F-1 REGULATIONS:
A MIXED BLESSING FOR FOREIGN STUDENTS

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F-1 Regulations: A Mixed Blessing for Foreign Students

Recent Operations Instructions Leave Some Issues Unresolved

by Adam Green, Esq.* and Dyann DelVecchio*

This article combines commentary on the F-1 student regulations of May 22, 1987 and the Operations Instructions issued December 24, 1987. For more information and a discussion of the history of the foreign student program, please refer to The Revised F-1 Student Regulations: A New Era for the Designated School Official by Adam Green, Esq. published in the American Immigration Lawyers Association (AILA) Immigration Journal, Volume X, Numbers 3 & 4.

INTRODUCTION

The May 22, 1987 F-1 student regulations1 combined with the recently published Operations Instructions form yet another chapter in the developing history of foreign students in the United States. In promulgating these regulations, INS's stated goals were "to eliminate burdensome paperwork and maintain control over the student by more effective institutional sponsorship." This article will discuss the full picture created by the 1987 regulations in conjunction with the long-awaited Operations Instructions (hereinafter referred to as "OIs") and will attempt to illustrate the extent to which INS's stated goals have been met.

Historically, the F-1 OIs have been thorough and extensive, clarifying regulatory ambiguities and explaining procedures in detail--even those procedures which, although seemingly unimportant to the outsider, offer invaluable guidance in helping students and Designated School Officials stay safely within legal parameters.2 The 1985 OIs (published in response to the August 1983

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

2 The term "Designated School Official" ("DSO") is defined in 8CFR 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 forms. 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. On the other hand, some schools have large and well-equipped International Student Offices with a dozen or more "Foreign Student Advisors" on staff. However, a Foreign Student Advisor might 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.
regulations) were very much in keeping with this reputation for clarity and thoroughness. The 1987 OIs, however, break with this tradition. By and large, they fail to clarify many of the ambiguities that have surfaced in attempting to interpret the mandate of the 1987 regulations and they present far less substantive information than earlier OIs. Unlike their predecessors, they do not serve as a useful complement to the regulations, nor can they be seen as outlets for problems created by the regulations-- the new OIs impose restrictions rather than present solutions.

Indeed, there are more than a few areas of ambiguity in the regulations which were not resolved or even addressed in the OIs. As we will explain below, at this writing there are several issues which will create problems for students and schools precisely because they were not resolved in the OIs. By its own admission, INS has not successfully explained or accounted for every possible scenario or contingency. DSOs are already scrambling to find satisfactory explanations and interpretations of the regulations. In fact, so many questions have remained unanswered that it is likely that INS will have to present regulatory amendments or supplementary OIs at a later date.

An examination of the foundation of these regulations/OIs will reveal two major cornerstones. They are: 1) the fact that INS has granted DSOs the right to approve periods of Practical Training and in so doing has delegated substantial power to the schools; and 2) the fact that INS has declared war against "professional students" by altering the definition of Duration of Status ("D/S") and devising two systems whereby students will have to apply for Extensions of Stay. These two cornerstones present what many DSOs, students, and even INS officials will perceive as "the tradeoff." In allowing DSOs to grant periods of Practical Training (as well as allowing more total Practical Training time to many students), INS is making a good faith effort to stay within the original spirit of Practical Training: that is, that Practical Training should be seen as a positive force within the context of international educational exchange rather than a "stepping stone" to permanent residence. The compromise is that, in return for this unprecedented authority, many DSOs will find the rules governing Extension of Stay and Duration of Status to be, if not too restrictive, too confusing to understand and properly implement.

It should also be mentioned here that, because Foreign Student Advising is such a new and growing field, strict requirements for entry into the field have yet to be established (although the National Association for Foreign Student Affairs ["NAFSA"] has made great steps in formulating sound recommendations for entry criteria). At the time of this writing, the range of backgrounds is broad. Also varied is the image that FSAs have with respect to their role as liaisons between students and the government, with the two extremes being those FSAs who are disciplinary in nature and regard themselves as agents of INS and those FSAs who are more oriented towards cross-cultural awareness and international educational exchange-- such FSAs tend to regard themselves strictly as student advocates.
In accordance with its above-stated goals, the regulations have reduced a lot of INS's own paperwork; however, they seem to have created more paperwork for the student and the DSO. Further, by introducing what many will call an unnecessarily complicated system of Duration of Status and Extension of Stay, INS should be satisfied that it will achieve better control over students.

In order to "get the ball rolling" with respect to Extension of Stay, schools and students now have a October 1, 1988 deadline to contend with. All students who required an Extension of Stay as of May 22, 1987 (the date the regulations went into effect) or later will have until October 1, 1988 to submit their Extension of Stay application (more details of this requirement and procedure are outlined later in the article). Because of the relationship between the students and the responsible officers of the school, this means that, in reality, it will be the burden of the school to "round up" students and make it known to them that they may need to apply for an Extension of Stay. Even though the regulations state that it is the student's responsibility, unless the students are made aware of their new obligations, they will not be able to comply and may lapse out of lawful student status. Further, failure to notify a student in a timely fashion as to his obligation to apply for an Extension of Stay may subject schools to potential legal liability.

To understand the significance of these new regulations it would be helpful to see them in their historical context. Thus, the following is an historical summary of the foreign student program, in which is explained the opposing currents or "tensions" which have been prevalent in the Government's approach to foreign students: the laissez-faire approach apparent in early years and the "restrictionist" approach that has characterized recent years.

**History**

A discussion of the new foreign student regulations might seem incomplete without an historical overview of the foreign student program in this country.³ Beginning with the codification of a national policy 60 years ago, the United States has had three important objectives in admitting nonimmigrant foreign students: 1) the furtherance of 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; 2) the creation of foreign markets for U.S. industry through the transfer of U.S. knowledge and skills; and 3) the foreign students'

³ 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.
consumption of our goods and services. As foreign students are a major source of tuition revenue at many large universities, perhaps their most salient contribution is as consumers of the education process. Indeed, an increasing number of schools have become dependent on their foreign student populations for a large source of their revenues.

The increase in the size and significance of the foreign student population has 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: INS officials would attempt to gauge how long a student needed 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-graduation 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.

At this time, most Americans were not concerned with the presence and growing numbers 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 usually supported by personal funds or by 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, not only expressing opposition to the policies of their home governments, but also exposing the ties between their governments and the United States. They actively assisted resistance movements at home; they marched and picketed at

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4 Detailed information and statistics regarding foreign students in the United States can be found in Open Doors, an annual report on International Educational Exchange published by the Institute of International Education, New York, New York.
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 number 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 eight years ago this information was not obtainable.

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 the FSA 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. At the time of the promulgation of the 1983 regulations, INS established a sophisticated computerized monitoring system. In compliance with this new database, INS introduced the Form I-20 I.D. Copy and the corresponding Admission Number. The data base was intended to be a centralized source for the monitoring of all of the students' activities: entries, changes of program, transfers, Practical Training, and the like.

