DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214, 248, and 274a

[DHS Docket No. ICEB–2025–0001]

RIN 1653–AA95

Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media

AGENCY: U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Unlike most nonimmigrant classifications, which are admitted for a fixed time period, aliens in the F (academic student), J (exchange visitor), and most I (representatives of foreign information media) classifications, with limited exceptions, are currently admitted into the United States for the period of time that they are complying with the terms and conditions of their nonimmigrant classification (''duration of status''). The U.S. Department of Homeland Security (DHS) proposes to amend its regulations by changing the admission period in the F, J, and I classifications from duration of status to an admission for a fixed time period.

DATES: Comments must be received on or before September 29, 2025. *Information collection comment period:* Comments on the information collection described in the *Paperwork Reduction Act* section below must be received by October 27, 2025.

ADDRESSES: You may submit comments on the entirety of this rule, which must be identified by Docket No. ICEB–2025–0001, through the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the website instructions to submit comments.

Comments on the information collection may be submitted to the same docket as the NPRM or as described in the ''submitting comments'' section below. In addition, all comments on the information collection must include the OMB Control Number in the body of the comments.

Comments submitted in a manner other than the Federal eRulemaking Portal, including emails or letters sent to the Department of Homeland Security (the Department or DHS), will not be considered comments, and will not receive a response from DHS. Please note that DHS cannot accept any hand delivered or couriered comments, nor any comments contained on any form of digital media storage devices, such as CDs, DVDs, and USB drives. If you cannot submit your material using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. Telephone 202–732–6960 (not a toll-free number) (for questions only—no comments will be accepted at this phone number).

I. Public Participation

DHS encourages all interested parties to participate in this rulemaking by submitting data, views, comments, and arguments on all aspects of this notice of proposed rulemaking. Comments providing the most assistance to DHS will reference a specific portion of this rule, explain the reason for any recommended change and include the data, information, or authority that supports the recommended change. See the **ADDRESSES** section above for information on where to submit comments.

A. Submitting Comments

All comments must be submitted in English, or an English translation must be provided. If you submit comments, you must include the DHS docket number for this rulemaking (ICEB–2025–0001), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. Include data, information, or the authority that supports the comment. Your comments must be submitted online by 11:59 p.m. of the last day of the comment period.

Instructions: To submit your comments online, go to *https://www.regulations.gov* and insert ''ICEB–2025–0001'' in the ''Search'' box. Click on the rule that appears in the ''Search Results.'' Click on the ''Comment'' box under the name of the rule and input your comments in the text box provided. When you are satisfied with your comments, follow the prompts, and then click ''Submit Comment.'' *Collection of information.* You must submit comments on the collection of information discussed in this notice of proposed rulemaking to either DHS's docket or the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). OIRA will have access to and view the comments submitted in the docket. OIRA submissions can also be sent using any of the following alternative methods:

- *Email (alternative): dhsdeskofficer@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for U.S. Immigration and Customs Enforcement, DHS'' in the subject line of the email).
- *Fax:* 202–395–6566.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; Attention: Desk Officer, U.S. Immigration and Customs Enforcement, DHS.

DHS will post your comments to the federal e-Rulemaking Portal at *https://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission. DHS may withhold from public viewing information provided in comments that it determines is offensive. For more information, please read the ''Privacy & Security Notice'' via the link in the footer of *https://www.regulations.gov.* DHS will consider all comments and materials received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents referenced in this preamble as being available in the docket, go to *https://www.regulations.gov* and insert ''ICEB–2025–0001'' in the ''Search'' box. Next, click on the name of the rule, and then click ''Browse Posted Comments.'' Individuals without internet access can request alternate arrangements for viewing comments and documents related to this rulemaking (see the **FOR FURTHER INFORMATION CONTACT** section of this document). You may also sign up for email alerts on the online docket so that you will be notified when comments are posted, or a final rule is published.

SUPPLEMENTARY INFORMATION:

II. Acronyms and Abbreviations

CBP U.S. Customs and Border Protection
CFR Code of Federal Regulations
DOJ U.S. Department of Justice
DHS U.S. Department of Homeland Security
D/S Duration of Status
DOS U.S. Department of State
DSO Designated School Official
EAD Employment Authorization Document

ED U.S. Department of Education
EOS Extension of Stay
GAO U.S. Government Accountability Office
ICE U.S. Immigration and Customs Enforcement
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA Immigration and Nationality Act
INS Immigration and Naturalization Service
NPRM Notice of Proposed Rulemaking
OPT Optional Practical Training
POE Port of Entry
PRC People's Republic of China
RFE Request for Evidence
RO Responsible Officer
SAR Special Administrative Region
SEVIS Student and Exchange Visitor Information System
SEVP Student and Exchange Visitor Program
SSR Special Student Relief
STEM Science Technology Engineering and Mathematics
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services

III. Executive Summary

A. Purpose of the Proposed Regulatory Action

Studying and participating in exchange visitor and academic programs in the United States offers aliens access to world-renowned, individualized instructional and educational programs. Similarly, the United States allows foreign news and media members access to the United States as part of their foreign employment. Millions of aliens have come to the United States on a temporary basis in the F (academic student),[1] J (exchange visitor),[2] and I (representatives of foreign information media)[3] classifications.[4] Unlike aliens in most nonimmigrant classifications who are admitted until a specific departure date, F, J, and I (except for some I aliens from the People's Republic of China (PRC)) nonimmigrants are admitted into the United States for an unspecified period of time to engage in activities authorized under their respective nonimmigrant classifications. This unspecified period of time is referred to as ''duration of status'' (D/S). D/S for F academic students is generally the time during which a student is pursuing a full course of study at an educational institution approved by DHS, or engaging in authorized practical training following completion of studies, plus authorized time to depart the country.[5] D/S for J exchange visitors is the time during which an exchange visitor is participating in an authorized program, plus authorized time to depart the country.[6] D/S for I representatives of foreign information media is the duration of his or her foreign employment duties in the United States.[7] For dependents of principal F, J, or I nonimmigrants, D/S generally corresponds with the principal's period of admission so long as the dependents are also complying with the requirements for their particular classifications.[8] Since D/S was first introduced in 1978 for F nonimmigrants and 1985 for J and I nonimmigrants,[9] the number of F, J, and I nonimmigrants admitted each year into the United States has significantly increased.[10] In 2023 alone, there were over 1.6 million admissions in F status, a dramatic rise from when the legacy Immigration and Naturalization Service (INS) first shifted to D/S admission in 1979.[11] For example, in the 1980–81 school year, there were approximately 260,000 admissions in F status.[12] Similar growth in the J nonimmigrant population has also occurred over the past decades. In 2023, there were over 500,000 admissions in J status, up over 250 percent from the 141,213 J admissions into the United States in 1985.[13] Finally, there were 32,470 admissions for I nonimmigrant foreign media representatives in the United States in 2023, nearly double from the 16,753 admissions into the U.S. in 1985.[14]

The significant increase in the volume of F academic students, J exchange visitors, and I foreign information media representatives poses a challenge to the Department's ability to monitor and oversee these nonimmigrants while they are in the United States. During the length of their stay for D/S, a period of admission without a specified end date, these nonimmigrants are not required to have direct interaction with DHS, except for a few limited instances, such as when applying for employment authorization for optional practical training (OPT) or for reinstatement if they have failed to maintain status. Admission for D/S, in general, does not afford immigration officers enough predetermined opportunities to directly verify that aliens granted such nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce compliance with the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse.

For F and J visa holders, the Immigration and Nationality Act (INA) specifically states that aliens must have a residence in a foreign country which they have no intention of abandoning and seek to enter the United States temporarily.[15] Yet, DHS has many examples of students and exchange visitors staying for decades in their student or exchange visitor status.[16]

The events of 9/11 highlighted the potential for abuse of the student visa.

[1] *See* Immigration and Nationality Act (INA) 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F).

[2] *See* INA 101(a)(15)(J), 8 U.S.C. 1101(a)(15)(J).

[3] *See* INA 101(a)(15)(I), 8 U.S.C. 1101(a)(15)(I).

[4] *See* Office of Homeland Security Statistics, Yearbook of Immigration Statistics-Yearbook 2023, Table 25, Nonimmigrant Admissions by Class of Admission: Fiscal Years 2014 to 2023 at h*ttps://ohss.dhs.gov/topics/immigration/yearbook-immigration-statistics/yearbook-2023* (last visited Mar. 31, 2025).

[5] Statutory and regulatory requirements restrict the duration of study for an alien who is admitted in F–1 status to attend a public high school to an aggregate of 12 months of study at any public high school(s). *See* INA section 214(m), 8 U.S.C. 1184(m); *see also* 8 CFR 214.2(f)(5)(i).

[6] *See* 8 CFR 214.2(j)(1)(ii) (explaining the initial admission period) and (j)(1)(iv) (explaining that extensions of stay can be obtained with a new Form DS–2019); *see also* 22 CFR 62.43 (permitting responsible officers to extend J nonimmigrant's program beyond the original DS–2019 end date according to length permitted for the specific program category).

[7] *See* 8 CFR 214.2(i).

[8] *See* 8 CFR 214.2(f)(3), (f)(5)(vi)(D) (discussing F–2 period of authorized admission); 214.2(j)(1)(ii), (j)(1)(iv) (discussing J–2 authorized period of admission); INA 101(a)(15)(I), 8 U.S.C. 1101(a)(15)(I); 22 CFR 41.52(c).

[9] *See* 43 FR 54618 (Nov. 22, 1978) and 50 FR 42006 (Oct. 17, 1985).

[10] In 1985, when D/S was introduced for I and J nonimmigrants, there were 16,753 admissions in I status, 141,213 admissions in J status, and 251,234 admissions in F–1 status. *See* U.S. Department of Justice (DOJ), Immigration and Naturalization Service, 1997 Statistical Yearbook of the Immigration and Naturalization Service, available at *https://ohss.dhs.gov/sites/default/files/2023-12/Yearbook_Immigration_Statistics_1997.pdf* (last visited March 20, 2025).

[11] In fiscal year (FY) 2023, there were 1,625,740 admissions in F–1 status and 61,910 in F–2 status. *See* DHS Off. of Homeland Sec. Stat., Legal Immig. and Adjustment of Status Report Fiscal Year 2023, Quarter 4, tbl.4B, available at *https://ohss.dhs.gov/sites/default/files/2024-06/2024_0507_ohss_legal-immigration-adjustment-of-status-fy-2023q4.xlsx* (last visited Apr. 3, 2025).

[12] In the 1980–81 school year, 312,000 nonimmigrant students were admitted into the United States. Approximately 83 percent of the nonimmigrant students admitted into the United States during the 1980–81 school year were in F status. Therefore, approximately 258,960 nonimmigrant students in F status were admitted into the United States in the 1980–81 school year. *See* U.S. Gov't Accountability Off., Controls Over Foreign Students in U.S. Postsecondary Institutions Are Still Ineffective; Proposed Legislation and Regulations May Correct Problems (Mar. 10, 1983), available at *https://www.gao.gov/assets/hrd-83-27.pdf* (last visited Mar. 20, 2024).

[13] *See* DHS FY23, Quarter 4, tbl.4B, *supra* note 11, sum of J1 481,280 and J2 62,000.

[14] *Id.*

[15] *See* INA sec. 101(a)(15)(F) and (J); 8 U.S.C. 1101(a)(15)(F) and (J).

[16] DHS has identified over 2,100 aliens who first entered as F–1 students between 2000 and 2010 and remain in active F–1 status as of Apr. 6, 2025. *See* Student Exchange Visitor Program analysis of data in the Student Exchange Visitor Information System and valid as of Apr. 6, 2025.

In the wake of 9/11, a Homeland Security Presidential Directive titled, *Combating Terrorism Through Immigration Policies* directed, among other things, that a program be developed to track the status of foreign students. It also mandated that the government develop guidelines that may include control mechanisms such as limited duration of student status.[17] The 9/11 Commission reiterated the need to track foreign students and place tighter controls on student visas.[18] From these mandates and the statutory authorities described below, the Student and Exchange Visitor Program (SEVP) was created, and the electronic Student and Exchange Visitor Information System (SEVIS) was implemented. SEVIS is a DHS computer system that stores and processes information on foreign students and exchange visitors in the U.S.

SEVIS ensures government agencies have essential data related to nonimmigrant students and exchange visitors to preserve national security. SEVIS also implements Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208 (codified at 8 U.S.C. 1372), which requires DHS to collect current information from nonimmigrant students and exchange visitors continually during their stay in the United States. In addition, section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (amending IIRIRA sec. 641), mandated full implementation and expansion of SEVIS.

Given these mandates and concerns, DHS believes that the admission of F, J, and I nonimmigrants for D/S is not appropriate. With this notice of proposed rulemaking (NPRM), DHS proposes to replace the D/S framework for F, J, and I nonimmigrants with an admission period with a specific date upon which an authorized stay ends. Nonimmigrants who would like to stay in the United States beyond their fixed date of admission would need to apply directly to DHS for an extension of stay (EOS).[19] DHS anticipates that many F, J, and I nonimmigrants would be able to complete their activities within their period of admission. However, those who could not, generally would be able to request an extension to their period of admission from an immigration officer. DHS believes that this process would help to mitigate risks posed by aliens who seek to exploit these programs and live in the United States on a non-temporary basis in contradiction with the underlying statutory language that applies to their nonimmigrant status.

Replacing admissions for D/S with admissions for a fixed time period of authorized stay is consistent with most other nonimmigrant classifications,[20] would provide additional protections and oversight of these nonimmigrant classifications and would allow DHS to better evaluate whether these nonimmigrants are maintaining status while temporarily in the United States. DHS does not believe such a requirement would place an undue burden on F, J, and I nonimmigrants. Rather, providing F, J, and I nonimmigrants a fixed time period of authorized stay that would require them to apply to extend their stay, change their nonimmigrant status, or otherwise obtain authorization to remain in the United States (*e.g.,* a grant of asylum or adjustment of status) by the end of this specific admission period is consistent with requirements applicable to most other nonimmigrant classifications and consistent with the practices for F–1 students prior to 1979.[21]

These changes would ensure that DHS has an effective mechanism to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, and to obtain timely and accurate information about the activities these aliens have engaged in and plan to engage in during their temporary stay in the United States. If immigration officers discover a nonimmigrant in one of these classifications has overstayed or otherwise violated his or her status, the proposed changes may result in the alien beginning to accrue unlawful presence for purposes of unlawful presence-related statutory grounds of inadmissibility under section 212(a)(9)(B)(i) and (C)(i) of the INA. DHS believes this greater oversight would deter F, J, or I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications.

DHS believes that the provisions of each new regulatory amendment function independently of other provisions. However, to protect DHS's goals for proposing this rule, DHS proposes to add regulatory text stating that the provisions be severable so that, if necessary, the regulations may continue to function even if a particular provision is rendered inoperable.

B. Summary of the Proposed Regulatory Provisions

DHS proposes the following substantive changes:

- Amend 8 CFR 214.1, Requirements for admission, extension, and maintenance of status, by:
  - Striking all references to D/S for F, J, and I nonimmigrants;
  - Describing requirements for F and J nonimmigrants seeking admission, including after travel abroad and those approved for OPT and academic training;
  - Updating the cross reference and clarifying the standards for admission in the automatic extension visa validity provisions that cover F and J nonimmigrants applying at a port of entry (POE) after an absence not exceeding 30 days solely in a contiguous territory or adjacent islands;
  - Outlining the process for EOS applications for F, J, and I nonimmigrants;
  - Specifying the effect of departure while an F or J nonimmigrant's application for an EOS in F or J nonimmigrant status and/or employment authorization (and an associated employment authorization document (EAD)) is pending;
  - Providing procedures specific to the transition from D/S to admission for

[17] *See* Homeland Sec. Presidential Directive 2, Combating Terrorism Through Immig. Policies (Oct. 29, 2001) (HSPD–2), *https://georgewbush-whitehouse.archives.gov/news/releases/2001/10/text/20011030-2.html* (last visited May 1, 2025).

[18] Kean, T.H. & Hamilton, L.H., 2004. The 9/11 Commission report: final report of the National Commission on Terrorist Attacks upon the United States, New York: Norton, pgs. 81, 187.

[19] *See generally* 8 CFR 214.1(c) (setting forth the general EOS requirements applicable to most other nonimmigrants).

[20] For example, *see* 8 CFR 214.2(a)(1) (setting forth a period of admission for the A–3 nonimmigrant classification); (b)(1) (period of admission for aliens admitted under the B nonimmigrant classification); (c)(3) (period of admission for aliens in transit through the United States); (e)(19) (periods of admission for most E nonimmigrants); (g)(1) (period of admission for the G–5 nonimmigrant classification); (h)(5)(viii) (9)(iii) and (13) (various periods of admission and maximum periods of stay for the H–1B, H–2A, H–2B, and H–3 nonimmigrant classification); (k)(8) (period of admission for the K–3 and K–4 nonimmigrant classification); (l)(11)–(12) (periods of admission and maximum periods of stay for the L nonimmigrant classification); (m)(5), (10) (period of stay for the M nonimmigrant classification); (n)(3) (period of admission for certain parents and children eligible for admission as special immigrants under section 101(a)(27)(I)); (o)(6)(iii) and (10) (period of admission for the O nonimmigrant classification); (p)(8)(iii) and (12) (period of admission for the P nonimmigrant classification); (q)(2) (period of admission for the Q nonimmigrant classification); (r)(6) (period of admission for the R nonimmigrant classification); (s)(1)(ii) (period of admission for the NATO–7 nonimmigrant classification); (t)(5)(ii) (period of admission for the S nonimmigrant classification); and (w)(13) and (16) (period of admission for the CW–1 nonimmigrant classification).

[21] *See* 38 FR 35425 (Dec. 28, 1973).

a fixed time period of authorized stay for F, J, and I nonimmigrants; and

○ Replacing references to specific form names and numbers with general language, to account for future changes to form names and numbers.

• Amend 8 CFR 214.2, Special requirements for admission, extension, and maintenance of status, by:

○ Setting the authorized admission and extension periods for F and J nonimmigrants up to the program length, not to exceed a 4-year period;

○ For F–1 students changing educational objectives or transferring to an SEVP-certified school, requiring that the student complete his or her first academic year of a program of study at the school that initially issued his or her Form I–20 or successor form, unless an exception is authorized by SEVP;

○ Prohibiting F–1 students at the graduate education level from changing programs at any point during a program of study.

○ Outlining procedures and requirements for F–1 nonimmigrants who change educational objectives while in F–1 status;

○ Requiring any nonimmigrant who has completed a program at one educational level to only be allowed to begin another program at a higher educational level while in F–1 status and prohibiting a change to the same or a lower educational level while in F–1 status;

○ Decreasing from 60 to 30 days the allowed period for F–1 nonimmigrants to prepare to depart from the United States after completion of a course of study or authorized period of post-completion practical training;

○ Providing for collection of biometric information in conjunction with an EOS application for F, J, and I nonimmigrants as may be required by 8 CFR 103.16;

○ Limiting language training students to an aggregate 24-month period of stay, including breaks and an annual vacation;

○ Providing that a delay in completing one's program by the program end date specified on the Form I–20, which includes but is not limited to delays caused by academic probation or suspension or a student's repeated inability or unwillingness to complete his or her course of study, generally is an unacceptable reason for program extensions for F nonimmigrants;

○ Allowing F nonimmigrants whose timely filed EOS applications remain pending after their admission period has expired to receive an auto-extension of their current authorization for on-campus and off-campus employment based on severe economic hardship resulting from emergent circumstances under existing 8 CFR 214.2(f)(5)(v). The length of the auto-extension of employment authorization would be up to 240 days or the end date of the **Federal Register** notice announcing the suspension of certain regulatory requirements, whichever is earlier;

○ Replacing D/S for I nonimmigrants with admission for a fixed time period until they complete the activities or assignments consistent with the I classification, not to exceed 240 days (with the exception of some I aliens from the People's Republic of China), with an EOS available for I nonimmigrants who can meet specified EOS requirements;

○ Codifying the definition of a foreign media organization for I nonimmigrant status, consistent with long-standing U.S. Citizenship and Immigration Services (USCIS) and U.S. Department of State (DOS) practice;

○ Updating the evidence an alien must submit to demonstrate eligibility for the I nonimmigrant classification;

○ Clarifying that J–1 nonimmigrants who are employment authorized with a specific employer incident to status, continue to be authorized for such employment for up to 240 days under the existing regulatory provision at 8 CFR 274a.12(b)(20), if their status expires while their timely filed EOS application is pending, whereas J–2 dependents, who must apply for employment authorization as evidenced by an EAD, do not have the benefit of continued work authorization once the EAD expires;

○ Clarifying that I nonimmigrants are authorized to continue working in the United States for their foreign employer, under 8 CFR 274a.12(b)(20), while their timely filed EOS application is pending for up to 240 days;[22]

○ Striking all references to ''duration of status'' and/or ''duration of employment'' for the F, J, and I nonimmigrant classifications; and

○ Including a severability clause. In the event that any provision of this rule is not implemented for whatever reason, DHS proposes that the remaining provisions be implemented in accordance with the stated purposes of this rule.

