at once based on the submission of a job letter accompanying his application. Even if the student can present a one-year employment letter, he will not be eligible to be granted the full 12 months at one time.
Second Period of Post-Graduate Practical Training

8CFR 214.2(f)(10)(iii)

In order to be granted permission to engage in a second period of post-graduate Practical Training, the student must have secured employment during his first period. An important change from the previous regulations is that within 30 days of the student beginning qualified employment he must submit a request for a second period of Practical Training to the Service office having jurisdiction over the actual place of employment. The student must again submit a Form I-538 (endorsed by the DSO, this time with a $15 fee), his I-20 I.D. copy, and a letter from the employer. This letter must outline the position, its specific training duties, the date that the employment began, and the date that the employment will terminate. This letter must be reviewed by the DSO before it is submitted. As is the case now, the student may continue working while the application is pending. In adjudicating the application for the second period of Practical Training, INS will require that:

1) the student began employment during the first period;

2) the work be directly related to the student's course of study; and

3) the training not exceed the 12 month post-graduate maximum

In a significant change, the student does not need to re-establish that the training is not available in his home country--INS will refer to the DSO's previous certificate submitted as part of the application for the first period [8CFR 214.2 (f)(10)(iii)(B)(3)].
Computation Dates for Post-Graduate Practical Training

8CFR 214.2(f)(10)(ii)(D) and 8CFR 214.2(f)(10)(iii)(D)

The regulations state that the beginning date of the first period of post-graduate Practical Training will be the date of completion of studies and that the ending date will be a date six months after the date of completion of studies. It is this date that is written on the I-20 I.D. by the DSO. The actual date that the Practical Training clock starts "running", however, will be determined by INS at the time a student applies for a second period of Practical Training. The actual date of the beginning of Practical Training will be either the date the student begins employment or a date 60 days after the completion of studies, whichever is earlier [8CFR 214.2(f)(10)(ii)(D)]. If a student begins employment one or two months after the official commencement of Practical Training time as noted on his I-20 I.D., INS will calculate the Practical Training time as having begun at the time he actually started his position. In this way, the student will not have lost valuable Practical Training time. If, however, a student does not find and begin a position until more than two months after the noted completion of studies, he will not be able to recover any lost time--that is, INS will not credit him for the unused Practical Training time. Given this explanation it becomes clear why it is essential that the student obtain a job letter within 30 days of the beginning of employment. Thus, the end date of the second period will be exactly 12 months after the employment began, or 14 months after the completion of studies [8CFR 214.2(f)(10)(iii)(D)].
RECORD-KEEPING REQUIREMENTS

8 CFR 214.3(g)

This section of the regulations brings the record-keeping requirements for foreign students more into line with the Requirements of the Family Education Rights and Privacy Act of 1974 (also known as the Buckley Amendment). This will make life easier for DSOs who until now felt that they were operating on a "double standard" with regard to information that could be given out for foreign students and that which could be given out regarding U.S. citizens and permanent residents.

The final version of the regulations adds a requirement that the school keep a photocopy of the I-20 ID [8CFR 214.3(g)(xii)]. Also, a school is required to respond orally on the same day to INS requests for information if it concerns a student who is in custody; however, a school has three work days to respond to requests for information on any individual students and ten work days to respond to requests for information on any class of students [8CFR 214.3(g)(xii)].

CHANGE OF STATUS TO H-1

The previous regulations placed no restrictions on students engaged in post-graduate Practical Training from changing status to that of an H-1 temporary worker. The proposed regulations, however, included a dramatic and controversial provision which would have required INS to deny any change of status request from F-1 student to H-1 temporary worker for any individual who was engaged in post-graduate Practical Training. Under that proposal it still would have been possible to apply for an H-1 visa at a U.S. consular post abroad. The proposed bar to
change of status was due to a Service belief that the "practical training experience was being abused by some individuals to gain temporary and ultimately permanent employment in the United States rather than to gain practical experience to be used upon return to the home country." 16

Many comments were voiced with regard to this particular proposal, and the overwhelming majority were opposed to the provision. Many simply did not agree with the Service's perception of the high rate of abuse; others also stated that INS had no quantitative proof of their assertion of a high rate of abuse.

As a result, this provision was excised from the final regulation. The Service admits in its Supplementary Information statement to the final regulations that "a regulation of such impact should not be promulgated without sufficient statistical data to either substantiate or refute this perception." However, they added that they "may again propose some action after studying whether abuse of the practical training system is occurring."

CONCLUSION

It is INS's stated belief (as written in the Supplementary Information preceding the regulations) that "implementation of this regulation will allow it [the Service] to concentrate resources on the small number of students who are most likely to violate the regulation, and therefore [the Service] takes a more responsible approach to enforcement of the regulations."

16 Proposed regulations published August 4, 1987
Federal Register, page 27867
Under the new regulations, more decisions will be made by DSOs and fewer by INS—especially those concerning Practical Training and transfers.

The new F-1 regulations represent an unprecedented delegation of authority to the DSO, an empowerment which is not found anywhere else in the body of Immigration law. With this new power comes an enormous challenge to the DSOs that they handle it fairly and responsibly. If the DSOs as a group do not live up to their substantially increased power (for example, if too many periods of Practical Training are indiscriminately granted), it is unlikely that INS will ever again see fit to bestow such power. DSOs should therefore be sensitive to this and, at every turning, use their power wisely.

While the new F-1 regulations represent dramatic breakthroughs, they will also present complications for students and institutions. New regulations always bring with them some measure of confusion and necessitate a re-education on the part of students and the DSOs who are responsible for their welfare. It should be remembered that the community of foreign students and DSOs have only just begun to feel comfortable with the latest set of regulations to come on the scene, and these regulations are well over three years old.

On the other hand, many provisions are a genuine attempt at streamlining procedures and will inevitably result in great benefits for students and FSAs. Although job descriptions will vary greatly, the intended function of most Foreign Student Advisors is not only to provide information and advice in the area of immigration law but also to assist those students in the many aspects of cultural adjustment that are inherent to international educational exchange. Indeed, one of the major motivations behind the NAFSA Task Force's writing "Regulatory Roadblocks to International Exchange" and "Plan of Implementation for a New System of Students/Schools Regulations Governing Nonimmigrant Students" (which, in large part, precipitated the new regulations) was the sense that it is essential that foreign students and
their advisors have sufficient time and energy to devote to the other, equally valid, issues presented by international exchange.

Perhaps these new regulations will make that a possibility.