In promulgating the 1987 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 procedure rather than a request for INS approval. Because INS is perennially underfunded and understaffed, this delegation of power and responsibility is a way of "sharing the workload." And, although INS has admitted that most students do not abuse the system, these regulations make it clear that it seeks to concentrate its limited resources on the students who are the perpetrators.

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

**DURATION OF STATUS (D/S)**

*8CFR 214.2 (f)(5)*

The regulations define Duration of Status as the *entire length of time during which a student is enrolled as a full-time student in any educational program* (emphasis added) plus any period of Practical Training plus an additional 60 days to prepare for departure. During those 60 days, the student remains in F-1 status. As before, the 60-day period may be used to prepare for departure or to allow a student sufficient time to apply for a change of status. Here INS has *doubled* the "grace period" it allows students: the 1983 regulations allowed students only a 30-day period.

The regulations allow a student to move from one educational level to another (*i.e.*, Bachelor's degree to Master's degree) without having to apply for an extension of stay: the student must simply follow the procedures for a transfer [*8CFR 214.2(f)(8)*]. However, as is explained in the
Extension of Stay section below, the regulations do not present us with the pure and conceptual definition of Duration of Status that was previously in effect. Rather, students are now presented with not one, but two sets of time limits within which they must complete their programs.

**Conversion to Duration of Status**
OI 214.2(f)(5)(ii)
In another reflection of the 1983 regulations, the OIs state that any bona fide student who was admitted to the U.S. as an F-1 (or changed his status to F-1) before May 22, 1988 will be automatically converted to Duration of Status. Also, any dependent spouse and children maintaining valid F-2 status will also have Duration of Status.

** Interruption or Reduction in Course of Study**
8 CFR 214.2(f)(5)(i)
The regulations state that a student taking less than a full-time course load because of illness or other valid medical reasons is considered to be in status for the duration of the illness or the medical condition and is therefore eligible for any benefits of a full-time student in status (Practical Training, Off-campus Employment Authorization, and Transfer).

Further, any student who takes less than a full course load on the advice of the DSO for valid academic reasons is also considered to be in status [OI 214.2(f)(5)(i)]. In a significant change, the regulations accord power to the DSO in determining the reasons why the student should be allowed to dip below the full-time level. However, it is interesting to note that neither the regulations nor the OIs address two issues:

1) How long might a student remain in F-1 status while taking a reduced course load (we might assume indefinitely); and

2) Because INS reserves the right to review a DSO's decision at a later date, is the DSO advised to maintain written documentation supporting his or her decision?

The regulations merely state that is is assumed that the student will resume a normal full-time course load as soon as the situation improves; however, it could be presumed that a DSO might have an easier time defending a decision if there were supporting documentation in the student's file to support that decision.

Where the 1983 regulations did not explicitly empower the DSO to advise students to go below a full-time course load, the 1987 regulations clearly state that a student taking less than a full load due to illness or for valid medical reasons (emphasis added) will be considered in status [8CFR
214.2(f)(5)(ii). Thus, the new regulations allow for a wider interpretation, and grant greater decision-making power to the DSO. (The old regulations did state that, when compelled by illness, a student may go under a full course load, but did not explicitly empower the DSO to authorize the student in his decision.)

Similarly, in a broader and more generous interpretation, the regulations allow students to go under the full-time level because they have not adjusted culturally or linguistically to life in the United States or to American teaching methods or reading requirements [8CFR 214.2(f)(6)(v)]. This is a significant step forward for INS, suggesting a greater understanding of some of the real issues involved in international educational exchange.

**Review of DSO's Decision to Recommend Less than a Full Course of Study**

In the very words of the OIs, "the current regulations require minimal contact between the student and the Service after the student's initial admission to the U.S." It is because of this "minimal contact" that a DSO's decision may not be seen and reviewed by the INS until a much later date. Although at 8 CFR 214.2(f)(6) the Service grants DSOs the authority to recommend less than a full course of study, in the OIs it reserves the right to review and approve these decisions at a later date [OI 214.2(f)(6)].

The groundwork for this particular OI was set forth in a letter from Lawrence Weinig, Deputy Assistant Commissioner, Adjudications, INS Central Office dated October 6, 1987, of which the OI is an interpretive reiteration.\(^5\) The letter concerns the INS interpretation of decisions made by DSOs regarding their recommending a lower course load. The letter states that, although there are no established procedures for systematic review of recommendations made by DSOs pursuant to 8 CFR(f)(6)(v), the Service will review the DSO's decision whenever an F-1 student makes contact with the Student (for example, when the student files an application for benefits or for an Extension of Stay). Once the Service has endorsed a decision made by a DSO, the decision may not be reviewed again at a later time. Only decisions made subsequent to the previous review are subject to examination in the student's later contact with the INS. Thus, INS places neither the school nor the student in "double jeopardy": once a DSO's decision is officially sanctioned (albeit at a much later date), it will not be subject to a later review. [In cases where a student is applying for benefits or for an Extension of Stay and has a form indicating a reduced course load, it would

\(^5\) *Interpreter Releases* Volume 64, Number 42, November 2, 1987, pp. 1221, 1231-1232
be assumed that the DSO would provide a clear and thorough explanation of the fact that the student reduced his course load with the authority of the DSO.]

An important issue concerns situations where the Service does not approve a DSO's recommendation that a student go below a full course load. In such cases, Mr. Weinig's letter explains (and this is reflected in the OIs) that it is for the DSO to demonstrate that the permission to take a less than full load was granted in good faith. Failure to offer a reasonable explanation for the decision or evidence of bad faith will be construed as an intentional abuse of the student/school program. In the case of INS's perception of such abuse, the letter continues, INS will begin proceedings to revoke the student's status and the school's INS certification may also be questioned. Finally, "in the absence of proof of abuse," INS will not take action against the student or the school.

Nonetheless, it appears that it would be wise for a DSO to retain documents and, as always, be in a position to be accountable for decisions. Where the regulations do grant DSOs new responsibilities, it is important that they not only use their new power wisely and judiciously, but that they maintain good records. Since the student's status and the institution's certification may always be questioned for valid reasons, DSOs must never allow themselves to relax too much.

EXTENSION OF STAY
8 CFR 214.2(f)(7)
Where the 1983 regulations nearly did away with the notion of a student having to apply for an Extension of Stay, the 1987 regulations and the new OIs indicate that for some this will become a necessary occurrence. The 1983 definition of Duration of Status allowed a student unlimited time to complete his education program as long as he remained in valid F-1 status. Further, the previous regulations did not place any time limit on the amount of years that a person may be an F-1 student in this country. As a result, Extensions of Stay were only required in cases where a student was beginning a new level of educational program and obviously needed more time to complete it. [For example, a student who wished to begin a Master's degree program after having completed a Bachelor's degree program at a different school needed to apply for a Transfer of Schools and an Extension of Stay.]