• Amend 8 CFR 248.1, Eligibility, by:

○ Establishing requirements to determine the period of stay for F or J nonimmigrants whose change of status application was approved before the Final Rule's effective date and who depart the United States, then seek admission after the Final Rule's effective date; and

○ Codifying the long-standing policy under which DHS deems abandoned an application to change to another nonimmigrant status, including F or J status, if the alien who timely filed the application departs the United States while the application is pending.

• Amend 8 CFR 274a.12, Classes of aliens authorized to accept employment, by updating the employment authorization provisions to incorporate the revisions in 8 CFR 214.2.

C. Summary of the Costs and Benefits

Currently, aliens in the F (academic student), J (exchange visitor), and most I (representatives of foreign information media) nonimmigrant classifications are admitted to the United States under the D/S framework. However, this framework poses a challenge to DHS' ability to efficiently monitor and oversee these nonimmigrants to assess whether these nonimmigrants are complying with the terms and conditions of their status and whether they present national security concerns. To address these vulnerabilities, DHS proposes to replace D/S with an admission for a fixed time period for F, J, and I nonimmigrants. Admitting aliens in the F, J, and I classifications for a fixed period of time would require all F, J, and I nonimmigrants who wish to remain in the United States beyond their specific authorized admission period to apply for authorization to extend their stay with USCIS if in the United States, thus requiring periodic assessments by DHS in order for the alien to remain in the United States for a longer period. This change would impose incremental costs on F, J, and I nonimmigrants as well as schools and exchange visitor program sponsors, but would in turn protect the integrity of the F, J, and I programs by having immigration officers evaluate and assess the appropriate length of stay for these nonimmigrants.

Over a 10-year period of analysis, DHS estimates the proposed rule would have annualized costs ranging from $390.3 million to $392.4 million (using 3 and 7 percent discount rates, respectively) when considering both U.S. and non-U.S. parties. When considering U.S. parties only, annualized costs range from $86.3 million to $88.1 million (using 3 and 7 percent discount rates, respectively).

[22] This time period is limited to up to 90 days for I nonimmigrants with a passport from the People's Republic of China but does not include those with a Hong Kong Special Administrative Region passport or a Macau Special Administrative Region passport.

IV. Background and Purpose

A. Legal Authority

The authority of the Secretary of Homeland Security (the Secretary) to implement the regulatory amendments in this rule can be found in various provisions of the immigration laws. Section 102 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 112, and section 103(a)(1) and (3) of the INA, 8 U.S.C. 1103(a)(1), (3), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. Section 214(a) of the INA, 8 U.S.C. 1184(a), gives the Secretary the authority to prescribe, by regulation, the time and conditions of admission of any alien as a nonimmigrant, including F, J, and I nonimmigrant aliens. *See also* 6 U.S.C. 271(a)(3), (b) (describing certain USCIS functions and authorities, including USCIS' authority to establish national immigration services policies and priorities and adjudicate benefits applications) and 6 U.S.C. 252(a)(4) (describing the authority of DHS's U.S. Immigration and Customs Enforcement (ICE) to collect information relating to foreign students and exchange program participants and to use such information to carry out its enforcement functions).

Section 248 of the INA, 8 U.S.C. 1258, permits DHS to allow certain nonimmigrants to change their status from one nonimmigrant status to another nonimmigrant status, with certain exceptions, as long as they continue to maintain their current nonimmigrant status and are not inadmissible under section 212(a)(9)(B)(i) of the INA, 8 U.S.C. 1182(a)(9)(B)(i), relating to unlawful presence. Similar to extensions of stay, change of status adjudications are discretionary determinations.[23] Also, section 274A of the INA, 8 U.S.C. 1324a, governs the employment of aliens who are authorized to be employed in the United States by statute or in the discretion of the Secretary.

Finally, the INA establishes who may be admitted as F, J, or I nonimmigrants. Specifically, section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), established the F nonimmigrant classification for, among others, bona fide students qualified to pursue a full course of study who wish to enter the United States temporarily, who have no intention of abandoning their residence in a foreign country, and solely for the purpose of pursuing a full course of study at an academic or language training school certified by SEVP, as well as for the spouse and unmarried children under the age of 21of such aliens.[24] *See also* INA 214(m), 8 U.S.C. 1184(m) (limiting the admission of nonimmigrants for certain aliens who intend to study at public elementary and secondary schools).

Section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), established the J nonimmigrant classification for aliens who wish to come to the United States temporarily and have no intention of abandoning their residence in a foreign country, to participate in exchange visitor programs designated by the DOS, as well as for the spouses and unmarried children under the age of 21of such aliens in certain J–1 categories.

Section 101(a)(15)(I) of the INA, 8 U.S.C. 1101(a)(15)(I), established, upon a basis of reciprocity, the I nonimmigrant classification for bona fide representatives of foreign information media (such as press, radio, film, print) seeking to enter the United States to engage in such vocation, as well as for the spouses and children of such aliens.

Within DHS, SEVP is administered by ICE. SEVP is authorized to administer the program to collect information related to nonimmigrant students and exchange visitors under various statutory authorities. Section 641 of IIRIRA authorizes the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F and J nonimmigrants during the course of their stays in the United States, using electronic reporting technology where practicable. Consistent with this statutory authority, DHS manages these programs pursuant to Homeland Security Presidential Directive–2 (HSPD–2), Combating Terrorism Through Immigration Policies (Oct. 29, 2001), as amended, (*https://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf*), and section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543, 563 (May 14, 2002) (EBSVERA) (codified at 8 U.S.C. 1762). HSPD–2 requires the Secretary of Homeland Security to conduct periodic, ongoing reviews of institutions certified to accept F nonimmigrants, and to include checks for compliance with recordkeeping and reporting requirements. Section 502 of EBSVERA directs the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1101(a)(15)(F) and 1372 of all schools approved for attendance by F students within 2 years of enactment, and every 2 years thereafter.

B. Background

i. F Classification

Section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), permits aliens who are bona fide students to temporarily be admitted to the United States solely for the purpose for pursuing a full course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic language training program. Principal applicants are categorized as F–1 nonimmigrant aliens and their spouses and children who may accompany or follow to join as F–2 dependents.[25]

From 1973 to 1979, F students were admitted for one year and could be granted an EOS in increments of up to 12 months if they established that they were maintaining status.[26] However, on July 26, 1978, given the large number of nonimmigrant students in the United States at the time and the need to continually process their EOS applications, legacy INS proposed amending the regulations to permit F–1 aliens to be admitted for the duration of their status as students.[27] Legacy INS explained the changes would facilitate the admission of nonimmigrant students, provide dollar and manpower savings to the Government, and permit more efficient use of resources.[28] On November 22, 1978, a final rule was published to amend the regulations at 8 CFR 214 to allow INS to admit F–1 students for a D/S period as students.[29] That rule became effective on January 1, 1979.

Subsequently, between January 23, 1981, and October 29, 1991, the INS amended the regulations addressing admission periods for F–1 students four more times.[30] On January 23, 1981, a

[23] *See* INA 248(a), 8 U.S.C. 1258(a); 8 CFR 248.1(a).

[24] *See* INA 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F).

[25] *See* INA 101(a)(15)(F)(i)–(ii), 8 U.S.C. 1101(a)(15)(F)(i)–(ii); 8 CFR 214.2(f)(3).

[26] *See* 38 FR 35425, 35426 (Dec. 28, 1973) (''The period of admission of a non-immigrant student shall not exceed one-year.'').

[27] *See* 43 FR 32306 (July 26, 1978).

[28] *See* 43 FR 32306, 32306–07 (July 26, 1978).

[29] *See* 43 FR 54618, 54620 (Nov. 22, 1978) (''The period of admission of a nonimmigrant student shall be for the duration of Status in the United States as a student if the information on his/her form I–20 indicates that he/she will remain in the United States as a student for more than 1 year . . . If the information on form I–20 indicates the student will remain in the United States for 1 year or less, he/she shall be admitted for the time necessary to complete his/her period of study.'').

[30] *See* 46 FR 7267 (Jan. 23, 1981), 48 FR 14575 (Apr. 5, 1983); 52 FR 13223 (Apr. 22, 1987); 56 FR 55608 (Oct. 29, 1991).

rule changed admission for F–1 nonimmigrants to a fixed period of admission, *i.e.,* the time necessary to complete the course of study, with the opportunity for an EOS on a case-by-case basis.[31] Legacy INS explained this was necessary because admitting nonimmigrants students for D/S resulted in questionable control over foreign students and contributed to problems in record keeping.[32]

On April 5, 1983, D/S was reinstituted with, among other changes, the implementation of new notification procedures for transfers between schools, improved reporting requirements for Designated School Officials (DSOs),[33] a limit for enrollment in one educational level, and a requirement for F–1 students to apply for an EOS and, if applicable, a school transfer to pursue another educational program at the same level of educational attainment.[34]

On April 22, 1987, a final rule outlined medical and academic reasons that would allow F–1 students to drop below a full-time course of study while remaining in D/S status, and clarified when an EOS or reinstatement must be requested.[35]

Finally, in 1991, the regulations were revised to implement Section 221(a) of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, 104 Stat. 4978, which established a three-year off-campus program for F–1 students,[36] and clarified the procedures for F–1 students seeking EOS and employment authorization utilizing the Form I–20.[37] The rule also gave DSOs the authority to grant program extensions (essentially an EOS) for F–1 students with a compelling academic or medical reason that prevented them from completing their educational program by a program end date and then to notify INS of the extension.[38] Since then, and pursuant to the 1991 final rule, DHS has relied on DSOs to report on student status, issue program extensions, and transfer students between programs and schools. Information from these nonimmigrant students is now tracked in SEVIS, to ensure government agencies have essential data related to nonimmigrant students to preserve national security. This is consistent with the requirements in IIRIRA, the USA PATRIOT Act, Public Law 107–56, and the recommendations of the 9/11 Commission Report. Changes to D/S were proposed for F students in 2020, but the proposal was withdrawn in 2021.[39]

ii. J Classification

The J nonimmigrant classification was created in 1961 by the Mutual Educational and Cultural Exchange Act of 1961, also known as the Fulbright-Hays Act of 1961, Public Law 87–256, 75 Stat. 527 (22 U.S.C. 2451, *et seq.*), to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. It authorizes aliens to participate in a variety of exchange visitor programs in the United States. The Exchange Visitor Program regulations cover the following program categories: professors and research scholars, short-term scholars, trainees and interns, college and university students, teachers, secondary school students, specialists, alien physicians, international visitors, government visitors, camp counselors, au pairs, and summer work travel.[40]

Prior to 1985, J exchange visitors were granted an initial admission for the period of their program up to one year.[41] In 1985, the regulations were amended to allow J exchange visitors to be admitted for the duration of their program plus 30 days.[42] This change from being admitted for a fixed period to D/S was implemented as part of a continuing effort to reduce reporting requirements for the public as well as the paperwork burden associated with processing extension requests on the agency.[43] Changes to D/S were proposed for J exchange visitors in 2020, but the proposal was withdrawn in 2021.[44]

A prospective exchange visitor must be sponsored by a DOS-designated program sponsor to be admitted to the United States in the J nonimmigrant classification and participate in an exchange visitor program. The DOS designated sponsor will issue a prospective J exchange visitor a Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status. The DS–2019 permits a prospective exchange visitor to apply for a J–1 nonimmigrant visa at a U.S. embassy or consulate abroad or seek admission as a J–1 nonimmigrant at a port of entry. A J–1 exchange visitor is admitted into the United States for D/S, which is the length of his or her exchange visitor program.[45]

Extensions of J exchange visitor programs are governed by DOS regulations.[46] If there is authority to

[31] *See* 46 FR 7267 (Jan. 23, 1981).

[32] *Id.*

[33] A Designated School Official (DSO) means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students *See* 8 CFR 214.3(l).

[34] *See* 48 FR 14575 (Apr. 5, 1983).

[35] *See* 52 FR 13223 (Apr. 22, 1987).

[36] *See* 56 FR 55608 (Oct. 29, 1991).

[37] Form I–20, Certificate of Eligibility for Nonimmigrant Student Status, is the document used by DHS that provides supporting information for the issuance of a student visa. Applicants (including dependents) must have a Form I–20 to apply for a student visa, to enter the United States, and to apply for an employment authorization document to engage in optional practical training. *See* SEVP's web page, Form I–20, ''Certificate of Eligibility for Nonimmigrant Student Status'' at *https://studyinthestates.dhs.gov/sites/default/files/I-20_Intial.pdf* (last visited Mar. 17, 2025).

[38] *See* 56 FR 55608 (Oct. 29, 1991).

[39] *See* 85 FR 60526 (Sept. 25, 2020) and 86 FR 35410 (July 6, 2021).

[40] *See* INA 101(a)(15)(J), 8 U.S.C. 1101(a)(15)(J); 22 CFR 62.20–62.32.

[41] *See* 8 CFR 214.2(j)(1)(ii) (1985).

[42] *See* 50 FR 42006 (Oct. 17, 1985).

[43] *Id.*

[44] *See* 85 FR 60526 (Sept. 25, 2020) and 86 FR 35410 (July 6, 2021).

[45] Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, is the document required to support an application for an exchange visitor visa (J–1). It is a 2-page document that can only be produced through the Student and Exchange Visitor Information System (SEVIS). SEVIS is the DHS database developed to collect information on F, M, and J nonimmigrants (see 8 U.S.C. 1372 and 6 U.S.C. 252(a)(4)). The potential exchange visitor's signature on page one of the form is required. Page 2 of the current Form DS–2019 consists of instructions and certification language relating to participation. No blank Forms DS–2019 exist. Each Form DS–2019 is printed with a unique identifier known as a ''SEVIS ID number'' in the top right-hand corner, which consists of an ''alpha'' character (N) and 10 numerical characters (*e.g.,* N0002123457). The Department of State's Office of Private Sector Exchange Designation in the Bureau of Educational and Cultural Affairs (ECA/EC/D) designates U.S. organizations to conduct exchange visitor programs. These organizations are known as program sponsors. When designated, the organization is authorized access to SEVIS and is then able to produce Form DS–2019 from SEVIS. The program sponsor signs the completed Forms DS–2019 in blue ink and transmits them to the potential exchange visitor and his or her spouse and unmarried children under the age of 21. J visa applicants must present a signed Form DS–2019 at the time of their visa interview. Once the visa is issued, however, the biographic information on the SEVIS record cannot be updated until the participant's program is validated (''Active'' in SEVIS). The sponsor is required to update the SEVIS record upon the exchange visitor's entry and no corrections to the record can be made until that time. In addition, in the event a visa is needed, sponsors may issue a Form DS–2019 for a dependent spouse or child, the system will not permit a new Form DS–2019 to be created as long as the primary's SEVIS record is validated in initial or active status. *See* 9 FAM 402.5–6(D)(1) (U), The Basic Form, available at *https://fam.state.gov/FAM/09FAM/09FAM040205.html* (last visited Mar. 20, 2025). While applicants must still present a paper Form DS–2019 to DOS in order to qualify for a visa, the SEVIS record is the definitive record of student or exchange visitor status and visa eligibility. *See* 9 FAM 402.5–4(B) (U), Student and Exchange Visitor Information System (SEVIS) Record is Definitive Record, available at *https://fam.state.gov/FAM/09FAM/09FAM040205.html* (last visited Mar. 20, 2025).

[46] *See* 22 CFR part 62. These programs vary in length. For example, professors and research scholars are generally authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, provided such

Continued

extend a program, the exchange visitor program sponsor's Responsible Officer (RO),[47] similar to the DSO in the F–1 student context, is authorized to extend a J exchange visitor's program by issuing a duly executed Form DS–2019.[48] Requests for extensions beyond the maximum program duration provided in the regulations must be approved by DOS, which adjudicates these extensions. USCIS does not adjudicate these program extensions; however, USCIS does adjudicate applications to extend a J nonimmigrant's stay based on an authorized program extension. As outlined above, consistent with the requirements in IIRIRA and the USA PATRIOT Act, Public Law 107–56, J exchange visitor programs are also monitored using SEVIS.

iii. I Classification

Section 101(a)(15)(I) of the INA defines the I classification as, upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him or her. Most nonimmigrant foreign information media representatives (with the exception of those presenting a passport issued by the People's Republic of China) are currently admitted for the duration of their employment. They are not permitted to change their information medium or employer until they obtain permission from USCIS.[49]

From 1973 to 1985, aliens admitted to the United States in I nonimmigrant status were admitted for a period of 1 year with the possibility of extensions.[50] In 1985, legacy INS amended the regulations to allow nonimmigrant foreign information media representatives to be admitted for the duration of their employment.[51] This change from a set time period of admission to admission for duration of employment for I nonimmigrants was implemented as part of a continuing effort to reduce reporting requirements for the public, as well as the paperwork burden associated with processing extension requests on the agency.[52] Through its administration of the regulations authorizing I nonimmigrants admission for duration of employment, DHS currently admits all I nonimmigrants for D/S with the exception of those presenting a passport issued by the People's Republic of China (other than a Hong Kong Special Administrative Region (SAR) passport or a Macau SAR passport).[53] Changes to D/S were proposed for I foreign media representatives in 2020, but the proposal was withdrawn in 2021.[54]

C. Need for Rulemaking

i. Risks to the Integrity of the F, J, and I Nonimmigrant Classifications

DHS welcomes F academic students, J exchange visitors, and I representatives of foreign information media, but it also acknowledges that the sheer size of the population complicates oversight and vetting functions. Since 1980, the number of F nonimmigrant students admitted into the United States has more than sextupled.[55] Similarly, since D/S was introduced for J and I nonimmigrants in 1985, the number of exchange visitors admitted into the United States has more than quadrupled while the number of representatives of foreign information media has nearly doubled.[56]

The Department uses SEVIS, a web-based system, to maintain information regarding: SEVP-certified schools; F–1 students studying in the United States (and their F–2 dependents); M–1 students enrolled in vocational programs in the United States (and their M–2 dependents); DOS-designated Exchange Visitor Program sponsors; and J–1 Exchange Visitor Program participants (and their J–2 dependents). SEVIS is necessary for national security and is consistent with the requirements in IIRIRA, the USA PATRIOT Act, and the 9/11 Commission Report.