With the present regulations, however, students are subject to two sets of "time limits" regarding how long they may take to complete their studies in the U.S. In a new and modified definition of Duration of Status, the regulations place strict limits on the amount of time that a student may
remain in F-1 status or at a certain academic level. This new definition is somewhat confusing and contradictory, as the former definition of Duration of Status was liberal, open-ended (ie, not "date-certain" in nature) and, in effect, without limits.

Under the new definition of Duration of Status, two important time limits must be considered because there are now two circumstances under which a student must apply for an extension of stay. The conditions are as follows:

1) REQUEST AFTER EIGHT CONSECUTIVE YEARS [8 CFR214.2(f)(7)(i)]
The 8-Year Rule: If a student is in F-1 status for 8 consecutive academic years, he or she must apply for an extension of stay in order to continue in valid F-1 student status. Once granted, the student does not have to apply for an Extension of Stay until an additional 8-year period has elapsed. (Thus, a student will be given an 8-year "general extension" whether or not he needs the entire 8-year period).

2) ACADEMIC PROGRAM TIME LIMITS [8 CFR 214.2(f)(7)(II)(A)(B)(C)]
The I-20 Rule: In a direct response to the Service's perception that some students were abusing the old definition of Duration of Status by intentionally prolonging their stay and "stretching out" educational programs, the regulation imposes time limits on the amount of time that a student may take to complete a certain level of educational program. The limits go according to the projected length of the program as stated on the Form I-20 issued at the beginning of his program at that particular educational level. The limits are as follows:

- **Program of 2 years or less:** Students will have 2 years plus a six month "grace period" to complete the program (typically, a program of this length would be an Associate's degree, an English as a Second Language program, or a Master's degree).

- **Program of more than 2 years but less than 4 years:** Students will have 4 years plus a 1 year "grace period" (typically, Bachelor's degree programs would come under this category).

- **Program of more than 4 years:** Students will have the period of time stated on the I-20 plus an 18 month "grace period" (examples would include a Ph.D. program, a combined program, or a double major).

Thus, the OIs state that, as of October 1, 1988, all students who have exceeded the time limits set forth in (1) or (2) above must apply to the Service for an Extension of Stay [OI 214.2(f)(7)(ii)]. In order to apply for an Extension of Stay, a student must submit an I-538 and a $15 filing fee to the Service. Contrary to what had been hoped for, there was no provision for a grandfather clause in either the regulations or the OIs.

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6 The Form I-20AB (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 Form I-20 at the point of entry. The form is also used for transfer purposes.
As of October 1, 1988, the restrictions will affect, for example, any student who has been in continuous F-1 status since 1979. They would similarly affect a student who has taken more than 5 years to complete a 4-year program (or has exceeded any of the time limitations noted above). The INS Central Office has confirmed that the date that the 8-year clock will start "ticking" is the date of the student's original entry in the United States (rather than the date they begin their program).

These new requirements will undoubtedly create problems and confusion for both students and their DSOs. It will be particularly difficult to "catch" all of the students who are now in the United States and who need to apply for an Extension of Stay by October 1, 1988. For one thing, many institutions do not have records that go back far enough. Secondly, many students' original I-94 cards and passports (indicating original entry) have been surrendered at the border or (in the case of passports) turned in to government agencies so that a new one could be issued. Thirdly, one of the biggest problems regards transfer students whose original I-20 came from another school: it is that form which can identify the original entry date and the estimated time of the education program-- if that form is lost, that necessary information cannot be verified. Fourthly, many schools do not file copies of the initial I-20 form sent to incoming students. Further, it is not uncommon for some students to lose the I-20 forms (as well as I-94s or passports, for that matter).

In order for this regulation to work smoothly, an almost paranoic attention will now have to be paid to the date and time period indicated on the initial I-20. Further, it will be difficult for DSOs to educate students and fellow administrators, disseminate the appropriate information, and police (read: "round up") all students who will be obliged to obtain an Extension of Stay. In short, some students will inevitably fall through the cracks. Once again, the expression "Duration of Status" now appears to be a misnomer.

Neither the regulations nor the OIs make clear how long a student would have to stay out of the U.S. in order to be able to "start all over again" on a new 8-year period. The regulations state that "absences of short duration do not break the continuity of a period of stay" [8CFR 214.2(f)(7)]. However, nowhere in the regulations or the OIs is "short period of stay" defined, although "temporary absence" is defined for I-20 issuance purposes (see Temporary Absence under Miscellaneous Provisions section below). Recent communication with INS Central Office reveals that "absence of short duration" was intentionally not defined in the regulations and OIs and that to have done so would be seen to defeat the purpose for which the time limits were placed in the regulations: that is, to prevent abuse of the system. Doubtless, this area will require further clarification in the near future.
However, as a result of the restrictive measures taken in these regulations, it appears that INS can now feel more confident that students who are idly prolonging their stay will now be deterred from doing so. Moreover, because of the near certainty of being granted Practical Training upon graduation, many more students will have a new impetus to make progress towards completion of their program (see Practical Training section).

**Penalties for Non-Compliance**

OI 214.2(f)(7)(i)

Students who need to seek an Extension of Stay and do not do so by October 1, 1988 will be rendered out of status and therefore deportable. Such students will have to apply for reinstatement and will not be eligible for benefits during this time (Off-Campus Work Authorization, Practical Training, etc.). The OIs specifically state that any such requests for benefits from out-of-status students (whether reviewed by the DSO or by INS) should be automatically denied, again placing the DSO in a potentially uncomfortable enforcement position [OI 214.2(f)(7)(v)]. As has always been the case with reinstatement, discretion lies with the INS and there is no guarantee that a student will be reinstated.

The OIs further state that an application for an Extension of Stay may be filed in conjunction with a request for reinstatement.

**Extension of Stay Procedures After October 1, 1988**

OI 214.2(f)(7)(i)

Students who must apply for an Extension of Stay must do so during a very strict and specified time frame: at least 15 days but no more that 60 days before the expiration of their current authorized stay. For example, consider the student who has been an F-1 student in a succession of programs since September 1, 1981 and still has not completed his current program: if he must apply for an Extension of Stay, he can only apply between July 1st and August 16th, 1989. This "time frame" presented in the OIs is far too restrictive and it is unlikely that even responsible students and DSOs will be able to comply in all cases.

These regulations will complicate the lives of many students in ways that the previous regulations could not possibly have done. For example, take the case of a student whose 8-year time limit or program time limit [outlined above in (1) and (2)] will expire during a summer break or an annual
vacation period. The student might have plans to leave the U.S. during this break (to return to his home country, take a vacation, etc.). Under these regulations, he will be obliged to remain in the U.S. until such time as the extension of stay application is not only *filed*, put positively *adjudicated* (and, as of this writing there is no certainty as to how long such an adjudication would take).

This is a potential source of problems for several reasons. First, faced with the above situation, many students will feel they are "stuck" in the U.S. Moreover, it is the INS's firm policy that a departure from the U.S. while an application for an Extension of Stay is pending constitutes an *abandonment* of that application. Therefore, a student who files an Extension of Stay application and leaves the U.S. before he receives an answer might face serious problems.

Consider also the student who must apply for a new F-1 visa at a U.S. consular post abroad. Recent communication with INS Central office has confirmed that such a student may well be denied the visa and *may not be able to return to resume his studies if an Extension of Stay application is pending or if the student's F-1 status has already expired*. INS confirms that, in such cases, a trip outside the U.S. would be "inadvisable." Further, because of the limited amount of time in which a student may apply for the Extension of Stay, similar problems can arise if the student is simply out of district (*ie*, on a vacation in another part of the U.S.) and far from the advice and signature of a DSO. The Central Office has acknowledged that there is a problem and it will make efforts to resolve these vagaries.

**Request for an Extension of Stay after 8 Consecutive Years:**
**The "Normal Progression" Condition**

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

Only those students who have maintained status and made "normal progression" towards their stated study objectives will be eligible for an Extension of Stay after 8 years in F-1 status. "Normal progress" is defined as completing an academic level within the permissible time limits already discussed. Conversely, a student who has made "normal progress" will *not* be required to obtain an Extension of Stay in order to begin another educational program (he will, however, have to obtain a "transfer"--see Transfer section below).

It is presumed that a student, while staying within the larger 8-year time frame, might go beyond the stated "limits" of his educational program. Thus, INS has (perhaps inadvertently) set up two potentially conflicting time schemes. If a student has exceeded the time limit set up to complete an educational program and fails to apply for an Extension of Stay in a timely fashion, he is out of
status and will automatically lose any remaining time on the 8-year period [OI 214.2(f)(7)(iii)]. The OIs continue to explain that such a student may be reinstated to student status if there are valid academic or medical reason for exceeding the time limits and that, if granted, the lost portion of the 8-year period may be restored.

Consider, however, the case of a student who is about to exceed the 8 year limit and has also exceeded the time limits on his program-- the OIs do not address such a case. Would such a student then have to apply for two Extensions of Stay?

What is also unclear and will certainly become a question to many DSOs is: what should be done in the case of a student who was at one time not making progress in his program and exceeded the time limits but who, having changed programs, is now "on target" with respect to his current program (for example, a student who took 6 years to complete a Bachelor's degree program but is now making normal progress in a Master's degree program). Does this student need to apply for an Extension of Stay? It is not clear whether the date on the current (or most recently issued I-20) is the controlling I-20 form in this case.

Lastly, the new implications of a student's status after inspection at a Port of Entry are significant: in the past, if a student was successfully inspected as an F-1 student, his status was declared legal from that point on (under the old definition of Duration of Status, the student was then allowed to remain in the U.S. until such time as he completed his current program). Under the 1983 regulations, successfully entering the U.S. and being granted legal F-1 status and Duration of Status were synonymous. Under the new regulations (we are left to conclude), sometimes an entry will be just an entry and not a confirmation or guarantee of a period of legal status following that entry.

**Request for Extension of Stay after "Extended Period" in an Educational Level**

OI 214.2(f)(7)(iv)

The OIs specifically state that students who request an additional 8 year period of stay after exceeding the time limits in an educational level will not be granted an additional 8 years. Rather, the student will only be granted an extension for the remaining time in that 8-year period. For example, a student who is in the 6th year of a Bachelor's degree program would be given an extension of another 2 years only. The OIs fail to state the reasons that may be considered by the Service in reviewing the application for an Extension of Stay. This is different from the application for an Extension of Stay submitted after the individual has been in F-1 status for 8 years. It is not
clear as to whether the same standard will apply as for requests for Extension of Stay after 8 academic years ("valid academic or medical reasons") or whether the Service will take the student's entire history into account (that is, if at one point the student could have been perceived to have been taking advantage but is not currently doing so).

In instituting such strict and complicated regulations INS has not only created a new source of anxiety for the student, but it has created a lot of work for the DSO and for itself. Although its original purpose may have been justified, in the not-so-distant future INS might well regret having deviated from the previous concept of Duration of Status.

PRACTICAL TRAINING
8CFR 214.2(f)(10)
In one of the most significant changes in the May 22, 1987 regulations, INS empowers the DSO to authorize periods of Practical Training. In addition, INS has doubled the amount of time that most students may engage in Practical Training. In making these changes, however, INS has built in controls to ensure that the DSO act with the recommendation of an academic advisor or a department chairman.

Historical Background
Before the 1987 changes, INS enjoyed absolute power in determining a student's Practical Training future. In fact, because of the lack of certainty of being granted Practical Training upon graduation (and the short Voluntary Departure notice they would receive if rejected), some students actually prolonged their educational programs so that they could defer their graduation.

Indeed, the notion that an INS officer (whose knowledge of the student's educational field or country might be limited) had greater control in pronouncing judgment on a given country's employment training conditions than the student from that country, the professor specializing in that field, or the government representative from that country, had always been a source of great frustration for students and their advisors. The new regulations have eliminated that frustration by placing the responsibility for making that determination squarely on the shoulders of the academic advisors and administrative officials of the school -- individuals who, collectively, are well qualified to determine how the student's specific curriculum relates to current conditions in the student's home country. Further, in the past there had been many cases of inconsistency from one INS district to another (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 May 1987 regulations have made that problem a thing of the past and that is significant.

In recent years many Districts had earned a reputation for failing to adjudicate Practical Training applications in a timely fashion. This was a 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 U.S. with no income while awaiting an answer from INS. In the same way, students who sought Summer Practical Training had to file their applications at least two months in advance of the beginning of summer vacation. Despite such timely filing, many students would find that the summer was half over before they received an answer. Thus, the 1987 regulations have also eliminated the problem of lengthy adjudication time.

Specifically, the 1987 regulations make these two major allowances:

1) A Designated School Official has the authority to approve periods of pre-graduation Practical Training as well as the first 6-month period of post-graduation Practical Training.

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

However, there is a catch: despite these significant new allowances, INS has introduced an elaborate and confusing scheme by which it will determine the type of Practical Training in which a student is engaging (pre-graduation and post-graduation; curricular Practical Training; parallel programs, etc.). The key rule in these OIs is categorization: students and DSOs will have to be "on their toes" in complying with the ways in which INS distinguishes between types of Practical Training. What follows is an explanation of these categories.