Employees of educational institutions and program sponsors, specifically DSOs and ROs, play a large role in SEVIS. They are responsible for monitoring students and exchange visitors, accurately entering information about the students' and exchange visitors' activities into SEVIS, and properly determining whether the student or exchange visitor's SEVIS record should remain in active status or change to reflect a change in circumstances.[57] Under this framework, an academic student or exchange visitor generally maintains lawful status by complying with the conditions of the program, as certified by the DSO or RO. However, a program extension and an extension of an alien's nonimmigrant stay are different. DHS believes it is appropriate for the DSO to recommend an extension of an academic program and an RO to recommend an extension of an exchange visitor program; however, an EOS involves an adjudication of whether an alien is legally eligible to extend his or her stay in the United States in a given immigration status and has been complying with the terms and conditions of his or her admission.[58] DHS believes that the determinations of program extension and EOS should be separated, with the DSO's and RO's recommendation being one factor an immigration officer reviews while adjudicating an application for EOS. Changing to a fixed period of admission would give immigration officers a mechanism to make this evaluation at reasonably frequent intervals.

Additionally, DHS expects this change would deter and prevent fraud, as a requirement to check-in directly with an immigration officer is inherently likely to deter exploitation of perceived vulnerabilities in the F and J nonimmigrant classifications. The same benefits of direct evaluation, better recordkeeping, and fraud prevention also would apply to the I population.

time does not exceed 5 five years. *See* 22 CFR 62.20(i)(1). And, alien physicians, are generally limited to 7 years. *See* 22 CFR 62.27(e)(2).

[47] A Responsible Officer (RO) is an employee or officer of a sponsor who has been nominated by the sponsor, and approved by the U.S. Department of State, to carry out the duties outlined in 22 CFR 62.11.

[48] *See* 22 CFR 62.43. A RO must be a citizen of the United States or a lawful permanent resident of the United States. *See* 22 CFR 62.2.

[49] *See* 8 CFR 214.2(i).

[50] *See* 38 FR 35425 (Dec. 28, 1973). *See also* 50 FR 42006 (Oct. 17, 1985) (indicating that, prior to the publication of this rule, I nonimmigrants were admitted for one year).

[51] *See* 8 CFR 214.2(i); 50 FR 42006 (Oct. 17, 1985).

[52] *Id.*

[53] *See* 87 FR 61959 (Oct. 13, 2022) and 85 FR 27645 (May 11, 2020).

[54] *See* 85 FR 60526 (Sept. 25, 2020) and 86 FR 35410 (July 6, 2021).

[55] For example, approximately 260,000 F–1 nonimmigrant students were admitted into the United States during the 1980–81 school year. *See* U.S. Gov't Accountability Off., Controls Over Foreign Students in U.S. Postsecondary Institutions Are Still Ineffective, *supra* note 12, pg. ii. In fiscal year (FY) 2023, 1,625,740 F–1 nonimmigrant students were admitted into the United States. *See* DHS FY23, Quarter 4, tbl.4B, *supra* note 11.

[56] In 1985, 110,942 exchange visitors and 16,753 representatives of the foreign information media were admitted into the United States. *See* U.S. Dept. of Justice, Immigration and Naturalization Service, 1997 U.S. Statistical Yearbook of the Immigration and Naturalization Service, pg. 118, available at *https://archive.org/details/statisticalyearb1997bunit/page/n3/mode/2up* (last visited Mar. 19, 2025). In FY 2023, 481,280 exchange visitors and 32,470 representatives of the foreign information media were admitted into the United States. *See* DHS FY23, Quarter 4, tbl.4B, *supra* note 11.

[57] *See* 8 CFR 214.3(g)(1), (g)(2) (detailing a DSO's reporting requirements); 214.4(a)(2) (stating that failure to comply with reporting requirements may result in loss of SEVP certification).

[58] *See* 8 CFR 214.1(a)(3).

ii. Risks Within the F Classification

While the F program can provide significant benefits to academic institutions and local communities, the Department is aware that the F–1 program is subject to fraud, exploitation, and abuse. Since 2008, multiple school owners and others have been criminally prosecuted for ''pay-to-stay'' fraud, in which school officials, in return for cash payments, falsely report that F–1 students who do not attend school are maintaining their student status.[59] In some cases, convicted school owners operated multiple schools and transferred students among them to conceal the fraud.[60] DHS is also concerned that DSOs at these schools were complicit in these abuses; some DSOs intentionally recorded a student's status inaccurately,[61] some issued program extensions to students who did not have compelling medical or academic reasons for failing to complete their program by its end date,[62] and some DSOs permitted students who failed to maintain status to transfer to another school rather than apply for reinstatement.[63] Beyond cases publicly identified by DHS and the U.S. Department of Justice (DOJ), DHS is concerned about cases where DSOs were not aware of status violations by students.

Apart from concerns about DSOs and school owners involved in fraudulent schemes, DHS also has concerns about the actions of the aliens themselves. Some aliens have used the F classification to reside in the United States for decades by continuously enrolling in or transferring between schools, a practice facilitated by the D/S framework.[64] DHS has identified over 2,100 aliens who first entered as F–1 students between 2000 and 2010 and remain in active F–1 status as of April 6, 2025.[65] To extend their stay, these aliens enrolled in consecutive educational programs, they transferred to new schools, or DSOs repeatedly extended their program end dates. This practice is not limited to any one particular type of school; students at community or junior colleges, universities, and language training schools have maintained F–1 status for lengthy periods. While these instances of extended stay may not always result in technical violations of the law, DHS is concerned that such stays violate the spirit of the law, given that student status is meant to be temporary, with the alien having no intention of abandoning their residence in a foreign country, and for the primary purpose of studying, not as a way to remain in the United States indefinitely.[66]

The use of the F classification to remain in the United States for decades raises doubts that the alien's intention was to stay in the United States temporarily, as required by the INA.[67] It also raises concerns as to whether those aliens are bona fide nonimmigrant students who are maintaining valid lawful status by complying with the terms of their admission, which include solely pursuing a full course of study and progressing to completing a course of study. Likewise, it raises concerns as to whether these aliens truly have the financial resources to cover tuition and living expenses without engaging in unauthorized employment.

Further, while some school owners and school executives have faced legal consequences for their violation of the law, nonimmigrants admitted for D/S generally do not accrue unlawful presence for purposes of the 3- and 10-year bars described in INA 212(a)(9)(B) and (C), 8 U.S.C. 1182(a)(9)(B) and (C), unless an immigration officer finds they have violated their status in the context of adjudicating an immigration benefit request, or an immigration judge orders them excluded, deported, or removed.[68] Because F–1 nonimmigrant students are admitted for D/S, they generally do not file applications or petitions, such as EOS applications, with USCIS, and

[59] Press Release, U.S. Dep't of Justice, Operator of English language schools charged in massive student visa fraud scheme (Apr. 9, 2008), available at *https://www.justice.gov/archive/usao/cac/Pressroom/pr2008/038.html* (last visited Mar. 20, 2025); Press Release, U.S. Dep't of Justice, Owner/Operator and employee of Miami-based school sentenced for immigration-related fraud (Aug. 30, 2010), available at *https://www.justice.gov/archive/usao/fls/PressReleases/2010/100830-02.html* (last visited Apr. 8, 2025); Press Release, Immig. and Customs Enf't, Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school (June 13, 2011), available at *https://www.ice.gov/news/releases/pastor-sentenced-1-year-visa-fraud-ordered-forfeit-building-housing-former-religious* (last visited Mar. 20, 2025); Press Release, U.S. Dep't of Justice, School Official Admits Visa Fraud (Mar. 12, 2012), available at *https://www.justice.gov/archive/usao/pae/News/2012/Mar/tkhir_release.htm* (last visited Apr. 8, 2025); Press Release, Immig. And Customs Enf't, Owner of Georgia English language school sentenced for immigration fraud (May 7, 2014), available at *https://www.ice.gov/news/releases/owner-georgia-english-language-school-sentenced-immigration-fraud* (last visited Mar. 20, 2025); Press Release, Immig. and Customs Enf't, 3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud (Apr. 30, 2015), available at *https://www.ice.gov/news/releases/3-senior-executives-profit-schools-plead-guilty-student-visa-financial-aid-fraud* (last visited Mar. 20, 2025); Press Release, Immig. and Customs Enf't, Owner of schools that illegally allowed foreign nationals to remain in US as ''students'' sentenced to 15 months in federal prison (Apr. 19, 2018), available at *https://www.ice.gov/news/releases/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15* (last visited Mar. 20, 2025).

[60] Press Release, Immig. and Customs Enf't, 3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud, *supra* note 59.

[61] Former DSO Official Found Guilty of Visa Fraud, (May 20, 2019), available at *https://www.goffwilson.com/Blawg-entries/2019/former-DSO-Official-Guilty-of-Visa-Fraud.aspx* (last visited Mar. 20, 2025); ImmigrationReform.com, U.S. Removes 4,600 Fraudulent OPT Participants from the Program, (July 14, 2020), available at *https://www.immigrationreform.com/2020/7/2014/OPT-fraud-dhs-crackdown-immigrationreform-com* (last visited Mar. 25, 2025); Press Release, U.S. Dep't of Justice, Operator of English language schools charged in massive student visa fraud scheme, *supra* note 59; Press Release, U.S. Dep't of Justice, Owner/Operator and employee of Miami-based school sentenced for immigration-related fraud, *supra* note 59; Press Release, Immig. and Customs Enf't, Pastor sentenced to 1 year for visa fraud, ordered to forfeit building housing former religious school, *supra* note 59; Press Release, U.S. Dep't of Justice, School Official Admits Visa Fraud, *supra* note 59; Press Release, Immig. and Customs Enf't, Owner of Georgia English language school sentenced for immigration fraud, *supra* note 59; Press Release, Immig. and Customs Enf't, 3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud, *supra* note 59; Press Release, Immig. and Customs Enf't, Owner of schools that illegally allowed foreign nationals to remain in U.S. as ''students'' sentenced to 15 months in federal prison, *supra* note 59.

[62] For example, DHS identified a nonimmigrant who was an F–1 student at a dance school from 1991–2021. Although the reported normal length of the dance program is 5 years, the school issued 17 program extensions between 2003 (when the use of SEVIS was mandated) and 2020, claiming that the student needed more time despite nearly 30 years of enrollment. The student subsequently transferred to an English language training program at another school with a program start date in November 2022, despite more than 30 years in the United States as an F–1 student. The student remains in active F–1 status reportedly studying English as of May 7, 2025. Another student who was enrolled at the same school from 2009 to 2020 and had been an F–1 student since 2005, was granted 14 program extensions. DHS also identified three F–1 students in doctoral programs that have taken over 20 years to complete their programs, and five F–1 students at community colleges have been enrolled in associate degree programs for periods in excess of 5 years—some for as long as a decade. Student Exchange Visitor Program analysis of data in the Student Exchange Visitor Information System and valid as of May 7, 2025.

[63] Press Release, Immig. and Customs Enf't, 3 senior executives of for-profit schools plead guilty to student visa, financial aid fraud, *supra* note 59.

[64] Monitoring F–1 students on post-completion OPT can be even more complicated because the students are no longer attending classes. *See* U.S. Gov't Accountability Off., GAO–14–356, Student and Exchange Visitor Program, DHS Needs to Assess Risks and Strengthen Oversight of Foreign Students with Employment Authorization, (Feb. 27, 2014), available at *https://www.gao.gov/assets/gao-14-356.pdf* (last visited Apr. 4, 2025).

[65] Student Exchange Visitor Program analysis of data in the Student Exchange Visitor Information System identifying the number of F–1 active students who began studying between 2000 and 2010, valid as of Apr. 6, 2025.

[66] *See* INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i).

[67] *See* INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i).

[68] *See* USCIS Interoffice Memorandum, ''Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act'' (May 6, 2009).

therefore, immigration officers do not generally have an opportunity to determine whether they are engaging in F–1 nonimmigrant activities in the United States and maintaining their F–1 nonimmigrant status.

The U.S. Government Accountability Office (GAO) has reported on DHS's concerns about DSOs and nonimmigrant students. In 2019, GAO and ICE published a report identifying fraud risks to SEVP related to managing school recertification and program training. The report included vulnerabilities associated with involving school owners and DSOs in overseeing the maintenance of status of F–1 students.[69] In the report, GAO identified fraud vulnerabilities on the part of both students and schools. Examples include students claiming to maintain status when they are not, such as failing to attend class or working without appropriate authorization, or school owners not requiring enrolled students to attend classes or creating fraudulent documentation for students who are ineligible for the academic program. GAO recommended that ICE develop a fraud risk profile and use data analytics to identify potential fraud indicators in schools petitioning for certification, develop and implement fraud training for DSOs, and strengthen background checks for DSOs.[70]

DHS believes it can mitigate fraud risks in part through, as this rule proposes, setting the authorized admission and extension periods for F nonimmigrants as the length of the F nonimmigrant's specific program, not to exceed a 4-year period. It would establish a mechanism for immigration officers to assess these nonimmigrants at defined periods (such as when applying for an EOS in the United States beyond a 4-year admission period) and determine whether they are complying with the conditions of their classification. Immigration officers receive background checks, clearances, and training before DHS authorizes them to implement the nation's immigration laws, which includes as part of adjudicating the application, whether nonimmigrants meet the requirements to extend their stay, whether a student has violated his or her nonimmigrant status without the DSO's awareness or whether DSOs are engaging in fraud by not requiring students to attend classes or by falsifying documents. Immigration officers are further trained to assess applications for fraud indicators and conduct reviews and vetting that may assist in the detection of fraud or abuse. This would allow further opportunity for DHS to identify and hold accountable aliens who violate their F–1 status, as well as their educational institutions. DHS currently employs out-of-cycle reviews and recertification of SEVP-certified schools outlined in 8 CFR 214.3(h) to ensure the school's compliance with regulatory recordkeeping and reporting requirements. DHS may also conduct on-site reviews of schools at any time, which may lead to withdrawal of SEVP certification upon findings of noncompliance or regulatory violations. Under the current D/S framework, DHS might not detect an individual F–1 status violation for an extended period if the student stays enrolled in a school, does not seek readmission to the United States, and does not apply for additional immigration benefits. If DHS makes periodic assessments to verify that F–1 students are maintaining their student status, DHS could better detect and mitigate against these violations as well as violations by their school.[71] The proposed rule creates opportunities for this scrutiny if these nonimmigrants wish to remain beyond their fixed period of admission. This may also have the effect of deterring individuals who would otherwise seek to come to the United States and engage in some of the behaviors discussed above, believing they would be able to do so undetected for long periods of time. DHS believes this is a more appropriate way to maintain the integrity of the U.S. immigration system. Additionally, the Department believes the proposed changes would allow immigration officers to directly verify, among other things, that students applying for an EOS: have the funds needed to live and study in the United States without engaging in unauthorized work; are maintaining a residence abroad to which they intend to return; have pursued and are pursuing a full course of study; and are completing their studies within the 4 year generally applicable timeframe relating to their post-secondary education programs in the United States or are able to provide a permissible explanation for taking a longer period of time to complete the program.

Finally, the D/S framework, because it reduces opportunities for direct vetting of foreign academic students by immigration officers, creates opportunities for foreign adversaries to exploit the F–1 program and undermine U.S. national security. An open education environment in the United States offers enormous benefits, but it also places research universities and the nation at risk for economic, academic, or military espionage by foreign students. Foreign adversaries are using progressively sophisticated and resourceful methods to exploit the U.S. educational environment, including well-documented cases of espionage through the student program.[72]

[69] In a 2019 report, GAO was asked to review potential vulnerabilities to fraud in the Student and Exchange Visitor Program. GAO examined, among other things, the extent to which ICE (1) implemented controls to address fraud risks in the school certification and recertification processes and (2) implemented fraud risk controls related to DSO training. *See* U.S. Gov't Accountability Off., GAO–19–297, DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight (Mar 18, 2019), available at *https://www.gao.gov/assets/700/697630.pdf* (last visited Apr. 3, 2025); U.S. Gov't Accountability Off., GAO–11–411, Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs (Apr. 15, 2011), available at *https://www.gao.gov/assets/320/317762.pdf* (last visited Apr. 4, 2025); and U.S. Gov't Accountability Off., GAO–12–572, Student and Exchange Visitor Program: DHS Needs to Assess Risks and Strengthen Oversight Functions (June 18, 2012), available at *https://www.gao.gov/assets/600/591668.pdf* (last visited Apr. 4, 2025).

[70] Since publishing its 2019 report, GAO has updated its website to include comments to the Recommendations for Executive Action included therein. ICE has taken steps to implement the report's recommendations, including making a public announcement regarding changing the timeline for the recertification notification process for schools. *See* U.S. Gov't Accountability Off., Student and Exchange Visitor Program: DHS Can Take Additional Steps to Manage Fraud Risks Related to School Recertification and Program Oversight, RECOMMENDATIONS, (Mar. 18, 2019), available at *https://www.gao.gov/products/GAO-19-297?mobile_opt_out=1#summary_recommend* (last visited Mar. 11, 2025).

[71] For example, SEVP may withdraw a school's certification or deny a school's recertification if a DSO willfully issues a false statement, including wrongful certification of a statement by signature, in connection with a student's school transfer or application for employment or practical training. *See* 8 CFR 214.4(a)(2)(v).

[72] In January of 2023, Ji Chaoqun, a Chinese national who came to the United States to study electrical engineering at the Illinois Institute of Technology in 2013, was sentenced to 8 years for spying for the Chinese government. *See* CNN Politics, Chinese engineer sentenced to 8 years in U.S. prison for spying (Jan. 25, 2023), available at *https://www.cnn.com/2023/01/25/politics/chinese-engineer-sentence-spying-intl-hnk/index.html* (last visited Apr. 9, 2025). In Dec. 2019, Weiyun (Kelly) Huang, the owner of Findream and Sinocontech, pleaded guilty to conspiracy to commit visa fraud in the U.S. District Court for the Northern District of Illinois in Chicago. In return for payments, Findream listed aliens as OPT workers, providing them with what appeared to be legal status. The FBI charged one of those aliens with spying. *See* Kelly Huang Criminal Compliant (Mar. 28, 2019), available at https://media.nbcbayarea.com/2019/09/KellyHuangCriminalComplaint.pdf (last visited Apr. 2, 2025). Huang was sentenced to 37 months in federal prison for conspiracy to commit visa fraud. Press Release, U.S. Dep't of Justice, Chinese Business Woman Sentenced to 37 Months in Federal Prison for Conspiracy to Commit Visa Fraud (June 26, 2020), available at *https://www.justice.gov/usao-ndil/pr/chinese-businesswoman-sentenced-37-months-federal-prison-conspiracy-commit-visa-fraud* (last visited

Detecting and deterring emerging threats to U.S. national security posed by adversaries exploiting the F–1 program requires additional oversight. In 2022, in response to a Congressional inquiry, GAO investigated and made recommendations that ICE modify the SEVIS system to include factors that potentially indicate which foreign students or scholars may pose more risk of transferring technology at U.S. universities.[73]

DHS believes that replacing admissions for D/S for F–1 students with admission for a fixed time period would help mitigate these national security risks by ensuring an immigration official directly and periodically vets applicants for extensions of stay and, in so doing, confirms they are engaged only in activities consistent with their student status. F–1 nonimmigrants applying for EOS will also be required to establish they are admissible, and failure to do so will result in denial of the EOS. Admissibility grounds are complex and are properly assessed by a trained DHS officer. Such an assessment is not currently made when F–1 nonimmigrants apply for an extension of their program with their institution.[74] Significantly, under the proposed changes to the period of admission of F nonimmigrants and the applicable EOS process, DHS would collect biometrics and other information (such as evidence of financial resources to cover expenses and evidence of any criminal activity) from F nonimmigrant students more frequently, thereby enhancing the Government's oversight and monitoring of these aliens.

iii. Risks Within the J Classification

DHS believes that the national security risks posed by D/S admissions for individuals admitted under the J classification are similar to those posed by the F classification.[75] According to a December 2018 report by a panel of experts commissioned by the National Institutes of Health (NIH) to study foreign influence on federally-funded scientific research, ''Small numbers of scientists have committed serious violations of NIH policies and systems by not disclosing foreign support (*i.e.,* grants), laboratories, or funded faculty positions in other countries.'' [76] As with F nonimmigrants, setting the length of the J nonimmigrant's specific program to not exceed a 4-year period would establish a mechanism for immigration officers to assess these nonimmigrants at defined periods (such as when applying for an EOS in the United States beyond a 4-year admission period) and determine whether they are complying with the conditions of their classification. This will increase vetting of the J nonimmigrant population, which can help to prevent and deter nefarious actors.

There are multiple examples of ongoing national security threats posed by J nonimmigrants. For example, in September 2019, a stark illustration of state-sponsored efforts to illegally obtain U.S. technology emerged when the FBI charged Chinese government official Zhongsan Liu with conspiracy to fraudulently procure U.S. research scholar visas for Chinese officials whose actual purpose was to recruit U.S. scientists for high technology development programs within China.[77] Liu was convicted of participating in conspiracy to defraud the United States and fraudulently obtain U.S. visas.[78]

Additionally, in December 2019, Zaosong Zheng, a 29-year-old graduate student in J–1 status participating in an exchange visitor program at Harvard University, was stopped at Boston Logan International Airport. Federal agents determined he was a ''high risk for possibly exporting undeclared biological material'' after finding 21 vials of brown liquid wrapped in a plastic bag inside a sock in his checked luggage; typed and handwritten notes indicated ''that [the exchange visitor] . . . was knowingly gathering and collecting intellectual property . . . possibly on behalf of the Chinese government.'' [79] Zheng was indicted on one count of smuggling goods from the United States and one count of making false, fictitious or fraudulent statements.

In January 2020, Yanqing Ye, was charged with one count each of visa fraud, making false statements, acting as an agent of a foreign government and conspiracy after Ye falsely identified herself on her J–1 visa application as a

Apr. 2, 2025). This vulnerability presented in the nonimmigrant student classification has been highlighted by the FBI. In a 2018 hearing before the Senate Intelligence Committee, the FBI Director testified about the threat from China, noting ''that the use of nontraditional collectors, especially in the academic setting, whether it's professors, scientists, students, we see in almost every field office that the FBI has around the country. It's not just in major cities. It's in small ones as well. It's across basically every discipline. I think the level of naiveté on the part of the academic sector about this creates its own issues. They're exploiting the very open research and development environment that we have, which we all revere, but they're taking advantage of it. So, one of the things we're trying to do is view the China threat as not just a whole of government threat, but a whole of society threat on their end. I think it's going to take a whole of society response by us. So, it's not just the intelligence community, but it's raising awareness within our academic sector, within our private sector, as part of the defense.'' *See* Senate Select Committee on Intelligence Hearing (Feb. 13, 2018), transcript available at https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats (last visited Apr. 1, 2025)*; see also* Foreign Threats to Taxpayer—Funded Research: Oversight Opportunities and Policy Solutions: Hearing before the Senate Finance Committee (June 5, 2019) (Statement of Louis A. Rodi III), available at *https://www.finance.senate.gov/imo/media/doc/05JUN2019RodiSMNT.pdf* (last visited Apr. 2, 2025). DSOs are not trained immigration officers nor are they in a position to make such determinations.

[73] *See* U.S. Gov't Accountability Off., GAO 23–106114, China, Efforts Underway to Address Technology Transfer Risk at U.S. Universities, but ICE Could Improve Related Data (Nov. 2022), available at *https://www.gao.gov/assets/gao-23-106114.pdf* (last visited Apr. 3, 2025).

[74] In addition, DSOs may be unaware of a student's failure to maintain status, including by engaging in criminal activity, nor do they have the authority or ability to acquire such information. Admitting F–1 nonimmigrants for a fixed period of admission would provide trained immigration officers with the opportunity to vet these individuals.

[75] In its 2019 Report to Congress, the U.S.-China Economic and Security Review Commission, the Commission described the U.S. Government's efforts to curb China's extensive influence and espionage activities in academic and commercial settings. The Commission noted that these efforts took the form of visa restrictions for Chinese nationals, greater scrutiny of federal funding awarded to universities, legal action against those suspected of theft or espionage, and new legislation. *See* U.S.-China Economic and Security Review Commission, 2019 Annual Report to Congress (Nov. 2019), available at *https://www.uscc.gov/annual-report/2019-annual-report* (last visited Mar. 20, 2025).

[76] *See* U.S. National Institutes of Health Advisory Committee to the Director (ACD), ACD Working Group for Foreign Influences on Research Integrity (Dec. 2018) (discussing measures to address concerns about foreign influences related to graduate students and post-doctoral fellows, as well as foreign employees).

[77] Press Release, U.S. Dep't of Justice, Chinese Government Employee Charged in Manhattan Federal Court with Participating in Conspiracy to Fraudulently Obtain U.S. Visas (Sept. 16, 2019), available at *https://www.justice.gov/archives/opa/pr/chinese-government-employee-charged-manhattan-federal-court-participating-conspiracy* (last visited Apr. 2, 2025).

[78] *See* Press Release, U.S. Dep't of Justice, Chinese Government Employee Convicted of Participating in Conspiracy to Defraud the United States and Fraudulently Obtain U.S. Visas (Mar. 23, 2022), available at *https://www.justice.gov/usao-sdny/pr/chinese-government-employee-convicted-participating-conspiracy-defraud-united-states* (last visited Apr. 1, 2025).

[79] *See* Boston Herald, China may be behind theft of bio samples by Harvard-sponsored Chinese student, fed says (Dec. 30, 2019), available at *https://www.bostonherald.com/2019/12/30/peoples-republic-of-china-may-be-behind-theft-of-bio-samples-by-harvard-sponsored-chinese-student-feds-say/* (last visited Mar. 20, 2025); *see also* The Daily Beast, China Might Be Behind Harvard Student's Theft of Cancer Research, Feds Claim (Dec. 31, 2019), available at *https://www.thedailybeast.com/china-might-be-behind-harvard-student-zaosong-zhengs-theft-of-cancer-research-feds-claim* (last visited Mar. 20, 2025); Press Release, U.S. Dep't of Justice, Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases (Jan. 28, 2020), available at *https://www.justice.gov/archives/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related* (last visited Mar. 28, 2025).

''student'' and lied about her ongoing military service at a top military academy directed by the Chinese Communist Party. It was further alleged that while studying at Boston University's Department of Physics, Chemistry, and Biomedical Engineering, Ye continued to work as a People's Liberation Army (PLA) Lieutenant completing numerous assignments from PLA officers such as conducting research, assessing U.S. military websites and sending U.S. documents and information to China.[80]

In June 2020, a Chinese national who entered the United States on a J–1 visa to conduct research at the University of California, San Francisco (UCSF) was arrested at Los Angeles International Airport while attempting to return to China and charged with visa fraud. According to court documents, he allegedly is an officer with the PRC PLA and provided fraudulent information about his military service in his visa application. He allegedly was instructed by his military lab supervisor to bring back to China information about the lab at UCSF.[81]

In 2025, J–1 Chinese Research Scholar at the University of Michigan was charged in a criminal complaint for conspiracy, smuggling goods into the United States, false statements, and visa fraud. The FBI arrested the exchange visitor for allegedly smuggling a noxious fungus which is responsible for billions of dollars in economic losses worldwide each year and causes health problems for both humans and livestock. The J–1 allegedly received Chinese government funding for her work on this pathogen and is a loyal member of the Chinese Communist Party.[82]

Exchange visitor program categories include college and university students, which share similarities with the F–1 nonimmigrant classification. Students enrolled in such programs are pursuing post-secondary studies alongside F–1 nonimmigrants. J–1 college and university students in a degree program may be authorized to participate in the exchange visitor program so long as they meet the requirements for duration of participation, including pursuing a full course of study, echoing the full course of study requirements for F–1 nonimmigrants. Their programs may also be extended by the ROs, subject to regulation and/or approval by DOS, without an application to DHS. These similarities give rise to the same concerns related to F–1s about national security, as described above, and about fraud and abuse by J–1s and their ROs. By requiring the same fixed period of admission for F–1s and J–1s, J–1 college and university students in exchange visitor programs would be unable to circumvent the intent of this proposed rule, [83] which is to protect the integrity of these programs and provide additional protections and mechanisms for oversight. Because J exchange visitors are also tracked in SEVIS, DHS believes it would be more effective for an immigration officer to periodically confirm that an alien has properly maintained status, rather than relying on the checks of an RO that the J–1 is pursuing the activities permitted by the exchange visitor program. As noted above, DHS believes it is more appropriate for immigration officers, with their background checks, clearances, and training from the U.S. government, to adjudicate maintenance of nonimmigrant status and whether an alien is eligible for an additional admission period. Switching from D/S to a fixed period of admission would permit immigration officers the opportunity to determine whether an alien is eligible for an additional period of time. If an officer finds a violation of status while adjudicating the alien's request, the consequences could be immediate. Applicants for EOS must also establish that they are admissible, and failure to do so will result in denial of the EOS.[84] Admissibility grounds are complex and are properly assessed by a trained DHS officer. Such an assessment is not currently made when J exchange visitors apply for an extension of their program with their RO.[85] Thus, admitting J exchange visitors for a fixed period, instead of for D/S, would give DHS more frequent opportunities to directly vet these foreign visitors and ensure they are bona fide exchange visitors and it would prevent and deter nefarious actors within the J exchange visitor population. Under the proposed changes to the period of admission of J exchange visitors and the applicable EOS process, DHS would more frequently collect biometrics and other information from J exchange visitors, enhancing the Government's oversight and monitoring of these aliens.

iv. Risks Within the I Classification

Admitting most I nonimmigrants for D/S affords them different treatment from most other nonimmigrants, who are admitted for a specified period of time. The Department believes admitting aliens temporarily in the United States for a fixed period would strengthen vetting and information collection and help immigration officers ensure that the I nonimmigrants are, and will be, engaged in activities that are permissible under INA 101(a)(15)(I). In addition, this rulemaking proposes to require individuals who wish to remain in I nonimmigrant status beyond the end date for their authorized stay to apply for an EOS with USCIS, at which point immigration officers can review their activities in the United States. It also clarifies what DHS would require these individuals to present as evidence supporting their EOS request.[86]

V. Discussion of the Proposed Rule

All persons arriving at a POE to the United States must be inspected by a U.S. Customs and Border Protection (CBP) officer and must apply for admission into the United States with CBP.[87] In the case of an alien, a CBP officer determines whether an alien is eligible for admission and, if they are, issues the I–94, Arrival/Departure Record with the nonimmigrant classification and period of admission.[88] For the vast majority of aliens, their I–94 includes a specific date through which their status is valid; they must depart the United States on or before

[80] Press Release, U.S. Dep't of Justice, Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases, *supra* note 79.

[81] *See* Press Release, U.S. Dep't of Justice, Officer of China's People's Liberation Army Arrested At Los Angeles International Airport (June 11, 2020), available at *https://www.justice.gov/usao-ndca/pr/officer-china-s-people-s-liberation-army-arrested-los-angeles-international-airport* (last visited Mar. 20, 2025).

[82] *See* Press Release, U.S. Dep't of Justice, Chinese Nationals Charged with Conspiracy and Smuggling a Dangerous Biological Pathogen into the U.S. for their Work at a University of Michigan Laboratory (June 3, 2025), available at https://www.justice.gov/usao-edmi/pr/chinese-nationals-charged-conspiracy-and-smuggling-dangerous-biological-pathogen-us.

[83] References to ''this proposed rule'' and ''this proposed rulemaking'' throughout this document refer to the rulemaking being proposed within this NPRM.

[84] *See* 8 CFR 214.1(a)(3).

[85] ROs may be unaware of a student's failure to maintain status, including by engaging in criminal activity. Admitting J–1s for a fixed period of admission would provide trained DHS officers with the opportunity to vet these individuals.

[86] These proposed changes, including additional evidence relating to foreign media organizations and activities the alien intends to engage in while in I status, would also apply to a nonimmigrant in the United States who requests to change his/her nonimmigrant status to that of an I nonimmigrant.

[87] *See* INA sec. 235, 8 U.S.C. 1225; *see also,* 8 CFR pt. 235.

[88] The I–94 is used by the U.S. Government to track arrivals and departures of nonimmigrants. Originally the form was designed in two parts—one for the Government and one for the nonimmigrant. The second part would be stapled into the nonimmigrant's passport and then removed upon departure. The form is now maintained electronically and can be accessed by nonimmigrants by downloading it from the CBP website. *See https://i94.cbp.dhs.gov/* (last visited Apr. 10, 2025).

that date. An alien who wishes to lawfully remain in the United States in the same status past that date generally must apply for an EOS with USCIS.

However, certain nonimmigrant classifications, including F academic students, J exchange visitors, and I representatives of foreign information media, and their dependents, may be admitted into the United States for D/S instead of a period of time with a specific departure date. DHS is proposing changes to the admission provisions for these particular nonimmigrant classifications, including replacing admissions for ''duration of status'' with a fixed admission period. This would enable immigration officers to independently and directly verify the continued eligibility of foreign visitors in F, J, or I nonimmigrant status. It would also require aliens who fall under certain criteria to apply more frequently for additional admission periods.

A goal of this proposed rule is to institute policies that would encourage aliens to maintain lawful status and reduce instances in which F, J, and I nonimmigrants unlawfully remain in the United States after their program, practical training, or activities or assignments consistent with the I classification ends. Aliens who remain in the United States beyond a fixed time period generally would begin accruing unlawful presence. Unlawful presence in the United States may result in an alien becoming inadmissible upon departing the United States. *See* INA 212(a); 8 U.S.C. 1182(a). As a result of this inadmissibility, the alien may become ineligible for a nonimmigrant or immigrant visa, admission to the United States, or benefits for which admissibility is required, such as adjustment of status to that of a lawful permanent resident. *See* INA 212(a), 8 U.S.C. 1182(a); INA 245(a), 8 U.S.C. 1255(a).

A. General Period of Admission for F and J Nonimmigrants

Under this proposal, aliens applying for admission in either F or J status who, under this proposal, would be eligible to be admitted for a maximum period of 4 years or the length of program as specified on Form I–20 or DS–2019, whichever is shorter, or the end date of the approved employment authorization for post-completion OPT and Science Technology Engineering and Mathematics (STEM) OPT, as applicable, plus additional 30 day periods for arrival and a 30-day period to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i) through (iii); and 8 CFR 214.2(f)(5) and (j)(1)(ii).

In this proposal, DHS addresses the following circumstances that might apply when F and J nonimmigrants apply for admission at a POE:

- Aliens who departed the United States, including those seeking admission before their timely filed EOS application has been adjudicated, but after their previously authorized period of stay has expired, could be eligible to be admitted for the length of time required to reach the program end date noted in their most recent Form I–20 or DS–2019, not to exceed 4 years, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States, similar to an initial period of admission. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (ii)(A). USCIS would consider the alien's EOS application abandoned because the alien's new fixed date of admission based on the most recent I–20 or DS–2019 had already been determined by CBP upon the most recent admission to the United States, and thus the pending EOS application is extraneous. *See* proposed 8 CFR 214.1(c)(8).
- Aliens who departed the United States and are applying for admission before their timely filed EOS application has been adjudicated, but before their previously authorized period of stay has expired, could be eligible to be admitted either for:
  - The length of time as indicated by the program end date noted in their most recent Form I–20 or DS–2019, not to exceed 4 years, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States, similar to an initial period of admission. If the alien is admitted for the program length (not to exceed 4 years, as applicable), USCIS would consider the alien's EOS application abandoned because the alien's new fixed date of admission based on the most recent I–20 or DS–2019 had already been determined by CBP upon the most recent admission to the United States, and thus the pending EOS application is extraneous; or
  - The period of time remaining on their previously authorized period of admission. CBP could admit the alien for a period of time not to exceed the unexpired period of stay that was authorized before the alien's departure, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. In this scenario, in accordance with proposed 8 CFR 214.1(c)(8), an alien's EOS application would not be considered abandoned and USCIS could grant a new period of stay upon subsequent adjudication of the EOS application. *See* proposed 8 CFR 214.1(a)(4)(i) and (a)(4)(ii).

DHS is providing additional clarification here in this preamble that in order to facilitate admission in this scenario, aliens should be prepared to provide evidence of a timely filed extension in the form of a receipt notice issued by DHS for either instance detailed above.

- Aliens who departed the United States after timely filing an EOS application and are reapplying for admission after their EOS application is granted. In such cases, CBP could admit them for a period of time not to exceed the time authorized by their approved EOS, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i)(C) and (a)(4)(ii)(C). When applying for admission at a POE while their application for employment authorization is pending, they should have a notice (currently Form I–797) issued by USCIS indicating receipt of the application for employment authorization (currently Form I–765) necessary for post-completion OPT or STEM OPT. *See* proposed 8 CFR 214.1(a)(4)(iii).
- Aliens who departed the United States without an approved EOS application and are applying for admission with a valid Form I–20 or Form DS–2019, or successor form, may be admitted for the length of time as indicated by the program end date noted in their Form I–20 or DS–2019, not to exceed 4 years, plus a period of 30 days to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(i)(A) and (ii)(A); 8 CFR 214.2(f)(5) and (j)(1)(ii)(A).
- F nonimmigrants applying for admission to engage in post-completion OPT or STEM OPT may, generally, be admitted either up to the expiration date noted on their EAD or up to the DSO's recommended employment end date for post completion or STEM OPT specified on their Form I–20, whichever is later, plus a 30-day period to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 214.1(a)(4)(iii); and 8 CFR 214.2(f)(5). When applying for admission at a POE while their application for employment authorization is pending, they should have a notice issued by USCIS indicating receipt of the employment authorization application necessary for

post-completion OPT or STEM OPT (currently Form I–797).

This proposed rule would clarify how the periods of admission will be calculated for F–1 and J–1 nonimmigrants. Specifically, DHS proposes adding wording to 8 CFR 214.2(f)(5)(i), (f)(7)(vi) and (j)(1)(iv)(C) clarifying that the 30-day period before the indicated report date or program start date and 30 additional days following the program end date or 4-year maximum period of admission do not count towards the maximum F–1 and J–1 nonimmigrants are permitted.[89] The calculation of the 4-year maximum periods of admission would not begin from the date of admission during that 30-day window, but from the program start date. Similarly, the 30-day departure periods for F–1 and J–1 nonimmigrants would not count towards the 4-year maximum period of admission. DHS proposes this to avoid a scenario where an F–1 or J–1 seeks admission 30 days prior to the program start date, is admitted for a maximum 4-year period of admission to complete a 4-year program, but receives a period of admission calculated from the date of entry, meaning that the end of their period of admission would end 30 days prior to their 4-year program end date, thereby requiring the F–1 or J–1 to apply for an EOS or depart and re-enter the United States.

Under this proposed rule, certain aliens applying for admission pursuant to the provisions relating to automatic extension of visa validity in the case of an absence not exceeding 30 days solely in contiguous territory or adjacent islands could be admitted up to the unexpired period of stay authorized prior to their departure and the visa is considered automatically extended to the date of application for readmission only. *See* proposed 8 CFR 214.1(b)(1); and 22 CFR 41.112(d).