PRACTICAL TRAINING PRIOR TO COMPLETION OF STUDIES
8 CFR 214.2(f)(10)(i)(A)

Although it is not readily apparent from a cursory reading, the 1987 regulations classify pre-graduation, study-related "work" into three categories:

1) Annual 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 [8 CFR 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 program and has completed 
all required coursework but has yet to complete his thesis or equivalent [8 CFR 
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 1987 
regulations [8 CFR 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:

(a) 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 [8 CFR 
214.2(f)(10)(i)(A)(2)]. Examples might include an Internship, Student Teaching, or a 
Practicum during a student's senior year; in such cases, the student will be working in 
conjunction with an upper level class (concurrent coursework). This last example is termed 
by INS a "parallel program" and is explained in 8 CFR 214.2(f)(10)(D).

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

It is important to note here that, apart from the circumstances noted above, the new regulations 
make no provision for students who wish to work off-campus in a job related to their field of study 
while they are enrolled in school. For example, a student may have an opportunity to do a full or 
part-time job or "internship" which is directly related to his field of study and which he wishes to 
pursue while enrolled in school. Unless this off-campus employment is part of the student's 
curriculum, he is not allowed to pursue this employment under the Practical Training regulations. 
(He may, however, be eligible for off-campus employment authorization due to economic 
necessity-- this is not considered Practical Training.)

More on Curricular Practical Training
OI 214.2(f)(10)(v)
The OIs clarify that, in cases where classroom instruction is part of the Practical Training 
(explained above in (2)), only 50% of the time will be deducted. (Again, the regulations term this 
a "parallel program.") However, this is only applicable when the off-campus employment 
amounts to no more than 20 hours per week. INS considers employment of more than 20 hours of 
employment per week as being out of the part-time realm (that is, in the same category as a "coop" 
experience), and such training is therefore deducted at 100%.

The OIs go on to illustrate this point: a student who works 10 hours a week for four months in a 
work/study ("parallel program") situation will have 2 months deducted from his total pre-
graduation Practical Training. A student who works 30 hours a week for 4 months will have all 4 
months deducted (regardless, it is assumed, of whether he is attending a related class at this time).
Apart from the fact that the new terminology and elaborate categorization system will be difficult to digest, a major problem is that many program-related employment opportunities have different names at different institutions: for example, the same activity could be termed a *practicum* at one school, *field work* in another, and an *internship* in another.

**Considerations for "Coop" Students**

O1 214.2(f)(10)(iv)

A student who engages in more than 6 months of "curricular practical training" is precluded from engaging in any post-graduation Practical Training. Such a student would then be limited to a total of 12-months pre-graduation Practical Training. INS rationalizes this approach based on its 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.

Some schools, however, require a total period of **more** than 12 months of Practical Training (for example, some of the major "coop" schools-- schools offering curriculums of required cooperative education). After the publication of the May 22, 1987 regulations, the issue of what to do in these cases was presented to INS. As was promised, the OIs did address this situation, saying that an exception will be made where the student's academic curriculum requires more than 12 months of training and where the student is unable to complete the educational program without completing the required training.

**Procedure for Applying for Practical Training Prior to Completion of Studies**

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

To obtain Practical Training prior to completion of studies, a student must 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 then endorse the Form I-538 indicating approval and endorse the I-20 ID Copy with the dates of the authorized Practical

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*The I-20 ID Copy is used to identify the F-1 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 copy. Unlike the Form I-94 (arrival/departure document) which may be surrendered upon departure, the I-20 ID Copy is maintained by the student for the duration of his F-1 status.*
Training. In addition, the field or occupation must be noted, the date of authorization, and the school code [OI 214.2(f)(10)(x)]. The DSO then sends the I-538 to the INS Data Processing Center in London, Kentucky.

Students attending a school which requires or makes optional Practical Training for candidates for a degree in that field need not present a certification regarding availability of similar employment opportunities in their home country. This is because, in such cases, INS has determined that the program itself already mandates that training is necessary [8 CFR 214.2(f)(10)(i)(B)(3)].

**PRACTICAL TRAINING AFTER GRADUATION**

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

Under the regulations many students will be eligible for 12 months of Practical Training after graduation. (As mentioned, a student who engages in more than 6 months of Curricular Practical Training is ineligible for any post-graduation Practical Training.) The process whereby a student applies for Practical Training after they graduate would be the same as that outlined above for students wishing to obtain "Annual Vacation" Practical Training.

**First Period of Post-Graduation Practical Training**

8 CFR 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 and ending 30 days after completion of studies; thus, as with the previous regulations, a student has a three month "time frame" in which to make the application.

There is, however, no provision in the new regulations (as there had been in the past) for a student who wishes to be granted a full year of post-graduation Practical Training at once based on the submission of a job letter accompanying his application. Thus, 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-Graduation Practical Training**

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

In order to be granted permission to engage in a second period of post-graduation Practical Training, the student must have secured employment during this 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 ID copy, and a letter from the employer. This letter must outline the position, its specific training duties, the date the employment began, and the date that the employment will terminate. The letter must be reviewed by the DSO before it is submitted. 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 [8 CFR 214.2(f)(10)(iii)(B)(3)].

Computation Dates for Post-Graduation Practical Training
8 CFR 214.2(f)(10)(ii)(D) and
8 CFR 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 ID Copy by the DSO.

The actual date that the Practical Training clock starts "running", however, will be determined by INS at the time the 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 [8 CFR 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 ID, INS will calculate the Practical Training period 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, (for the purposes of doing all 12 months of post-graduation Practical Training at once), 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. 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 no more than 14 months after the completion of studies [8 CFR 214.2(f)(10)(iii)(D)].

New Practical Training Opportunities
Lastly, in a May 22, 1987 letter from Lawrence J. Weinig, INS's acting Assistant Commissioner, Adjudications, to Valerie Woolston of the National Association for Foreign Student Affairs (NAFSA), there contains an important interpretation concerning the limits placed on a student's ability to receive Practical Training after completion of a second degree program. This might involve the following scenario: occasionally, a student will complete his studies in the U.S., return to his home country or to a third country, and then, at a later time, come back to the U.S. to start a new degree program. Mr. Weinig's letter explains that if the student leaves the U.S. to obtain employment or attend school outside the U.S. for a period of one year or more, the reentry into the United States will be considered a new entry.

The significance of this interpretation is that, after a student receives a possible 24 months' Practical Training time, he could then leave the United States for a period of one year, reenter, begin a new program, and enjoy the benefits of a total of 24 months' Practical Training all over again. Thus, the regulations present new and substantial Practical Training benefits to certain students. Hopefully, this will incorporated into supplementary OIs at a later date.

Eligibility for Practical Training for Non F-1 Students
Recent communication with the INS Central Office has confirmed that a F-1 student must have been in F-1 status for a full nine months before he will be eligible for Practical Training benefits. Individuals who may be attending school full-time but who are not in F-1 status (for example, individuals attending school in H-4, F-2, or J-2 status) cannot use the time in school towards Practical Training [see also 8CFR 214.2(f)(10)(i)(A)(3)].