All of these cases assume, consistent with this proposed rule, that the admission period of any F or J nonimmigrant previously admitted for D/S would be transitioned to a fixed date of admission. To provide adequate notice to aliens previously admitted for D/S regarding the date when their admission period ends pursuant to the proposed transition, DHS proposes that an alien's period of admission would expire on the program end date on the alien's Form I–20 or DS–2019 that is valid on the final rule's effective date, not to exceed a period of 4 years from the final rule's effective date, plus the currently permitted additional period of 60 days for F nonimmigrants and 30 days for J nonimmigrants to depart. *See* proposed 8 CFR 214.1(m)(1). DHS believes that this proposal would provide adequate notice because all students and exchange visitors in F or J nonimmigrant status who wish to extend their program currently need to apply for permission with their DSO or RO. At that time, the DSO or RO could explain that they are recommending a program extension, but the F or J nonimmigrant must apply for an EOS directly with DHS or depart the United States and seek readmission, and such EOS or readmission must be granted to remain lawfully in or to re-enter the United States, respectively. Under current policy, F and J nonimmigrants admitted for D/S do not accrue unlawful presence until the day after USCIS formally finds a nonimmigrant status violation while adjudicating a request for another immigration benefit or on the day after an immigration judge orders the alien excluded, deported, or removed (whether or not the decision is appealed), whichever comes first.[90] In reliance on this policy, some F and J nonimmigrants admitted for D/S may not have taken the appropriate steps to maintain status, otherwise change status, or depart the United States. This proposed rule is concerned with providing adequate notice to allow F and J nonimmigrants who are maintaining status to transition to a new date-certain admission.

Although some F and J nonimmigrants may have program end dates longer than 4 years, DHS believes that using the program end date on the Form I–20 or DS–2019, up to a maximum 4-year period of admission, as the fixed date of admission is the best option because it aligns with the general structure of post-secondary education while still allowing for the government to have increased oversight of this population through the requirement that those nonimmigrants who wish to remain beyond their authorized period of admission either apply to extend their stay or depart the United States and seek readmission. According to the U.S. Department of Education (ED), students can normally earn a bachelor's degree in 4 years [91] and non-resident students normally earn their bachelor's degrees within 4 years of entry.[92] The total number of F–1 students pursuing a bachelor's degree in 2023 was 457,906, constituting almost 34 percent of the 2023 nonimmigrant student population. The total number of F–1 students pursuing a master's degree, generally 2-year programs, in 2023 was 608,857, representing almost 45 percent of the nonimmigrant student population. Taken together this population represents almost 79 percent of the nonimmigrant students in the United States.[93] Therefore, DHS believes that a 4-year period of admission would not pose an undue burden to most nonimmigrant students, because many F and J nonimmigrants would complete their studies within a 4-year period and not have to request additional time from DHS. The smaller proportion of students not pursuing a bachelor's or master's degree are enrolled in different programs, which may last more or less than 4 years.[94] While DHS acknowledges the additional burden that this rule would impose on students engaged in programs lasting longer than 4 years, DHS believes that the benefit to program integrity of this rule would outweigh the burden to this population.

Before arriving at the 4-year admission periods, DHS considered various options. DHS considered a standard 2-year admission for all F and J nonimmigrants. This option would give the Department more frequent direct check-in points with nonimmigrants than a 4-year maximum period of admission would. However, DHS was concerned it would unduly burden many F and J nonimmigrants. As discussed above, 4 years best accounts for the normal progress for most programs. With a 2-year admission period, students and exchange visitors participating in programs of greater duration would need to apply for additional time. Even considering those F or J nonimmigrants who are admitted

[89] *See* 8 CFR 214.2(f)(5), (j)(1)(ii).

[90] *See* USCIS Interoffice Memorandum, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act (May 6, 2009) (which currently applies unlawful presence to F, J, and I nonimmigrants in relation to duration of status but which would change accordingly if, upon finalization of this proposed rule, duration of status no longer applies to them).

[91] *See* The Mobile Digest of Education Statistics, 2017, The Structure of American Education, available at *https://nces.ed.gov/programs/digest/mobile/The_Structure_of_American_Education.aspx* (last visited Mar. 24, 2025).

[92] *See* The Digest of Education Statistics, 2023, Table 326.10: Graduation rate from first institution attended for first-time, full-time bachelor's degree-seeking students at 4-year postsecondary institutions, by race/ethnicity, time to completion, sex, control of institution, and percentage of applications accepted: Selected cohort entry years, 1996 through 2016, available at *https://nces.ed.gov/programs/digest/d23/tables/dt23_326.10.asp* (last visited Apr. 25, 2025).

[93] *See* The Student and Exchange Visitor Program (SEVP), 2023 SEVIS by the Numbers Report, available at https://www.ice.gov/doclib/sevis/btn/24_0510_hsi_sevp-cy23-sevis-btn.pdf (last visited Apr. 1, 2025).

[94] Other programs include associate degrees, language training programs, and Ph.D. programs, among others.

into the U.S. after having already completed a portion of their program outside of the U.S., instituting a 2-year maximum period of stay would have required each nonimmigrant pursuing a 4-year program to extend, while 4 years allows additional time to complete a 4-year degree. This alternative also would place greater administrative burdens on USCIS and CBP compared to the proposed 4-year maximum period of admission. USCIS would have to adjudicate EOS applications more frequently, and CBP's workload would increase as individuals would travel to request admission at the POE, with a 2-year maximum period of stay rather than a 4-year one. Therefore, DHS believes an admission for the program end date, not to exceed 4 years, is the best option.

B. Automatic Extension of Visa Validity at POE for Contiguous Travel

DHS proposes to change the admission language in the provision relating to extension of visa validity in limited situations from ''shall'' to ''may'' to clarify that CBP always maintains the discretion to determine whether an alien is admissible and the appropriate period of admission. This change removes any ambiguity about whether CBP has an absolute duty to admit an alien to clarify that CBP has the discretion to admit an alien for a certain period of time, consistent with statutory and regulatory authorities. *See* proposed 8 CFR 214.1(b)(1).

DHS proposes technical revisions to the visa revalidation provisions that allow certain F, J, and M nonimmigrants to apply for admission if eligible for admission as an F, J, or M nonimmigrant if they are applying for admission after an absence from the United States not exceeding 30 days spent solely in contiguous territory or adjacent islands. *See* proposed 8 CFR 214.1(b). Such technical revisions include updating language to clarify that ''visa revalidation'' refers to automatic extension of visa validity at the POE to the date of application for readmission only. These provisions apply when, for example, a nonimmigrant finds himself or herself applying for re-entry after going to Mexico on spring break without realizing that his or her visa had expired. Instead of having to get a new visa, CBP may admit the nonimmigrant, whose visa validity is automatically extended by operation of DOS regulations. *See* 22 CFR 41.112(d). DHS does not believe it is necessary to require a nonimmigrant to obtain a new visa under these circumstances.

DHS proposes minor technical updates to account for inaccurate or no longer applicable terms and cites: First, DHS proposes to strike the reference to INA 101(a)(15)(Q)(ii) and reserve it, as that program no longer exists and is no longer in the INA.[95] *See* proposed 8 CFR 214.1(b)(1)–(3). Second, DHS proposes to strike the reference to ''duration of status'' in 8 CFR 214.1(b)(1), 214.2(f)(5)(vii), 214.2(f)(18)(iii), and 274a.12(b)(6)(v).

C. Extension of Stay (EOS)

This proposed rule would not create a new form for an EOS application. However, in the future, some form names and numbers may change. While DHS plans to update existing forms allowing F, J, and I nonimmigrants to apply for an EOS with USCIS, DHS believes it would be more efficient to replace references to specific form names and numbers throughout the current proposed regulations with generally applicable language. Using general language in the regulatory text instead of referring to specific form names and numbers helps both the Department and stakeholders. It allows for technical changes without requiring an entirely new rulemaking to update form names. Stakeholders would receive notice and specific guidance on USCIS' website and in the appropriate form instructions, as they already do for various other benefits. Therefore, DHS proposes to use this language in 8 CFR 214.1(c)(2) and to strike the current phrase exempting F and J nonimmigrants from the requirement to file an EOS, as they would be required to file an EOS if they wish to remain in the United States beyond their specified date of admission. *See* proposed 8 CFR 214.1(c)(2).

Like the technical updates to strike the specific form name from 8 CFR 214.1(c)(2), DHS is proposing to strike the references to Forms ''I–129'' and ''I–539'' in 8 CFR 214.1(c)(5), replacing those specific form numbers with the aforementioned general language. *See* proposed 8 CFR 214.1(c)(5). The substance of that provision, including the language that does not allow an alien to appeal an EOS denial would remain the same.

DHS proposes striking ''other than as provided in 214.2(f)(7)'' from 8 CFR 214.1(c)(3)(v) to make it clear that students must apply for an EOS. This requirement would not apply to other nonimmigrants admitted for D/S, such as A–1 or A–2 representatives of foreign governments and their immediate family members; they would remain ineligible to file an EOS.

As part of the EOS application, USCIS requires biometric collection and will require such collection from F, J, and I nonimmigrants under the proposed rule. USCIS has the general authority to require and collect biometrics from applicants, petitioners, sponsors, beneficiaries, or other individuals residing in the United States for any immigration and naturalization benefit. *See* 8 CFR 103.16. Biometric collection helps USCIS confirm an individual's identity and conduct background and security checks. Further, USCIS may also require any applicant, petitioner, sponsor, beneficiary or individual filing a benefit request, or any group or class of such persons submitting requests to appear for an interview. *See* 8 CFR 103.2(b)(9). USCIS may require such an interview as part of the screening and adjudication process that helps confirm an individual's identity, elicit information to assess the eligibility for an immigration benefit, and screen for any national security or fraud concerns.

Finally, DHS considered how to address the admission of F, J, and I nonimmigrants who timely filed an EOS and/or an application for employment authorization but left the United States before receiving a decision from USCIS. DHS anticipates this scenario would apply mostly to F–1 students applying for post-completion OPT and STEM OPT extensions.

While USCIS generally does not consider an application for EOS abandoned when the nonimmigrant leaves the United States,[96] DHS recognizes the potential for conflict if a nonimmigrant receives authorization from both CBP and USCIS for what amounts to the same request (a specific period of time to pursue authorized activities). Where an alien in F, J, or I status timely files an application for EOS, leaves the United States before USCIS approves that EOS application, and applies for admission to continue his or her activities for the balance of the previously authorized admission period, USCIS would generally not consider the EOS application abandoned. *See* proposed 8 CFR 214.1(c)(8)(i).

Consistent with the general provision on admission in proposed 8 CFR 214.1(a)(4), where the alien leaves the United States and applies for admission while his or her EOS application is pending and is admitted based on a new

[95] *See* Irish Peace Process Cultural and Training Program Act of 1998, Public Law 105–319, 112 Stat. 3013 (Oct. 30, 1998), as amended by Public Law 108–449, 114 Stat. 1526 (Dec. 10, 2004).

[96] *See* U.S. Dept. of Justice Memo, Cook, Acting Asst. Comm. Programs, HQ 70/6.2.9 (June 18, 2001), available at *https://www.uscis.gov/sites/default/files/document/memos/Travpub.pdf* (last visited Apr. 11, 2025).

Form I–20 or DS–2019 after his or her previously authorized admission has expired, the pending EOS is deemed abandoned. In this case, the admit until date provided by CBP on the alien's I–94 would govern. *See* proposed 8 CFR 214.1(c)(8)(ii). This is because, in these cases, CBP's grant of a new period of authorized stay would supersede the pending EOS application seeking a period of authorized stay, rendering it superfluous.

The Department considered a policy whereby an F, J, or I nonimmigrant would automatically abandon an EOS application upon departing the United States. However, the Department believes such a strict requirement would not be practical, because people cannot always predict when they will have to travel.

Regarding applications for employment authorization for F–1 and J–2 nonimmigrants, DHS notes that CBP does not adjudicate applications for employment authorization. Should an EOS application be deemed abandoned, USCIS would continue processing any applications for employment authorization, notwithstanding a departure, and, if the application is approved, USCIS would not issue an EAD with a validity date that exceeds the fixed date of admission provided to the alien at the POE. For example, an F–1 student wishing to engage in post-completion OPT or a STEM OPT extension would need to file both an EOS application and an application for employment authorization. Where the alien had departed the United States before his or her applications are adjudicated, USCIS would not consider the employment authorization application abandoned. *See* proposed 8 CFR 214.1(c)(8)(ii).

In all events, when an F–1 or a J–2 nonimmigrant travels while the employment authorization or EOS application is pending, he or she is still expected to respond to any Request for Evidence (RFE) and to timely submit the requested documents. Because an RFE may arrive after an alien departs, either electronically or at a U.S. address, aliens traveling outside the United States while applications are pending are advised to make necessary arrangements to determine whether they have received an RFE relating to their application and to timely respond to any RFE.[97] Failure to do so could result in USCIS denying an employment authorization or EOS application for abandonment.

D. Transition Period

i. F and J Nonimmigrants

DHS proposes to generally allow all F and J nonimmigrants present in the United States on the final rule's effective date who are validly maintaining that status and who were admitted for D/S to remain in the United States in F or J status, without filing an EOS request, up to the program end date reflected on their Form I–20 or DS–2019 that is valid on the Final Rule's effective date, for a period not to exceed 4 years from the effective date of the Final Rule, plus an additional 60 days for these F nonimmigrants and 30 days for J nonimmigrants to depart the country. *See* proposed 8 CFR 214.1(m)(1).

F and J nonimmigrants who depart the United States after the rule's effective date and before the end date reflected on their Form I–20 or DS–2019 may be admitted with a new fixed admission period, like any other newly admitted F or J nonimmigrant, as provided for in proposed 8 CFR 214.1(a)(4) based on the date on their Form I–20 or DS–2019 and 30 days for departure. *See* proposed 8 CFR 214.2(f)(5) or (j)(1)(ii). Aliens who need additional time to complete their current course of study, including requests for post-completion OPT, STEM OPT, or academic training, or would like to start a new course of study or exchange visitor program would need to file for an EOS with USCIS for an admission period up to the new program end date, or OPT end date, listed on the Form I–20 or DS–2019, or successor form, reflecting such an extension, up to a maximum of 4-years. *See* proposed 8 CFR 214.1(m)(1).

For those aliens in F–1 status, admitted for D/S, present in the United States 60 days after the final rule publication who have timely filed on or before 6 months after the effective date of the final rule for an application for post-completion OPT or a STEM OPT extension, there would not be a requirement to file an EOS application, and, instead, they would be required to file the application for employment authorization for post-completion OPT or a STEM OPT extension. *See* proposed 8 CFR 214.1(m)(1)(i). An F–1 nonimmigrant who departs the United States before filing the application for post-completion OPT or STEM OPT, and is subsequently admitted to the United States with a fixed period of admission would be required to file both an application for employment authorization, (Form I–765 or successor form) and an EOS (Form I–539, or successor form), pursuant to 8 CFR 214.2(f)(11)(i)(B)(2) or (C). As discussed above concerning the general period of admissibility, an F–1 nonimmigrant who departs the United States while the application for employment authorization for post-completion OPT or STEM OPT is pending or once approved would be admitted for a fixed admission period pursuant to 8 CFR 214.1(a)(4)(iii). F–1 nonimmigrants who file for employment authorization for STEM OPT would remain eligible for the 180-day extension of their post-completion OPT EAD while their application for STEM OPT is pending pursuant to 8 CFR 274a.12(b)(6)(iv).

Regarding pending applications for employment authorization during the transition period, aliens in F status who are subject to the transition and who are seeking post-completion OPT and STEM–OPT employment authorization would be authorized to lawfully remain in the United States while the application is pending with USCIS if: (1) they are in the United States on the effective date of the final rule with admission for D/S; (2) they properly filed an application for employment authorization; (3) their application is pending on the final rule's effective date; and (4) they are not otherwise removable under the INA. Unless otherwise advised by USCIS, they would not have to file for an EOS or re-file an application for employment authorization. *See* proposed 8 CFR 214.1(m)(2). If the application for employment authorization is approved, the F–1 student would be authorized to remain in the United States in F–1 status until the expiration date of the EAD, plus 60 days as provided in their previous admission. If the employment application is denied, the F–1 student would continue to be authorized to remain in the United States until the program end date listed on their Form I–20, plus 60 days as provided in their previous admission, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F–1 status.

[97] *See* SEVP's Study in the States web page, ''Traveling as an International Student'' available at *https://studyinthestates.dhs.gov/traveling-as-an-international-student* (last visited Apr. 8, 2025). *See also* ICE's Re-entry for F–1 Non-immigrants Travelling Outside the United States for Five Months or Fewer web page, which notes, ''Can I reenter if my request for OPT is pending? Yes, but traveling during this time should be undertaken with caution. USCIS may send you [an RFE] while you are away, however, so you will want to make sure you have provided a correct U.S. address both to your DSO and on the application and would be able to send in requested documents. Also, if USCIS approves your OPT application, you will be expected to have your EAD in hand to re-enter the United States. Like a request for further information, USCIS can only send the EAD to your U.S. address,'' available at *https://www.ice.gov/sevis/travel* (last visited Apr. 1, 2025).

Aliens in F–1 status with pending employment authorization applications, other than post-completion OPT and STEM OPT, also would not need to file for an extension or refile an employment authorization application. As long as these F–1 nonimmigrants continue to pursue a full course of study and otherwise meet the requirements for F–1 status, they continue to be authorized to remain in the United States until the program end date listed on the Form I–20, plus 60 days, regardless of whether the employment authorization is approved or denied.

DHS believes that this transition proposal would not be unreasonably burdensome on F and J nonimmigrants, and it would enable DHS to transition F and J nonimmigrants without unduly burdening nonimmigrants, USCIS, or CBP. Many would be able to complete their programs per the terms of their initial admission (D/S) using the original program end date as an expiration of their authorized period of stay. DHS would grant such periods, which include an additional 60 days for F nonimmigrants and 30 days for J nonimmigrants as provided in their previous admission, automatically without an application or fee. With this option, DHS believes that the majority of F and J nonimmigrants will be shifted to a fixed period of admission of 4 years or less, except for some F–1 students and J–1 exchange visitors. For example, J–1 research scholars and alien physicians who have program end dates for up to 5 or 7 years respectively, would need to apply for an EOS before the 4-year maximum period of stay expires, *i.e.,* the date that falls 4 years after the rule becomes effective.

Another benefit of this option is that it would enable DHS to transition F and J nonimmigrants to an admission for a fixed time period without unduly burdening them, USCIS, or CBP. This option would ensure that no F and J nonimmigrants remain in the United States indefinitely by requiring all F and J nonimmigrants admitted for D/S who wish to extend their stay beyond their program end date or the 4-year maximum, whichever is applicable, to either file an EOS request or depart the United States and apply for admission at a POE by their program end date or the 4-year maximum period of stay from the final rule's effective date, plus an additional 60 days for F nonimmigrants, and 30 days for J nonimmigrants.

In proposing these transition procedures, DHS took into consideration the effect of transitioning to a fixed period of admission will have on F and J nonimmigrants originally admitted for D/S who chose to temporarily come to the United States to pursue a program of study or an exchange visitor program. DHS believes the proposed changes would not significantly affect the interests of these nonimmigrants admitted in D/S. DHS is not proposing to change the fundamental requirements to qualify for these nonimmigrant statuses, rather it is only proposing to change the length of time that an individual may lawfully remain in the United States in F or J status without filing an EOS application. Admitting these classifications of nonimmigrants for a fixed period of admission simply confirms that the admission is temporary and clearly communicates when that temporary admission period ends. Further, as is the case for the fixed period of admission policy more generally, a fixed date of admission simply places these nonimmigrants in the same position as most other nonimmigrants who are temporarily in the United States. They would still be able to continue to pursue their full course of study or exchange visitor program; however, if they need additional time in F or J status, the burden would now be upon them to request authorization directly from DHS and establish eligibility to extend their period of stay in such status, whereas previously they obtained an extension of lawful status in conjunction with a program extension through a DSO or RO.

At the same time, this proposed process would provide immigration officials an opportunity to directly review and determine whether F and J nonimmigrants who wish to remain in the United States beyond their fixed period of admission are complying with U.S. immigration law and are indeed eligible to retain their nonimmigrant status. If there are F or J nonimmigrants relying on a D/S admission in an attempt to permanently remain in the United States, or otherwise circumvent their authorized status, this proposed process would allow DHS to detect and deny an EOS request or entry under a new period of admission.

DHS considered several alternatives before determining the above proposal was the best option. First, DHS considered whether to impose a consistent length for the fixed admission for all F and J nonimmigrants transitioning from a D/S admission, such as 1 or 3 years from the final rule's effective date. While this proposal would provide a standard end date, DHS was concerned about the expense and workload implications of this option on all stakeholders and DHS. As noted, DHS expects most F and J nonimmigrants to complete their program of study or exchange visitor program within a 4-year period. A date that does not align with this expectation could place an unnecessary burden on the affected F and J nonimmigrants and on their academic institutions or exchange visitor programs' sponsors and employers, as applicable. USCIS would be especially affected if a significant percentage of these nonimmigrants chose to remain in the United States and file for an EOS in order to complete the balance of their program, study, or work activity. While USCIS could try to anticipate the volume, the sheer number of simultaneous nonimmigrants filing for EOS could significantly lengthen processing times. Because the proposed option is less burdensome on F and J nonimmigrants and on DHS, DHS does not believe that ending D/S for all F and J nonimmigrants at timeframes that do not align with the expected length of stay presents the best way to transition from D/S to admission for a fixed time period. The proposed transition period is consistent with the generally applicable policy and allows for the normal progress for most programs that nonimmigrants should be making. Further, it ensures that these nonimmigrants are complying with the terms and conditions of their status by requiring them to apply to extend their status by the end date on the I–20 or DS–2019, not to exceed 4 years.

A second option that DHS considered was to allow F and J nonimmigrants to keep their D/S period of admission until they depart the United States. The Department rejected this alternative, however, because one of the main reasons for proposing this rule is to address current abuse tied to the D/S period of authorized admission. Adopting this alternative would allow aliens currently violating their nonimmigrant status to largely avoid the consequences of non-compliance with U.S. immigration laws by simply remaining in the United States, as otherwise described in this rule.

Third, DHS evaluated an option to allow F and J nonimmigrants to retain their D/S admission up to their program end date, with the transfer to a fixed admission date implemented through any of the following actions of the nonimmigrant: (i) departure from the United States; (ii) transfer to a different institution or sponsor; (iii) failure to maintain a full course of study; (iv) approval for reinstatement; [98] (v) having

[98] *See* 8 CFR 214.2(f)(16), allowing an F–1 student, under certain circumstances, to apply for reinstatement with USCIS after receiving

Continued

a DSO or RO extend the program end date; (vi) approval for a post-completion OPT or a STEM OPT extension; or (viii) engaging in any action that requires the issuance of a new Form I–20 or DS–2019. However, DHS felt that this alternative may fail to provide adequate notice to all affected nonimmigrants given the several scenarios under which the transfer to a fixed period of admission could occur and could lead to some fraud by DSOs intentionally providing an unnecessarily long program end date on the Form I–20 prior to the final rule's effective date. Although this option is relatively similar to the proposed transition process, to make the transition easier for F nonimmigrants, J nonimmigrants, ROs, and DSOs, triggering events were limited to those that result in a change to the program end date, as well as re-entry to the United States. In addition, while this option would allow DHS to effectuate the transition of the F and J population without requiring the expense and workload associated with large numbers of simultaneous filings, it would not capture those who have program end dates beyond 4 years from the effective date of the proposed rule.

In sum, DHS's proposal is to transition all F and J nonimmigrants to a fixed admission date by using the program end date noted on their Form I–20 or DS–2019 (with the exception of F students engaging in post-completion or a STEM OPT extension who would use their EAD's expiration date), not to exceed 4 years, plus an additional 60 days for F nonimmigrants and 30 days for J nonimmigrants as provided in their previous admission. DHS believes this is a natural way to transition the majority of these nonimmigrants to a fixed admission date without creating any loopholes, such as those that could be created by allowing F and J nonimmigrants to retain their duration of status, potentially permitting those who are abusing their status to continue to do so without the oversight and vetting conducted through EOS. It would also provide all affected nonimmigrants with adequate notice of the events that would trigger the transition to a fixed admission date and their responsibilities resulting from such change.

ii. I Nonimmigrants

Turning to I nonimmigrants who are in the United States on the effective date of the final rule from their existing D/S admission to a fixed date of admission, DHS proposes an automatic extension of the length of time it takes the alien to complete his or her activity, for a period of up to 240 days. *See* proposed 8 CFR 214.1(m)(3). DHS based this proposed timeframe on the period of stay authorized in 8 CFR 274a.12(b)(20), which generally provides an automatic extension of employment authorization of 240 days to aliens, including I nonimmigrants, whose status has expired but on whose behalf an application for an extension of stay was timely filed through a Form I–539, Application to Extend/Change Nonimmigrant Status, *see* 8 CFR 214.2(i), which currently is also required when an I nonimmigrant changes employers or information mediums.[99] DHS believes that adopting an already established timeframe, to which I nonimmigrants are already accustomed, is reasonable. Consistent with the current process, an I nonimmigrant who departs the United States after the final rule's effective date and would like to return to the United States in that same status would need to reapply for admission as an I nonimmigrant at a POE.

I nonimmigrants who seek to remain in the United States longer than the automatic extension period provided would be required to file an extension of stay request with USCIS.[100] In addition to I nonimmigrants being familiar with the timeframe under 8 CFR 274a.12(b)(20), DHS anticipates that this provision would reduce any gaps in employment due to USCIS' processing timeframes between the I nonimmigrant's application for extension and USCIS approval of the application. It would also facilitate an I nonimmigrant's ability to complete his or her assignment while temporarily in the United States on behalf of a foreign media organization, in that it would give ample time to any I nonimmigrant to either complete that assignment or ask for an extension, as needed.

Under this proposal, if the EOS request is denied, the alien must cease working and depart the United States immediately. As with most other nonimmigrant classifications, they would not be given any period of time to prepare for departure from the United States after the denial, and there may be significant immigration consequences for failing to depart the country immediately. For example, such aliens generally would begin to accrue unlawful presence the day after the issuance of the denial. DHS believes this proposed standard provides parity across nonimmigrant classifications.

Finally, DHS proposes the transition procedures would not apply to F, J, or I aliens who are outside the United States when the final rule takes effect, or to any aliens present in the United States in violation of their status. *See* proposed 8 CFR 214.1(m).

E. Requirements for Admission, Extension, and Maintenance of Status of F Nonimmigrants

DHS is proposing various changes under the regulations that provide the framework for admission, extension, and maintenance of status for F nonimmigrants. These changes would eliminate D/S, require students to file an EOS if requesting to remain in the United States beyond the period of their admission, and clarify terms to ensure that the activities an F nonimmigrant has engaged in are consistent with those of a bona fide student.

i. Admission for a Fixed Time Period

As a preliminary matter, DHS is proposing to strike the existing regulation that allows F nonimmigrants to be admitted for D/S. DHS would replace it with a provision allowing F nonimmigrants to be granted status for the length of their program, not to exceed 4 years. *See* proposed 8 CFR 214.2(f)(5)(i) and (f)(7)(vi).

Second, DHS proposes to retain in the regulations the statutory limitation that restricts public high school students to an aggregate of 12 months of study at any public high school(s). *See* 8 CFR 214.2(f)(5)(i). However, this proposed rule moves this provision to a new section and further clarifies that the 12-month aggregate period includes any school breaks and annual vacations. *See* proposed 8 CFR 214.2(f)(5)(i)(C). Current requirements, including paying the full cost of education, would also remain in place.

Third, F–1 students who are applying to attend an approved private elementary or middle school or private academic high school would continue to be covered by the provisions of 8 CFR 214.2(f)(6)(i)(E). These provisions require the DSO to certify a minimum number of class hours per week prescribed by the school for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). However, like all other F–1 students, they would be subject to the 4-year maximum period of admission, and they would need to apply for an EOS with DHS if staying beyond this period. *See* proposed 8 CFR 214.2(f)(7)(vi).

recommendation from the DSO, following a failure to maintain status.

[99] *See* Instructions for Application to Extend/Change Nonimmigrant Status, available at *https://www.uscis.gov/i-539* (last visited Apr. 1, 2025).

[100] In FY 2023, fewer than 33,000 aliens entered the U.S. in I classification. *See* DHS FY23, Quarter 4, tbl.4B, *supra* note 11.

Fourth, DHS is proposing to exempt part-time border commuter students from the general length of admission provisions. *See* proposed 8 CFR 214.2(f)(5)(i)(B). The regulations at 8 CFR 214.2(f)(18) would continue to govern these border commuter students, including that DHS continue to admit them for a fixed time period. This proposed rule will apply to border commuter students attending school in the United States on a full-time basis.

Fifth, F–1 students in a language training program would be restricted to an aggregate of 24 months of language study, which would include breaks and an annual vacation. *See* proposed 8 CFR 214.2(f)(5)(i)(A). DHS is proposing this limitation as a way to prevent abuse of the F–1 program. Public Law 111–306, enacted on December 14, 2010, and effective since 2011, requires language training schools enrolling F–1 students to be accredited by an accrediting agency recognized by ED. DHS has found students enrolling in lengthy periods of language training, in some cases for more than two decades.[101] DHS has also identified students who enrolled in language training programs despite previously being enrolled in or completing undergraduate and graduate programs requiring English language proficiency.[102] Unlike degree programs that typically have prescribed course completion requirements, there are no nationally-recognized, standard completion requirements for language training programs and students are able to enroll in language training programs for lengthy periods of time. The lengthy enrollment in a language program, including enrollment in language courses for long periods subsequent to completion of a program of study that requires proficiency in English, raises concerns about whether the F–1 nonimmigrants meet the statutory definition of a bona fide student with the intent of entering the United States for temporary study.[103] Therefore, DHS proposes a 24-month aggregate limit for F–1 students to participate in a language training program, as it would provide a reasonable period of time for students to attain proficiency while mitigating the Department's concerns about the integrity of the program. This timeframe generally comports with the amount of time needed to gain the highest level of English proficiency under the Cambridge English Exam.[104]

Sixth, DHS proposes students with pending employment authorization applications who are admitted based on the DSO's recommended employment end date for post-completion OPT or STEM OPT specified on their Form I–20, with a notice issued by USCIS indicating receipt of the Application for Employment Authorization, Form I–765 or successor form for post-completion OPT or STEM OPT, and who cease employment authorized pursuant to a post-completion OPT- or STEM OPT-based EAD that expires before the alien's fixed date of admission as noted on their Arrival-Departure Record (Form I–94 or successor form), be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their I–94 (unless the student violates the terms of the authorized stay). *See* proposed 8 CFR 214.2(f)(5)(i)(D).

Seventh, the authorized period of stay for F–2 dependents will continue to not be able to exceed the authorized period of stay of the principal F–1 alien. DHS proposes adding this requirement to 8 CFR 214.2(f)(5)(i)(E).

ii. Changes in Educational Objectives

Under existing regulations, all F–1 students who change from one educational level to another or pursue multiple degrees in the same educational level are considered to be maintaining status. *See* 8 CFR 214.2(f)(5)(ii). DHS has observed that some students continuously enroll in different programs at the same degree level, such as by pursuing multiple associate, master's, undergraduate, bachelor's, or certificate programs. Alternatively, some students change to a lower educational level, such as completing a master's degree and then changing to an associate's program or an English language training program.[105] This has enabled some aliens to remain in the United States for lengthy periods of time in F–1 student status, raising concerns about the temporary nature of their stay. In 2024, DHS identified nearly 77,000 F–1 students who have spent more than 10 years in student status since SEVIS was implemented in 2003.[106] This includes individuals who enrolled in programs at the same educational level as many as 19 times, as well as students who completed graduate programs and then enrolled in undergraduate programs, including associate's degrees.

DHS has also observed a pattern of students immediately transferring schools or changing educational levels or programs of study upon their arrival in the United States. These students often use an admission letter and Form I–20 from a well-known school to increase their odds of obtaining a student visa and then immediately request a transfer to their intended school or program of study once they have gained admission to the United States. Some of the most egregious examples are those who apply to a 4-year university, which requires demonstration of sufficient English level skills for enrollment in classes through the passage of the Test of English as a Foreign Language test (commonly known as TOEFL), receive their visa based on their declared intention of attending a 4-year university, and then transfer to English language programs upon arrival. Other, more dangerous examples, include those foreign students who receive a visa based on their declared intention to study the humanities, but then transfer into sensitive programs such as nuclear science. A handful of those have been

[101] For example, one student has been enrolled in English language training programs at nine different schools since January 3, 2003. This student is active in SEVIS, reportedly studying English full time as of May 7, 2025—accounting for more than 22 years of language training. The student's most recent school issued a program extension changing the student's program end date from January 2, 2025, to January 2, 2026. The school input the following reason for the extension: ''Student pursuing advanced level linguistic studies.'' The school's 2025 catalog contains no references to linguistic studies—advanced or otherwise—and indicates the school offers general English academic preparation, TOEFL preparation, and business English courses. Student Exchange Visitor Program analysis of data in the Student Exchange Visitor Information System and valid as of May 7, 2025.

[102] SEVIS Records show that for example a student who entered the country in 2005 studied English and then between January 2011 and December 2024, he enrolled in a bachelor's program in Biology/Biological Sciences, a master's program in Biotechnology, and a second master's program in Bioinformatics. He also engaged in post-completion OPT and two periods of STEM OPT. Each of his Forms I–20 indicated the academic programs required English proficiency, and the student had English proficiency. However, in January 2025, the student transferred to a language training school and remains active in SEVIS reportedly engaged in English language training as of May 7, 2025. DHS found at least 20 similar examples. Student Exchange Visitor Program analysis of data in the Student Exchange Visitor Information System and valid as of May 7, 2025.

[103] *See* INA 101(a)(15)(F).

[104] According to Cambridge English, it takes approximately 1,000 to 1,200 hours to achieve the highest level of English proficiency from being a beginner of English. This is based on the Common European Framework of Reference (CEFR), which is an international standard for describing language ability. Given that an academic year is 9 months, it would take the average F–1 student less than 18 months (or less than 24 months to include summer breaks and annual vacations) to achieve advanced English proficiency through guided instruction. *See* Guided Learning Hours, Cambridge English, 2025, available at *https://support.cambridgeenglish.org/hc/en-gb/articles/202838506-Guided-learning-hours* (last visited Mar. 31, 2025).

[105] *Ibid.*

[106] Student Exchange Visitor Program analysis of data in the Student Exchange Visitor Information System and valid as of Mar. 17, 2025.

arrested for spying for China.[107] The existing regulations are vulnerable to exploitation by aliens who threaten U.S. national security. This proposed rule is designed to reduce this vulnerability. Since 2020, there have been over 13,000 F–1 students who transferred before the start of classes or within their first term, including over 4,400 students transferring from a higher education to English language training program of study within their first term or session of a program of study. The number of F–1 students who changed their educational levels within the first 60 days of their program is close to 8,400. While the number of students transferring or changing educational levels represents a small percentage of the total F–1 student population, these transfers are often promoted by third-party recruiters and other for-profit entities to allow aliens to use the student visa process to mask their intent in the United States or circumvent F–1 restrictions.[108] In addition, school officials are often burdened with the administrative costs of processing SEVIS transfer requests from F–1 students who misrepresented their intentions of studying at their institution.

While there may be legitimate cases of students who wish to change their educational objective to gain knowledge at a lower or at the same educational level, the traditional path of study typically progresses from a lower educational program to a higher one. The existing regulations present a model consistent with the majority of bona fide students who follow this traditional trajectory. The term ''full course of study'' as defined in the existing regulations requires that the program ''lead to the attainment of a specific educational or professional objective.'' [109] Repeated changes to a program of study either within the same educational level or to move to a lower level, as well as immediate changes to a program of study upon initial entry into the United States, are not consistent with attainment of such an educational or professional objective. This understanding was reflected in the preamble to a 1986 rulemaking proposing changes to the F regulations, which stated: ''The proposed regulation . . . places limitations on the length of time a student may remain in any one level of study. Thus, the Service has eliminated applications for [EOS] for students who are progressing from one educational level to another but has placed a control over students who, for an inordinate length of time, remain in one level of study.'' [110] But, by 1991, INS eliminated all EOS applications and began to rely on DSO's to make the decision on whether educational progress was being made. In the decades that have followed, it has become clear that this has enabled thousands to stay here for decades by switching programs and not making any upward progress.[111]

DHS proposes to restrict school transfers and changes of educational objectives within a student's first academic year of a program of study, unless an exception is authorized by SEVP, and to prohibit F–1 students in a graduate level program of study from changing educational objectives or transferring from within the United States. ''Educational objectives'' refers to an F–1 student's educational level or major. *See* proposed 8 CFR 214.2(f)(5)(ii)(A) and 8 CFR 214.2(f)(8)(i)(b). DHS believes these proposed changes would accommodate the legitimate academic activities of bona fide students, such as a desire to pursue a different field of study or more specialized studies in their current field. These proposed changes would also provide SEVP with flexibility to grant exceptions for extenuating circumstances. For example, an exception may be appropriate when a school closes or when a school has a prolonged inability to hold in-person classes due to a natural disaster or other causes.

In addition, an alien who has completed a program as an F–1 nonimmigrant at one educational level would be unable to maintain F–1 status, depart and be admitted in F–1 status, or otherwise obtain F–1 status (*e.g.,* via a change of status) through a program at the same educational level or a lower educational level. *See* proposed 8 CFR 214.2(f)(5)(ii)(C). However, an F–1 student who has completed a program in the United States at one educational level and is beginning a new program at a higher educational level would be considered to be maintaining F–1 status if they otherwise comply with requirements under 8 CFR 214.2(f). *See* proposed 8 CFR 214.2 (f)(5)(ii)(B).

DHS believes that it is reasonable for a student to progress to a higher educational level as that is the traditional trajectory in the pursuit of higher education. Movement within the same level after completion of a program or to a lower educational level raises concerns regarding whether the F–1 alien is a bona fide student who intends to temporarily and solely pursue a full course of study rather than pursuing different degrees as a de facto way to prolong their stay in the United States.

If an F–1 student who has completed their first academic year of a program of study seeks to change educational objectives and this change would require an EOS, the alien would then apply for EOS using the form designated by USCIS, paying the required fee and following all form instructions, including submitting any biometrics required by 8 CFR 103.16. *See* proposed 8 CFR 214.2(f)(5)(ii)(D).

DHS recognizes that this proposal may require updates to SEVIS and other systems. Because the timeframe for those updates is not fixed and there could be technical issues regarding implementation, DHS is proposing to include a provision whereby the Department may delay or suspend implementation, at its discretion, if it determines that the change in educational level limitation is inoperable for any reason. *See* proposed 8 CFR 214.2(f)(5)(ii)(E). If DHS delays or suspends the provisions in this section governing the change in educational level, DHS will make an announcement of the delay or suspension to the academic community through SEVP's various communication channels, including *ICE.gov/sevis*, Study in the States (*https://studyinthestates.dhs.gov*), and SEVIS Broadcast Message. DHS would also announce the implementation dates of the change in degree level provision through SEVP's communication channels (*ICE.gov/sevis*, Study in the States, and SEVIS Broadcast Message) at least 30 calendar days in advance.

Additionally, DHS proposes to retain the term ''educational'' with respect to a change in level as the Department

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[107] See CNN Politics, Chinese engineer sentenced to 8 years in US prison for spying, *supra* note 72, and Select Committee on Intelligence Hearing (Feb. 13, 2018), *supra* note 72.

[108] On May 29, 2020, President Trump signed a Presidential Proclamation to suspend the entry as nonimmigrants of certain students and researchers from the People's Republic of China. *See* Proc. No. 10043, 85 FR 34353 (May 29, 2020). Since this proclamation, students often circumvent enforcement of this proclamation by applying to a permissible program of study to obtain a student visa and admission to the United States and then transferring or changing their program of study to engage in studies, research, and other activities that are prohibited. This is also a tactic used by international and third-party recruiters. *See* Inside Higher Ed., Gaming the Student Visa System (Jan. 12, 2024), available at *https://www.insidehighered.com/news/global/international-students-us/2024/01/12/international-admission-offices-plagued-fraud-and* (last visited Mar. 31, 2025).