8 Letter of May 22, 1987 to Valerie Woolston, NAFSA Working Group from Lawrence J. Weinig, Acting Assistant Commissioner, Adjudications, INS, containing interpretations of questions raised by NAFSA regarding the new F-1 regulations (Letter available through AILA).
"Split" Periods of PT
OI 214.2(f)(10)(vii) states that a student may engage in 6 months of post-graduation Practical Training, enter into another educational program and request to reserve the remaining 6 months of their 12 month post-graduation Practical Training total for use after completion of the new program. For example, after graduation from a Master's degree program a student may wish to have six months of Practical Training before commencing a Ph.D. program. In such a case, the student should request that the DSO endorse the I-20 ID to that effect; also, the second I-538 (filed after graduation from the second program) should explain all of the facts of the situation.

INS Central Office has confirmed that, in those cases where a student wants to "split" periods of post-graduation Practical Training, the second period should also be approved by a DSO. Therefore in these cases, INS is not directly involved and is not the approving authority.

Change in Employers
A student may change employers during an authorized period of Practical Training provided that the employment meets the requirements found in 8 CFR 214.2(f)(10)(ix).

Unused Practical Training Time
OI 214.2(f)(10)(viii) explains that an unused portion of Practical Training may not be used at a later date. For example, if a student is unable to find a job within the period of post-graduation Practical Training, he may not claim credit for the unused time at a later date.

Notation of I-20 ID Copy
As a direct result of IRCA (The Immigration Reform and Control Act of 1986), new considerations must be made in terms of students proving their employment authorization to both prospective and current employers. As a result, each time a student begins a period of Practical Training (even in a "coop" program where the student is likely to be going on a long succession of short period of Practical Training), the DSO must note certain information on the I-20 ID copy. Although this presents a new burden to many schools, if the DSO were not to do so, the student would encounter great difficulty in obtaining employment as a result of the new law. Thus, the DSO must now specify a variety of information on the I-20 ID copy, including the type of Practical Training (i.e., pre or post graduation) and the occupation or field in which the employment is authorized. The latter is a new addition, and was not mentioned in the regulations [OI 214.2(f)(10)(x)]. It is a fact that some students have been known to "stretch" or even break the limits of their Practical Training by accepting employment in another "field or discipline" than that for which the training was
authorized and intended (such as a music student working as a waiter). Thus, this new OI (requiring a written description of the type of employment authorized for the benefit of prospective employers) may inspire more students to comply with the regulations.

On August 1, 1983 INS began issuing the I-20 ID copy in accordance with the the regulations that went into effect that date. The I-20 ID copy was a 3" x 8" yellow card made of heavy paper. At this writing, INS is issuing a new Form I-20 and with it a new I-20 ID copy. The yellow card used in the past will be replaced with a new format: the I-20 ID copy will no longer be a card as such, but a full-page sheet from the redesigned Form I-20. Thus, on the new version of the I-20 ID copy there will be more space to accommodate all of the information that must now be noted there.

Fee
Only those students applying for an Extension of Stay, a second period of post-graduation Practical Training, or part-time employment need submit a $15 filing fee with the Form I-538.

Notation of DSO's Decision on Form I-538
OI 214.2(f)(11)(ii)
In an interesting twist, INS not only authorizes but requires the DSO the check the box on the Form I-538 indicating the decision that was made with regard to the application. The DSO is instructed to sign his or her name in the space reserved for official use. Thus, again we see the INS pressing the DSOs into its "official" service, something that will illicit a reaction from those DSOs who do not want to feel they are in INS's service.

TRANSFER OF SCHOOLS
8CFR 214.2(f)(8)
Where the old regulations placed the preponderance of the administrative burden on the old school, the current transfer regulations place unprecedented responsibility on the shoulders of the DSOs at the "new school." The regulation indicates that the new school may issue a Form I-20AB to the incoming transfer student only after it has verified that the student is eligible to make the transfer (ie, that he has been maintaining F-1 status). This requirement was implicit in the former regulations but has now grown to become a full-blown and explicitly stated requirement.

After beginning classes at the new school, the transfer student must sign the I-20 AB and return it to the DSO for endorsement. This must be done no later than 15 days from the date that the
student begins classes. Within 30 days of receiving the completed form, the DSO must forward the top page of the I-20 to the INS Processing Center. If the DSO fails to follow this procedure, the student could be penalized for not maintaining valid F-1 status.

The former transfer procedure made it necessary for some students to anxiously await the issuance of the I-20 form because, under that procedure, they were required to complete the entire transfer procedure before being allowed to start at the new school. The new procedure is faster administratively, as the student may make arrangements to go to the new school as long as he has already been issued an I-20 (or, we can assume, as long as the student has reason to believe he is eligible to be issued the form). However, as will be explained below, the responsibility of the new school to determine eligibility before issuing the I-20 will require careful organization and close monitoring of the type that some DSOs and Admission Offices are unaccustomed.

The transfer procedure is as follows:

1) Student obtains Form I-20 AB from the new school;

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

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

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

5) Old school name is added to front of the Form I-20 and the DSO at the new school initials the addition;

6) Within 30 days of receipt from student, DSO at new school must send the I-20 to INS Data Processing Center in London, Kentucky; and

7) DSO at new school must send a photocopy of the I-20 to the old school.

Note that no Form I-538 is submitted if the student is only transferring and does not require an Extension of Stay or if a student is going from one academic program to another at the same school (for example: Bachelor's to Master's) or if the student is starting a different program at the same school.

Transfer of Schools through Reentry into the U.S.
In cases where a student has already received a Form I-20 from the new school and travels outside the U.S. prior to commencing studies at the new school, that student may reenter the U.S. without having to go to a U.S. Embassy or Consulate in order to have the name of the new school endorsed on the F-1 visa page of the passport [8 CFR 214.2(f)(4)(iii)]. Further, the INS officer should endorse the student's I-20 ID copy to indicate the name of the new school, and will
accordingly endorse the I-20 form and send it to the INS Data Processing Center. Thus, in this situation, a student will not have to undergo the Transfer procedure outlined above.

**Determining Eligibility for Transfer**

OI 214.2(f)(8)(iv)

The OIs allow a school to use whatever method is most expedient to determine whether the student was maintaining valid status at his previous school. Thus, schools who do not already have an efficient system in place will have to develop one. The OIs suggest that one way to accomplish this is by reviewing a student's transcript. However, to review transcripts for this purpose (as the OIs suggest) will create a burden for many schools and will not always supply the information that a DSO needs to make the required determination (for example, a transcript will not generally indicate that a student was carrying a part-time course load but was also authorized to do so by the DSO and was therefore in valid status).