[109] *See* 8 CFR 214.2(f)(6)(i).

[110] 51 FR 27867 (Aug. 4, 1986).

[111] By reviewing SEVIS data as of Apr. 4, 2025, DHS has identified 2,134 aliens who first entered as F–1 students between 2000 and 2010 and remain in active F–1 status today.

believes it accurately reflects current academic models.

Specifically, ''educational'' captures programs for non-degree students, whereas using a term such as ''degree'' may not. For example, an F–1 student currently would not qualify for additional post-completion OPT if he or she changes to a non-degree certificate program, given that the certificate program is not a ''higher educational level.'' Similarly, certificate programs for professional advancement are typically not considered to be a ''higher educational level'' that would allow F–1 students to qualify for additional post-completion OPT.

DHS believes these proposals would encourage F–1 students to complete the programs of study for which they were admitted to the United States and to only pursue additional programs of study that demonstrate an upward progression in degree levels, which is expected from a qualified bona fide student who is coming to the United States temporarily and solely to pursue a course of study. The Department believes that these new restrictions would not significantly impact the choice of bona fide students who come to the United States temporarily to complete a full course of study. The F–1 program, with its statutory requirement that an alien be a bona fide student who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at the school listed on his or her Form I–20 or successor form, should not be used by aliens wishing to remain in the United States indefinitely. These proposals will better ensure that this statutory intent is fulfilled without hindering the options presented to bona fide students seeking study at higher educational levels and thus would create a balanced solution to this issue.

iii. Preparation for Departure

DHS believes that the time allotted for F students to prepare for departure should be revised from 60 to 30 days. *See* 8 CFR 214.2(f)(5)(iv) and proposed 8 CFR 214.2(f)(5)(v). Under existing regulations, F–1 students are provided 60 days following the completion of their studies and any practical training to prepare for departure from the United States. *See* 8 CFR 214.2(f)(5)(iv). However, this is twice as long as other student and exchange visitor programs (J and M nonimmigrants). *See* 8 CFR 214.2(j)(1)(ii) and (m)(10)(i). In addition, this 60-day period is also six times longer than certain nonimmigrants who are authorized to remain in the United States for years but are only provided with a 10-day period to depart the United States. For example, DHS provides a 10-day period following the end of the alien's admission period as stated on his or her I–94 for individuals in the E–1, E–2, E–3, H–1B, L–1, and TN classifications in a 2016 rulemaking.[112] In the rulemaking discussing this 10-day period for departure, DHS noted that a grace period of up to 10 days after the end of an authorized validity period provides a reasonable amount of time for such nonimmigrants to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.[113] It is thus unclear to DHS why F students would need a significantly longer period of time—60 days—to prepare for departure when other nonimmigrants have less time to prepare for departure.[114]

DHS believes that 30 days for the F nonimmigrant population is the appropriate balance between a 60-day and a 10-day period of departure. DHS believes that the F classification, albeit distinct from M or J, shares a core similarity in that many aliens in these classifications are seeking admission to the United States to study at United States educational institutions. Thus, DHS thinks that these classifications should have a standard period of time to prepare for departure, or take other action to extend, change, or otherwise maintain lawful status. DHS thinks that 30 days is an adequate period for F–1 students to prepare for departure and is in line with similar classifications (the M and J departure periods).

Additionally, in the 2016 rulemaking establishing a 10-day grace period for certain nonimmigrant classifications, DHS chose to remove the phrase ''to prepare for departure from the United States or to seek an extension or change of status based on a subsequent offer of employment'' from the proposed regulatory text relating to the purpose of the grace period, with the justification that it was unnecessarily limiting and did not fully comport with how the existing 10-day grace period may be used by individuals in the H, O, and P nonimmigrant [visa] classifications.[115] DHS clarified that the 10-day grace period may be granted to these nonimmigrants at time of admission or upon approval of an EOS or change of status and may be used for other permissible non-employment activities such as seeking to change one's status to that of a dependent of another nonimmigrant or vacationing prior to departure.[116] DHS notes that seeking an EOS or change of status is an allowable activity for F aliens during the 30-day departure period following the completion of their program and believes this same clarification should be incorporated into this proposed rulemaking. *See* proposed 8 CFR 214.2(f)(5)(v).

DHS also proposes to clarify that the proposed period is 30 days from the Form I–94 (or successor form) end date or the expiration date noted on the EAD (Form I–766 or successor form), as applicable, to prepare for departure from the United States, or to otherwise maintain status, including timely filing an extension of stay application in accordance with paragraph (f)(7) of this section and 8 CFR 214.1 or timely filing a change of status application in accordance with 8 CFR 248.1(a). DHS proposes removing the reference to completing a course of study or a program in order to provide consistency in the admission of all F–1 and J–1 nonimmigrants and to allow the departure period to be reflected on the I–94 at admission, so that the F–1 and J–1 nonimmigrants would have an unambiguous end date of their period of authorized admission, easily referenced on the I–94. USCIS, when adjudicating applications for a change of status to F–1 and J–1 nonimmigrant status and EOS applications of F–1 and J–1 status would similarly provide I–797 approval notices reflecting the 30-day departure period following the program end date or the 4-year maximum period of admission, or period of OPT or STEM OPT, as applicable. DHS proposes making corresponding changes in the regulatory text at 8 CFR 214.2(f)(5)(v) where the departure period and I–94 (or successor form) are discussed.

Finally, DHS proposes to retain the current regulatory language that allows a 15-day period for departure from the United States if an alien is authorized by the DSO to withdraw from classes, but no additional time for departure if the alien fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain

[112] *See* 8 CFR 214.1(l)(1) (providing for 10-day grace periods for certain nonimmigrants).

[113] *See* 81 FR 82398, 82401 (Nov. 18, 2016).

[114] Rulemakings in the mid-1980s mention this 60-day period for departure but did not provide any explanation as to why this period of time to depart was given to students. *See e.g.,* 52 FR 13223 (Apr. 22, 1987) (referencing the proposed rule, and stating that in the ''proposed regulations, duration of status was defined to mean the period during which a student is pursuing a full course of studies in any educational program, and any period or periods of authorized practical training, plus sixty days,'' but not indicating the reason for the 60-day period). 51 FR 27867 (Aug. 4, 1986) (proposing that duration of status would consist of an additional ''sixty days within which to depart from the United States,'' but silent on the reason for the 60-day period of departure).

[115] 81 FR 82398, 82402, 82437 (Nov. 18, 2016).

[116] *Id at* 82437.

status. *See* 8 CFR 214.2(f)(5)(iv) and proposed 8 CFR 214.2(f)(5)(v). Because DSOs generally authorize withdrawal based on compelling academic or medical circumstances when a student proactively requests permission, DHS believes retaining the 15-day period is appropriate. However, aliens who fail to maintain their full course of study or otherwise violate their status are required to immediately depart the United States, as is consistent with other nonimmigrant classifications. DHS considered allowing a short ''grace period'' for departure after an EOS denial but does not see a compelling reason to treat F nonimmigrants who have received a denial more favorably than other nonimmigrant classifications. As in other nonimmigrant classifications, failure to immediately depart under these circumstances could result in accrual of unlawful presence and subject an individual to removal.

iv. Automatic Extension of Authorized Employment

1. Authorized Status and Employment Authorization Under Proposed 8 CFR 214.2(f)(5)(viii)

Each year, a number of U.S. employers seek to employ F–1 students and file a Form I–129, Petition for a Nonimmigrant Worker, with USCIS, along with a change of status request, to obtain classification of the F–1 student as an H–1B nonimmigrant worker. The H–1B nonimmigrant visa program allows U.S. employers to temporarily employ foreign workers in specialty occupations, defined by statute as occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty, or its equivalent. *See* INA sections 101(a)(15)(H)(i)(b) and 214(i); 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i). The H–1B classification, however, is subject to annual numerical allocations, commonly referred to as a ''cap.'' *See* INA sections 214(g)(1)(A) and (g)(5)(C); 8 U.S.C. 1184(g)(1)(A) and (g)(5)(C).[117] For purposes of the H–1B numerical allocations, each fiscal year begins on October 1. Petitioners may not file H–1B petitions more than 6 months before the date of actual need for the employee.[118] Thus, the earliest date an H–1B cap-subject petition may be filed for an allocation for a given fiscal year is April 1, 6 months prior to the start of the applicable fiscal year for which initial H–1B classification is sought. Many F–1 students complete a program of study or post-completion OPT in mid-spring or early summer. Per existing regulations, after completing their program or post-completion OPT, F–1 students have 60 days (which DHS is proposing to change to 30 days) to take the steps necessary to maintain legal status or depart the United States. *See* 8 CFR 214.2(f)(5)(iv) and proposed 8 CFR 214.2(f)(5)(v). However, because the change to H–1B status cannot occur until October 1, an F–1 student whose program or post-completion OPT expires in mid-spring has two or more months following the 60-day period before the authorized period of H–1B status can commence. To address this situation, commonly known as the ''cap-gap,'' DHS established regulations that automatically extended F–1 D/S and, if applicable, post-completion OPT employment authorization for certain F–1 nonimmigrants until April 1 of the fiscal year for which the H–1B status is being requested or until the validity start date of the approved petition, whichever is earlier. *See* 8 CFR 214.2(f)(5)(vi). The extension of F–1 D/S and OPT employment authorization is commonly known as the ''cap-gap extension.''

2. F–1 Status and Authorized Employment While EOS and/or Employment Authorization Applications Are Pending

DHS proposes to strike ''duration of status'' from redesignated 8 CFR 214.2(f)(5)(vii) and clarify that an alien with F–1 status whose admission period as indicated on his or her I–94 has expired, but who has timely filed an EOS application, would be authorized to continue pursuing a full course of study after the end date of his or her admission until USCIS adjudicates the EOS application. *See* proposed 8 CFR 214.2(f)(5)(viii). This change would provide ongoing authorization to continue studies as long as the student has timely filed his or her EOS and will not penalize students if USCIS is unable to adjudicate an EOS application before a student's new term or course of study is underway. In such cases, students would be able to continue pursuing their full course of study.

The shift to a fixed date of admission has implications for various types of employment authorization. Currently, DSOs may authorize certain types of employment authorization, including on campus employment and CPT,[119] and students generally do not need to be concerned about a specific expiration date for their student status, and thus their employment authorization, because they are admitted for duration of status. This rule would change that framework with different implications for various types of employment authorization.

For on-campus employment where no EAD is needed, DHS proposes to allow aliens in F–1 status to continue to be authorized for on-campus employment while their EOS applications with USCIS are pending, not to exceed a period of 240 days.[120] *See* proposed 8 CFR 214.2(f)(5)(viii). If the EOS application is still pending after 240 days have passed, the F–1 student would no longer be authorized for employment and would need to stop engaging in on-campus employment. DHS is proposing a 240-day automatic extension period in order to minimize disruptions to on-campus employment by teaching assistants, post-graduates working on research projects, and other positions that are integral to an F–1 student's educational program.

Likewise, DHS is proposing an automatic extension of off-campus employment authorization for up to 240-days during the pendency of the EOS application, for F–1 aliens who had previously demonstrated severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and had previously received an EAD from USCIS that expired at the program end date that is now being extended with the EOS application. *See* proposed 8 CFR 214.2(f)(5)(viii). These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other substantial and unexpected expenses. In such cases, DHS believes a 240-day automatic extension of employment authorization would help alleviate the severe economic hardship and avoid a disruption in their employment, especially given the fact that an EAD is

[117] Under INA 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A), 65,000 aliens may be issued H–1B visas or otherwise provided H–1B nonimmigrant status in a fiscal year. This limitation does not apply to aliens who have earned a master's or higher degree from a U.S. institution of higher education, as defined in 20 U.S.C. 1001(a), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000. INA 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C).

[118] *See* 8 CFR 214.2(h)(2)(i)(I).

[119] *See* 8 CFR 214.2(f)(9)–(12), 8 CFR 274a.12(b)(6)(iv).

[120] *See* 8 CFR 214.2(f)(9)(i) for a description of on-campus employment. For on-campus employment that is based on severe economic hardship resulting from emergent circumstances pursuant to 8 CFR 214.2(f)(5)(v), see later discussion for additional restrictions.

required and the frequency at which these students must submit an application for employment authorization.[121] Additionally, given that USCIS's average EAD processing time is typically 60–210 days for foreign students and 90–120 for most others, a 240-day timeframe provides sufficient flexibility in case of unexpected delays.[122]

For F–1 aliens granted off-campus employment authorization on the basis of severe economic hardship resulting from emergent circumstances pursuant to existing 8 CFR 214.2(f)(5)(v), DHS is proposing an automatic extension of such employment authorization with a different validity period than the general 8 CFR 214.2(f)(9)(ii)(C) severe economic hardship employment authorization extension described above while their EOS applications are pending. This will codify USCIS's current policy, which states USCIS may grant Special Student Relief (SSR) employment authorization for the duration of the **Federal Register** notice validity period, but the period of authorization may not exceed the F–1 student's academic program end date.[123]

As first promulgated in 1998, the SSR regulations provide necessary flexibility to address unforeseeable emergencies by allowing DHS, by notice in the **Federal Register**, to suspend the applicability of some or all of the requirements for on- and off-campus employment authorization for specified F–1 students where an emergency situation has arisen calling for this action. These F–1 students must continue to attend classes but are allowed to take a reduced course load. By regulation, aliens approved for SSR must take at least 6 semester or quarter hours of instruction at the undergraduate level or 3 semester or quarter hours of instruction at the graduate level. *See* existing 8 CFR 214.2(f)(5)(v). Failure to take the required credits could be considered a failure to maintain F–1 status. The SSR regulations are announced by notice in the **Federal Register** and such employment may only be undertaken during the validity period of the SSR notice.

Due to the shift to a fixed admission period, DHS proposes to provide an automatic extension of SSR-based employment so aliens' ability to benefit from this long-standing regulatory relief is not interrupted by USCIS processing times. This change is consistent with current USCIS policy, which allows for SSR employment authorization to be granted for the duration of the **Federal Register** notice validity period, so long as the period of authorization may not exceed the F–1 student's academic program end date. It is also consistent with existing practice for certain nonimmigrants who require an EAD.[124] DHS proposes to automatically extend SSR authorization if an F–1 alien has a timely-filed EOS pending for up to the end date stated in the **Federal Register** notice announcing the suspension of certain requirements, or 240 days, whichever is earlier. *See* proposed 8 CFR 214.2(f)(5)(viii).

As evidence of these automatic extensions of employment authorization, DHS is proposing that the F–1 alien's I–94 (or successor form) or EAD (Form I–766, or successor form), for F–1 nonimmigrants requiring an EAD, when combined with a notice issued by USCIS indicating receipt of a timely filed EOS application (such as the Form I–797), would be considered unexpired until USCIS issues a decision on the EOS application, not to exceed 240 days. *See* proposed 8 CFR 214.2(f)(5)(viii). SSR-based employment authorization that has been automatically extended can be evidenced by the F–1 alien's EAD and the receipt notice issued by USCIS (the Form I–797), not to exceed the lesser of 240 days or the end date stated in the **Federal Register** notice announcing the suspension of certain requirements.

v. New Process for EOS Application

Under existing regulations, F–1 students may obtain a program extension from a DSO as long as they are maintaining status and making normal progress toward the completion of their educational objectives. *See* existing 8 CFR 214.2(f)(7)(i) and (iii). The problem with the ''normal progress'' standard is that it is undefined, and DHS believes that retaining it could lead to inconsistent adjudications. Even now, the lack of a standard definition for normal progress leads DSOs to inconsistently extend F–1 students' program end dates and thus their stay in the United States. Some DSOs use a strict standard, evaluating, for example, documentation to support a student's claim of a compelling medical condition or illness that serve as the basis for the student's request for extension of the student's current program. However, other DSOs claim that the student is making ''normal progress'' whenever a student simply needs more time to complete the program. This inconsistency results in some students being able to remain in F–1 status for years simply by having the DSO update the Form I–20 without providing a justification as to how the student is making ''normal progress'' and what academic or medical circumstances necessitate the extension of the program.

Therefore, DHS proposes not to use a ''normal progress'' standard with respect to seeking a program extension of an authorized period of stay. In addition to the requirement that the applicant obtain a Form I–20 from the DSO recommending extension of the program, the applicant would be required to file an EOS application to request additional time to complete their current course of study beyond their authorized period of admission. *See* proposed 8 CFR 214.2(f)(7)(i).

Apart from pursuing a new course of study, DHS appreciates that the time for study can legitimately fluctuate given the changing goals and actions of the student. For example, a student may experience compelling academic or medical reasons or circumstances beyond their control that cause them to need additional time in the United States beyond the predetermined end date of the program in which they were initially enrolled. DHS understands these circumstances arise and believes these scenarios present an appropriate situation for the Department to directly evaluate the nonimmigrant's eligibility for additional time in the United States. However, instead of effectively extending their stay through a DSO's program extension recommendation in SEVIS, students would have to obtain a Form I–20 from the DSO recommending a program extension and apply to USCIS for an EOS under the proposed regulations. Immigration officers thereby would be able to conduct appropriate background and security checks on the applicant at the time of the EOS application and directly review the proffered evidence to ensure that the alien is eligible for the requested EOS, including through assessing whether the alien remains admissible. *See* 8 CFR 214.1(a)(3)(i). This extra step is necessary because an immigration officer will be able to see a more fulsome picture while considering the

[121] *See* 8 CFR 274a.12(c)(3). 8 CFR 214.2(f)(9)(ii)(F)(2) provides that employment authorization based upon severe economic hardship may be granted in one-year intervals up to the expected date of completion of the student's current course of study.

[122] USCIS Processing Times for Employment Authorization, available at *https://www.uscisguide.com/national-visa-center/processing-times-for-employment-authorization/* (last visited Mar. 26, 2025).

[123] *See generally* USCIS Policy Manual, Vol. 2, Part F, Chap. 6, available at *https://www.uscis.gov/policy-manual/volume-2-part-f-chapter-6* (last visited Mar. 27, 2025).

[124] *See* 8 CFR 214.2(f)(10)–(12), 8 CFR 274a.12(b)(6)(iv).

student's particular circumstances, and be able to identify potential fraud and criminality, thereby ensuring public safety and program integrity.

In these circumstances, the Department would only extend the stay beyond the prior admission date (typically the program end date for which the student was admitted to the United States as a F–1 nonimmigrant or was granted based on a change of status or EOS) of an otherwise eligible F–1 student requesting additional time to complete their program if the additional time needed is due to a compelling academic reason, documented medical illness or medical condition, or circumstance that was beyond the student's control. As with all nonimmigrant EOS, an alien seeking an EOS generally must have continually maintained status.[125] If an F–1 student dropped below a full course of study, that drop must have been properly authorized. F–1 students seeking extensions of stay must primarily be seeking to temporarily stay in the United States solely to pursue a full course of study, INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i), and not for other reasons separate from, or in addition to, pursuing a full course of study. If an F–1 student were to violate the terms of his or her F–1 status, the F–1 student would need to apply to USCIS for reinstatement, consistent with current 8 CFR 214.2(f)(16). If a student is reinstated and his or her admit until date expires within 6 months, but the student is unable to complete his or her program of study within that time, then the F–1 student also would need to apply to USCIS for an EOS. In that scenario, the F–1 student would need to make separate requests for reinstatement and for EOS by submitting a separate form for each request, including the required filing fee for each form, by marking reinstatement on one form and then EOS on the other. Both forms can then be submitted together at the same time to avoid unnecessary adjudication delays. In the event both forms are submitted together, and the F–1 student's application to reinstate student status is denied, his or her application for EOS would also be denied, with both filing fees being retained by USCIS and not refunded.