The required information could also be obtained through personal communication with a DSO at the previous school (although this can be a costly method). Some schools have addressed the problem by developing an "International Student Form" or a "Foreign Student Advisor's Form" which is sent to all foreign students at the time of acceptance. The way such a form usually works is that the student completes a section of this form and then passes it on to his Foreign Student Advisor or the appropriate DSO to complete the remaining sections. When completed, the form is returned to the appropriate office at the new school (Admissions Office, International Student Office, Registrar, etc.). With such a specialized form, the DSO at the new school is well equipped to make a determination as to whether the student is eligible to transfer. In addition to verifying full-time enrollment, this type of form can also be useful in determining the student's financial status (for example: Does the student owe money to the old school?) specific information (Does he have any special needs?) and INS history (When was the beginning of that student's period of F-1 status at that school? Has the student ever been reported to INS?).

Another means by which this task might be accomplished is if the institution requires that all transfer students sign an official statement saying that they had been carrying a full course of study at the old school. Whatever means schools do choose to use, it is clear that in schools where the Admissions Office is separate from the International Student Office (or where several DSOs share different responsibilities with respect to various student populations: incoming vs. continuing students; undergraduate vs. graduate students) it will be imperative that the schools devise an efficient means of internal communication.
It should be mentioned that such a system is again placing the DSO in a "watchdog" capacity: in light of the qualified success of the Form I-721 reporting system initiated in the 1983 regulations (described at greater length below), INS seems to be attempting to set up certain routine "roadblocks" for policing students. Unfortunately for those DSOs who perceive themselves as student advocates and not INS associates, certain aspects of the new regulations will place many DSOs in an uncomfortable position.

**Students not Maintaining Valid Status**

Students who have not been maintaining their status will have to first apply for reinstatement in order to be able to transfer schools [8 CFR 214.2(f)(12)]. If reinstated, the student may attend the new school **without** also having to apply for a transfer (seeing as the incidentals of the student's situation would necessarily be included in a reinstatement application). Also, while any request for reinstatement is pending, a student may enroll in school until such time as an adjudication is made [OI 214.2(f)(8)(ii)]. In case of a denial, however, the student must discontinue enrollment and depart the U.S. upon notification of INS (in such a case it is unlikely that an institution would issue the student a tuition refund!). Thus, DSOs are not advised to encourage students to pursue this option without first apprising them of the potential consequences.

**Change of School after Admission**

A student admitted to the U.S. to attend the school which issued their I-20 form is expected to attend that school [OI 214.2(f)(8)(iii)]. This OI also states that a student who attends a **different** school without INS permission will be considered to be out of status and must seek reinstatement to status. There is no provision in the regulations for students to enter the U.S. on one I-20, find a better school, and initiate a transfer without first attending the initial school. Therefore, it follows that foreign students must choose their school wisely and be willing to spend what could possibly be an unpleasant time at their chosen institution before transferring to a more suitable one.

**MISCELLANEOUS PROVISIONS**

**ADMISSION OF THE STUDENT**

**Admission without Form I-20**

OI 214.2(f)(1) states that if, for a valid reason, a **bona fide** student does not have a Form I-20 AB at the point of entry, he or she may be admitted to the U.S. for a 30-day period. In such a case, a Service officer will issue Form I-515 to the student. The student must then obtain a properly completed Form I-20 and submit it, along with the I-515, to the INS office having jurisdiction over
the school within a 30 day period. Upon approval, the student (and any dependents) will be given an extension of stay for duration of status.

**Admission Number**

The 11-digit Admission Number was introduced in the 1983 regulations as an "access number" for that student for the INS database which was also introduced at that time. In brief, it is expected that, by entering the student's Admission Number into any of its many computer terminals, INS can call up information regarding a student's status, including such information as benefits granted (off-campus work permission, Practical Training period, etc.).

In a greater commitment to consistency, at OI 214.2(f)(1)(ii) the Service recommends that its officers copy this 11-digit number onto any newly-issued I-94 cards. Similarly, it recommends that the DSO write the Admission Number on any new I-20 forms issued. Naturally, the latter practice will not be possible with regard to the I-20 forms of most new students, as they have probably not yet been assigned an Admission Number; if they have, it may not yet be known to the school to which they are heading.

In a repetition of a previous procedure, the OIs state that, when admitting a student who does not have an Admission Number on his or her I-20 ID copy, an INS officer should give the student the Admission Number from the I-94.

**I-20 ID Copy**

The Admission Number is a permanent record and a student is expected to keep his I-20 ID copy indefinitely. A student who has lost the I-20 ID copy may request a replacement copy from the Service. It is essential that a student maintain a valid and current I-20 ID copy at all times. This is because INS officers look to this card as one of several basic indicators of a student's legitimate F-1 status.

If the student needs to obtain a replacement I-20 ID copy while in the United States, he must submit a Form I-102 with the application fee to the Service office having jurisdiction over the school. If the student needs to obtain a replacement while entering the United States after a temporary absence, he may be issued a new copy without filing a Form I-102.

**Temporary Absence**

The OIs provide a definition of "temporary absence." For the first time, INS has defined the period of time during which a student may reenter using the same Form I-20 or the same signature
on Page 4 of the Form I-20: that is, for a period of 5 months. This is what is now defined, for the purpose of admitting or readmitting a student, as a "temporary absence." An absence of longer than 5 months, we can conclude, will require that the student obtain another signature or a fresh I-20 form.

Duplicates of Page 4

OI 214.2(f)(4)(iii) allows the DSO to issue a duplicate Page 4 if the student loses that page of his I-20 Form provided that the information is the same on the rest of the I-20. This represents a new convenience for schools with large foreign student populations—now that it has been officially sanctioned by INS, many DSOs will choose to simply issue a new Page 4 rather than a new Form I-20.

EMPLOYMENT

ON-CAMPUS EMPLOYMENT AUTHORIZATION

Definition

8 CFR 214.2(f)(9)

The regulations define on-campus employment as employment performed on the school's premises. OI 214.2(f)(9)(i)(A) clarifies that this includes employment for a commercial firm providing services for the students on campus (eg, a bookstore or an outside catering firm running the school cafeteria). Again, on-campus work is limited to 20 hours per week while school is in session. There is no limit to how long a student may work on-campus providing that he is maintaining status.

Scholarship

OI 214.2(f)(9)(i)(B)

In a more generous interpretation of "on-campus employment," the OIs allow a student who has a fellowship, assistantship, or postdoctoral appointment which is part of the student's academic program to perform services at an off-campus location that is educationally related [emphasis added] to the school if it is done in conjunction with the student's educational program (for example, a research assistantship at another school if the two schools have a joint degree program).
Off-Campus Employment Authorization
8 CFR 214.2(f)(9)(ii)
This regulation imposes a one year bar on a student’s eligibility to apply to INS for off-campus employment due to financial difficulties. Again, the OIs allow for a temporary absence of 5 months during the student’s first year and they restate the conditions under which a student may be granted off-campus work permission.

REINSTATMENT OF STATUS
8 CFR 214.2(f)(12)
OI 214.2(f)(12) makes clear that a request for reinstatement must be accompanied by a detailed written statement. Also, the OIs recommend (but do not require) that the student present a completed Form I-538 (without the $15 fee) to expedite a decision. If a student’s request for reinstatement does not offer the information deemed necessary for INS to render a decision, the INS officer considering the request may ask that the student submit a Form I-538. Thus, in the interests of timely adjudication, it is wise to include Form I-538 from the start.

FORM I-721
The Form I-721, a computer-generated status report, was introduced with the 1983 regulations. The record-keeping system that had existed before that time had required that in each academic term the school send a status report of all students who had not registered within 60 days of the date that the student was expected (for each particular academic term: for example, if the deadline for registration for the Fall Semester at School X was September 10th, the DSO from School X had to inform INS by November 10th).

Thus, the old regulations gave students until the last moment to register for a given term and allowed DSOs adequate time to file reports in accordance with their own institutional schedules. The reporting requirements in place at the time made it necessary for DSOs to "clean house" on a semesterly basis and forced them to regularly comply with INS's record-keeping requirements; as a result, DSOs could anticipate this deadline and managed to find a way to incorporate the status report into their work schedule.

The 1983 regulations, however, stated that the schools were to wait until they received the Form I-721 before submitting any further reports. The I-721 report was meant to be sent to schools at least once a year in order that both the school and INS be able to maintain accurate records on the
status of all students. INS's plan, however, did not work out exactly as envisioned. Many institutions never received the I-721 form; others received reports that contained gross inaccuracies. Those institutions in the latter category often found the number of errors to be so substantial as to cause their DSOs to wonder whether the I-721 was worth all the trouble and whether the old system had really needed "fixing" in the first place.

In short, the system has not been entirely successful. In well over 4 years' time, the most I-721s that any school has completed is one. This can hardly be construed to be an effective system. As of this writing, schools have just received another Form I-721 (that is, for the first time in three years-- since Spring of 1985). However, as noted above, for some schools it will be their first I-721 ever.

By INS's own admission at OI 214.3(g)(i), the I-721 was not sent to all schools as frequently as was intended. ("If, due to budgetary constraints or other reasons, Form I-721 is not sent to all approved schools as frequently as Service regulations permit, the district director may, if necessary, request that it be sent as an ad hoc report to a specific school, a number of schools or all schools within his or her jurisdiction.")

Thus, INS while admitting to a lack of regularity as to the issuance of the Form I-721, reserves the right to perform "spot checks" on an institution or a group of institutions per the discretion of the District Director. The OIs further state that between reporting periods (which, as we can see, have been of long duration), DSOs are encouraged to report mala fide students or students who have terminated their studies by writing to the District Director. This places DSOs in a position of doing INS's "dirty work" and again, runs counter to the definition of a Foreign Student Advisor as a confidential counselor and student advocate.

Schools receiving the Form I-721 for the first time in 3 years (or for the first time ever!) will undoubtedly be presented with a burden, especially if they are schools with large foreign student populations. Such schools will find it difficult, if not impossible, to complete the Form I-721 in the 3 months required [although the directions on the recently-issued Form I-721 say that the school has 3 months to complete it, the OIs erroneously say 60 days]. Accessing old records and revising the out-of-date (or incomplete) information found on INS's report can be time-consuming and frustrating in the extreme. [In addition, because of the new "arbitrary" nature of when INS sends the report to schools, the timing of the receipt of the I-721 will be a problem for many institutions. This is because if a school receives the I-721 at the beginning of a registration period, the schools may still not be able to confirm which students really intend to be registered for that
term: that information cannot be confirmed until the final deadline of the registration period. Thus, many schools will have to wait before they can even begin filling out the report. In this way, several weeks can be lost in the DSO's race against INS's deadline.

A project such as the I-721 report is taxing on the International Student Offices (which are often already under-staffed and under-funded) and can require dozens of "people hours" to complete. Some large institutions may even have to spend money to hire consultants or data entry staff in order to complete this gargantuan task in the time allotted. During such periods many FSAs will find that too much of their time is being spent away from the real needs of their students and that, rather than feeling like advisors, they have assumed the role of data entry clerks. All of this leads many to ask, "What is the benefit for the schools in such a system?" Perhaps the next few months will reveal some answers.

CONCLUSION

A reading of the regulations and the OIs reveals the presence of a compromise: true, students and DSOs have made substantial gains with regard to Practical Training (and, on a smaller level, with regard to Transfer of Schools), but they have clearly suffered some losses as well. The definition of Duration of Status and the new Extension of Stay requirements, although justified for a small minority of violators, seem, if not unduly harsh, unduly complicated. There is no doubt that students and DSOs will face great difficulty in attempting to navigate around them, especially during the current period when so much remains unclear.

A cynic might say that, in fact, nothing has really changed: that, in presenting the 1987 regulations, INS has merely re-distributed its weight. Indeed, some will feel that, rather than gaining untold influence with regard to educational exchange, the DSOs have unwittingly been made agents of the government. It is our belief, however, that most students and DSO will be grateful for the increased parameters presented in the regulations and the real opportunities they represent.

INS believes 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."9 Under the 1987 regulations, more decisions will be made by DSOs and fewer by INS-- especially

9 Supplementary Information section preceding the 1987 regulations.
those concerning Practical Training and transfers. However, in order for that "more responsible approach to enforcement" to happen, INS must not rest its entire weight on the DSOs: unless reports such as the Form I-721 are issued on a regular basis and INS can devise a system of consistency with regard to enforcement, this "more responsible approach" will be nothing more than an empty threat.

Nonetheless, we should not neglect the fact that the regulations represent an unprecedented delegation of authority to the DSO, which is an empowerment 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 granted indiscriminately), 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.

Although we feel that the gains will compensate for the losses, we must concede that time, as always, will be the determining factor. It should be remembered that the community of foreign students and DSOs had only just begun to feel comfortable with the August 1983 regulations when the May 1987 regulations came on the scene. Looking to the future of the foreign student program in the U.S., it is our strong hope that INS will continue to focus on the positive effects of international educational exchange and that it will not feel the need to dramatically change its regulations every three or four years. This constant revision, we perceive, is detrimental to the true goals of the foreign student program. In the past we have seen INS making hasty decisions with regard to F-1 students, decisions that were directly precipitated by knee-jerk reactions to international crises (such as the Iranian hostage crisis of 1979-1980). Rather, we hope that in the future INS will invest its time in formulating such well-wrought regulations that they will only require minor changes as time passes-- and even then, that such changes will only need to be made on an infrequent basis.