By way of illustration, a student with a fixed date of admission may request an additional 4 months to complete his or her program because the student was authorized to drop below a full course of study for one semester due to illness. Under the existing regulation, the student would need to request an updated Form I–20 from the DSO recommending a program extension. Under the proposed regulation, an immigration officer could review the proffered evidence and ensure that the claim is supported by documentation from a medical doctor. Conversely, a student may request an EOS for additional time to complete an associate program but fail to submit evidence they were properly authorized to drop below a full course of study. Under the proposed regulation, the immigration officer would have discretion to request transcripts from the student. If a student's transcripts reflect that the student failed multiple classes one semester, an immigration officer could determine the student has failed to maintain status due to a failure to carry a full course of study as required. In another example, a student could submit an EOS request to continue in the same program because he or she was unable to take all the required classes for his or her major due to over-enrollment at the school. Again, an officer could request additional information, if needed, to determine that the student was maintaining a full course of study (or, if not, was properly authorized to reduce his or her course load), but due to the school's high enrollment, the student may validly require an additional semester to complete the degree requirements in order to graduate.

Therefore, DHS is proposing to eliminate a reference to ''normal progress'' with respect to seeking a program extension and incorporate a new standard clarifying that acceptable reasons for requesting an extension of a stay for additional time to complete a program are: (1) compelling academic reasons; (2) a documented illness or medical condition; or (3) exceptional circumstances beyond the control of the alien. *See* proposed 8 CFR 214.2(f)(7)(i)(C).[126] The first two factors are based on the current regulatory provisions for program extension, 8 CFR 214.2(f)(7)(iii), from current text (*e.g.,* changes of major or research topics, and unexpected research problems). DHS proposes to clarify that, in addition to academic probation and suspension, a student's repeated inability or unwillingness to complete his or her course of study, as demonstrated by a pattern of failing classes and requesting multiple program extension, is not an acceptable reason to request an EOS for additional time to complete a program. *See* proposed 8 CFR 214.2(f)(7)(i)(C)(*1*). DHS expects bona fide students to be committed to their studies, attending classes as required, carrying a full course of study, and making reasonable efforts toward program completion. Repeatedly failing classes demonstrates that the student is not making reasonable efforts toward completing his or her program of study. Therefore, a student who has a pattern of failing classes that has resulted in multiple program extensions would not be qualified for an EOS. The prohibition against requesting an EOS would not include students such as those who, pursuant to DHS regulations, are making normal progress toward completing their program of study and still may not complete the program within 4 years due to the standard timeline and requirements for the program. Absent such factors as being placed on academic probation or suspension, or repeatedly failing classes, these students would be eligible for extension based upon compelling academic reasons. The prohibition would also not include cases in which the DSO properly authorized the student to drop below a full course of study as well as cases in which the status has been reinstated following a loss of status. In such a case, the student is eligible for reinstatement if the reduced course load was within a DSO's power to authorize. A student would be expected to provide evidence demonstrating the compelling academic reason in order for the DSO to recommend a program extension. The student may then apply for an EOS. While a letter from the student may be sufficient to meet his or her burden of proof, an immigration officer will evaluate the individual case and make the determination as to whether additional evidence (such as a letter from a member of the school administration or faculty) is needed to adjudicate the case.

Next, DHS is proposing to clarify that a student can qualify for a program extension and corresponding EOS based on a documented illness or medical

[125] Failure to file on or before the expiration of the previously accorded status or failure to maintain such status may be excused at the discretion of USCIS if the alien demonstrates that at the time of filing: the delay was due to extraordinary circumstances beyond the control of the applicant, and USCIS finds the delay commensurate with the circumstances, the alien has not otherwise violated his or her status, and is not subject to deportation. *See* 8 CFR 214.1(c)(3)(viii).

[126] DHS did not propose to update the term ''normal progress'' as defined in 8 CFR 214.2(f)(6)(i)(E) because the Department did believe it addresses the same concerns as it does at 8 CFR 214.2(f)(5). The provision at 8 CFR 214.2(f)(6)(i)(E) relates to study at an approved private elementary or middle school or public or private academic high school. In that context, it is clear that ''normal progress'' is the completion of the academic year (for example, 6th grade).

condition. To provide an objective standard, DHS proposes to codify standards already included in 8 CFR 214.2(f)(6)(iii)(B), which require a student to provide medical documentation from a licensed medical doctor, licensed doctor of osteopathy, licensed psychologist, or licensed clinical psychologist to substantiate the illness or medical condition if seeking a reduced course load. *See* proposed 8 CFR 214.2(f)(7)(i)(C)(*2*). As this is already a long-standing requirement for DSOs and students in a similar context, DHS believes that it would be appropriate and easy to implement in the program extension and corresponding EOS process. Further, requiring applicants to provide documentation of their medical illness or medical condition that caused their program delay is a reasonable request, because they are asking DHS to provide them additional time in the United States.

DHS is also proposing a new factor in the EOS provisions—circumstances beyond the student's control, including a natural disaster, a national health crisis, or the closure of an institution. *See* proposed 8 CFR 214.2(f)(7)(i)(C)(*3*). As in the reinstatement context, DHS believes that there might be additional reasons beyond compelling academic or documented medical reasons that result in a student's inability to meet the program end date listed on the Form I–20.

Therefore, DHS is proposing a third prong that would encompass scenarios that are not envisioned in the current provisions governing the extension of a program end date, such as those noted above. Some scenarios are currently in the reinstatement provisions, 8 CFR 214.2(f)(16)(i)(F), such as natural disasters, pandemics, and the negligence of a DSO, and DHS believes that they merit favorable consideration in extension requests moving forward. Other scenarios may present circumstances that require a more intensive, fact-specific analysis and may fall into this proposed third prong. For example, the circumstances surrounding the closure of a school may be considered in determining whether the student qualifies for an EOS. By way of illustration, if a school closes as a result of a criminal conviction of its owners for engaging in student visa fraud by not requiring students to attend, but the student is unable to demonstrate that he or she was attending classes prior to closure as required to fulfill a full course of study, the closure of the institution might not qualify the student for a program extension. In contrast, if a school closes but a student is able to demonstrate that he or she was attending classes and was fulfilling all requirements to otherwise remain in status, the closure of the institute may qualify the student for a program extension.

The requirements to timely request an extension of the program end date would remain largely unchanged; however, DHS proposes a technical change to replace all references to the DSO ''granting'' an extension of the program with the term ''recommend'' an extension of the program in order for the student to file for EOS because USCIS, not the DSO, would ''grant'' the EOS. *See* proposed 8 CFR 214.2(f)(7)(ii). For example, a student may not necessarily be granted an EOS by USCIS if an adjudicator determines the student has not actually maintained status or does not actually have compelling academic or documented medical reasons for the delay, despite the DSO's recommendation for program extension. Where the alien requests a recommendation to extend the program end date, the DSO could only make a recommendation to extend the program if the alien requested the extension before the program end date noted on the most recent Form I–20, or successor form. Additionally, consistent with proposed changes throughout this NPRM, once the DSO recommends the extension of the program, the alien would need to timely file for an EOS on the form and in the manner designated by USCIS, with the required fees and in accordance with the filing instructions, including any biometrics required by 8 CFR 103.16 and a valid, properly endorsed Form I–20 or successor form, showing the new program end date barring extraordinary circumstances. *See* 8 CFR 214.1(c)(4) and proposed 8 CFR 214.2(f)(7)(ii) and (f)(7)(iii).

If seeking an EOS to engage in any type of practical training, the alien in F–1 status would also need to have a valid Form I–20, properly endorsed for practical training, and be eligible to receive the specific type of practical training requested. *See* proposed 8 CFR 214.2(f)(7)(v). Finally, as with all immigration benefit requests, an immigration officer would generally not grant an EOS where an alien in F–1 status failed to maintain his or her status.

Finally, a student's failure to timely request, from the DSO, a recommendation for extension of the program end date prior to expiration of the student's authorized stay, which would result in the DSO recommending an extension of the program end date in SEVIS after the end date noted on the most recent Form I–20 or successor form, would require the alien to file for a reinstatement of F–1 status, because the alien would have failed to maintain status and would be ineligible for an EOS. *See* proposed 8 CFR 214.2(f)(7)(viii). A request for reinstatement must be filed in the manner and on the form designated by USCIS, with the required fee, including any biometrics required by 8 CFR 103.16. DHS is also requiring F–2 dependents seeking to accompany the F–1 principal student to file applications for an EOS or reinstatement, as applicable. These requirements are consistent with current provisions.

With the transition from D/S to admission for a fixed time period, F–1 students would need to apply for an EOS directly with USCIS, by submitting the appropriate form and following the requirements outlined in the form instructions. USCIS anticipates accepting the Form I–539, Application to Change/Extend Nonimmigrant Status, for this population but would like the flexibility to use a new form if more efficient or responsive to workload needs. Thus, DHS is proposing to use general language to account for a possible change in form in the future. *See* proposed 8 CFR 214.2(f)(7)(iii)(A). If the form ever changes, USCIS would provide stakeholder's advance notice on its web page and comply with Paperwork Reduction Act requirements.

Like all other aliens who file a Form I–539, F–1 applicants might be required to submit biometrics and may be required to appear for an interview pursuant to 8 CFR 103.2(b)(9).

In addition, applicants would need to demonstrate that they are eligible for the nonimmigrant classification sought. Accordingly, applicants must submit evidence of sufficient funds to cover expenses. A failure to provide such evidence would render the applicant ineligible for the EOS. *See* proposed 8 CFR 214.2(f)(7)(i).

While the sponsoring school is required to verify the availability of financial support before issuing the Form I–20, they may not be well-versed in foreign documentation submitted by applicants and circumstances may change between the issuance of a Form I–20 and a request for an EOS. Further, it is incumbent upon DHS to determine the veracity of the evidence submitted, and officers must ensure that the student has sufficient funds to study in the United States without resorting to unauthorized employment. The phrase ''sufficient funds to cover expenses'' is referred to in existing DOS regulations concerning issuance of F and M nonimmigrant student visas, 22 CFR

41.61(b)(1)(ii), and current DOS policy requires an applicant to provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the *entire* period of anticipated study.[127] While this does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years, the applicant must demonstrate enough readily available funds to meet all expenses for the first year of study and that additional funds will be available for the duration of the intended period of study.[128] DHS believes requiring evidence of readily available financial resources to cover expenses for one year of study is reasonable given that F students are familiar with this requirement because this is the standard used by the DOS in the issuance of F nonimmigrant visas. DHS also considers that this standard is appropriate because it establishes concrete resources for one full academic year of the program. Further, applicants must demonstrate that, barring unforeseen circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources. Such evidence for one year and subsequent years could include, but is not limited to: complete copies of detailed financial account statements for each account intended to be used to fund the student's education; other immediately available cash assets; receipts and/or a letter from the school accounts office indicating tuition payments already made and any outstanding account balance; affidavits of support from a sponsor; proof of authorized private student loans; [129] and/or other financial documentation.

F–1 applicants generally would need to timely file their EOS application—meaning that USCIS would need to receive the application on or before the date the authorized admission period expires. *See* proposed 8 CFR 214.2(f)(7)(iii)(B). This application timeframe for timely filing an EOS application would include the 30-day period of preparation for departure allowed after the completion of studies or any authorized practical training. However, if the extension application is received during the 30-day period of preparation for departure provided in proposed 8 CFR 214.2(f)(5)(v) following the completion of studies, the alien in F–1 status may continue studying but may not continue or begin engaging in practical training or other employment until the extension request is approved and, as applicable, an EAD is issued. *See* proposed 8 CFR 214.2(f)(5)(iii)(B).

The length of the extension granted could be up to the period of time needed to complete the program or requested practical training, not to exceed 4 years, unless the alien is a border commuter, enrolled in language training, or attending a public high school, in which case further restrictions apply, as described above. By permitting admission only ''up to'' the prescribed period, USCIS and CBP are afforded discretion as to the ultimate length of time to grant the applicant and consider factors such as program length.

F–2 dependents seeking to accompany the F–1 principal student would need to file applications for an EOS or reinstatement, as applicable. *See* proposed 8 CFR 214.2(f)(7)(iv). A dependent F–2 spouse and unmarried children under the age of 21 seeking to accompany the principal F–1 student during the additional period of admission would need to either be included on the primary applicant's request for extension or properly file their own EOS applications on the form designated by USCIS. If the dependent files a separate Form I–539, he or she would need to pay a separate Form I–539 filing fee. However, if the dependent files a Form I–539A as part of the primary applicant's EOS request on a Form I–539, only one fee would be required.

USCIS generally would need to receive the extension applications on or before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the course of study, as indicated on the F–2 dependent's I–94. To qualify for an EOS, the F–2 dependent would need to demonstrate the qualifying relationship with the principal F–1 student who is maintaining status, also be maintaining his or her own status, and not have engaged in any unauthorized employment. *See* proposed 8 CFR 214.2(f)(7)(iv). Extensions of stay for F–2 dependents would not be able to exceed the authorized admission period of the principal F–1 student. By removing duration of stay for family members, DHS is ensuring that a spouse who engages in unauthorized employment would be denied extensions of stays and must return home.

Under proposed 8 CFR 214.2(f)(7)(vii), if USCIS denies the request for an extension, and the period of admission for the student and his or her dependents has expired, then the student and his or her dependents would need to immediately depart the United States. As with other nonimmigrant classifications, they would not be given any period of time to prepare for departure from the United States after the denial, and there may be significant immigration consequences for failing to depart the country immediately. For example, such aliens generally would begin to accrue unlawful presence the day after the issuance of the denial. DHS believes this standard provides parity across nonimmigrant classifications and invites the public to submit comments on this issue as well as the proposed EOS application process.

vii. School Transfers and Changes in Educational Objectives

As discussed above, a significant concern with the current D/S framework is that it has enabled fraudulent ''pay-to-stay'' schemes in which students were falsely reported as maintaining status in return for cash payments to DSOs. In some cases, school owners have operated multiple schools and transferred students between these schools to conceal this fraud. For example, in 2018, a defendant was sentenced by a federal judge in the Central District of California to 15 months in prison and ordered to forfeit more than $450,000 for running such a scheme involving three schools that he owned.[130] Furthermore, as discussed more thoroughly above, the D/S framework has enabled some aliens to become ''professional students'' who spend years enrolled in programs at the same educational level (for example, multiple associate degree programs) or complete programs at one educational level and enroll in lower educational levels (such as completing a master's degree and then enrolling in an associate program). DHS believes the proposed changes previously discussed regarding admission for a fixed time period and limitations on program changes within and between educational levels will help to address these concerns and serve to further strengthen the integrity of the F nonimmigrant visa classification by better ensuring that aliens are in the

[127] *See* 9 FAM 402.5–5(G), Adequate Financial Resources, available at *https://fam.state.gov/FAM/09FAM/09FAM040205.html* (last visited Mar. 20, 2025).

[128] *Id.*

[129] Federal student loans are only available to U.S. citizens and permanent residents.

[130] Press Release, U.S. Dep't of Justice, Owner of Schools that Illegally Allowed Foreign Nationals to Remain in U.S. as 'Students' Sentenced to 15 months in Federal Prison (Apr. 19, 2018), available at *https://www.justice.gov/usao-cdca/pr/owner-schools-illegally-allowed-foreign-nationals-remain-us-students-sentenced-15* (last visited March 3, 2025).

United States primarily to study, rather than to reside permanently in the United States. *See* proposed 8 CFR 214.2(f)(8)(i).

DHS proposes to retain some of the current school transfer and change of educational level conditions. First, as is the case currently, aliens would need to begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I–20; and second, if the alien is authorized to engage in post-completion OPT, he or she must be able to resume classes within 5 months of changing programs or transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. *See* proposed CFR 214.2(f)(8)(i)(E) and (F).

Another indication of a violation of F–1 status is failing to pursue a full course of study at the school that the alien is authorized to attend. *See* proposed 8 CFR 214.2(f)(8)(i). DHS is proposing to retain the current provisions rendering aliens who do not pursue a full course of study ineligible to change programs or transfer schools, and is clarifying that failure to pursue a full course of study includes, but is not limited to, a student whose pattern of behavior demonstrates a repeated inability or unwillingness to complete his or her course of study. Just as delays caused by unacceptable patterns of behavior, academic probation or suspension would not be acceptable reasons for program extensions and corresponding EOS of a student's current program, neither would they be an acceptable reason for failing to carry a full course load. Such aliens would have failed to maintain F status, are ineligible for a change of program and school transfers, and would be required to file for a reinstatement of status, if eligible. *See* proposed 8 CFR 214.2(f)(8)(i).

DHS also proposes clarifying that a change to a higher education level can be accomplished in accordance with the transfer procedures outlined in paragraph (f)(8)(ii) of 8 CFR 214.2 *See* proposed 8 CFR 214.2(8)(iii).

Next, if the new program to which the student changes or transfers will not be completed within the authorized admission period established in paragraphs (f)(5)(i) of 8 CFR 214.2, then, consistent with the other provisions throughout this proposed rule, the F–1 student would need to apply for EOS in the manner and on the form designated by USCIS, with the required fee and in accordance with form instructions, together with a valid, properly endorsed Form I–20 indicating the new program end date, and would need to provide biometrics as authorized by 8 CFR 103.16, if required. *See* proposed 8 CFR 214.2(f)(8)(iv).

viii. Border Commuter Students

DHS proposes to strike the sentence referencing how ''duration of status'' is inapplicable to border commuter students because DHS is proposing to eliminate D/S for all F nonimmigrants. *See* proposed 8 CFR 214.2(f)(18)(iii).

ix. Severability

In the event a provision in the section was not implemented, DHS proposes that the remaining provisions be implemented as an independent rule in a severability clause. *See* proposed 8 CFR 214.2(f)(20).

F. Requirements for Admission, Extension, and Maintenance of Status of J Exchange Visitors

i. Initial Admission Period and Period of Stay

1. Principal Applicants

The proposed revisions to the J regulations at 8 CFR closely align with the proposed changes for F nonimmigrants. Under proposed 8 CFR 214.2(j)(1), J exchange visitors would be able to receive an initial period of admission not to exceed the program end date as stated on the Form DS–2019, up to a period of 4 years. Currently, the permissible initial time periods for J program categories (as opposed to the periods of admission) are as follows, though further extensions are possible with DOS approval for all categories:

- *Professors and research scholars:* The length of program, not to exceed 5 years. *See* 22 CFR 62.20(i)(1).
- *Short-term scholars:* The length of the program not to exceed 6 months. *See* 22 CFR 62.21(g).
- *Trainees and interns:* General trainees may be granted 18 months; trainees in the field of agriculture, hospitality and tourism may be granted 12 months, and interns may be granted 12 months. *See* 22 CFR 62.22(k).
- *College and university students:* The length of time necessary to complete the goals and objectives of the training. *See* 22 CFR 62.23(f)(4). For undergraduate and pre-doctoral academic training, not to exceed 18 months, and for post-doctoral training, not to exceed a total of 36 months. 22 CFR 62.23(f)(4). Students enrolled in a degree program do not have a definite admission period but must comply with duration of participation requirements at 22 CFR 62.23(h).[131] If enrolled in a non-degree program, students may be granted up to 24 months. *See* 22 CFR 62.23(h)(2).
- *Student intern:* Up to 12 months. *See* 22 CFR 62.23(h)(3) and (i).
- *Teachers:* The length of time necessary to complete the program, not to exceed 3 years, unless a specific extension of 1 or 2 years is authorized by DOS. *See* 22 CFR 62.24(j).
- *Secondary school students:* Not more than two academic semesters (or quarter equivalency). *See* 22 CFR 62.25(c)(2).
- *Specialists:* The length of time necessary to complete the program, not to exceed 1 year. *See* 22 CFR 62.26(i).
- *Alien physicians:* Limited to 7 years, unless the alien physician has demonstrated to the satisfaction of the Secretary of State that the country to which the alien physician will return at the end of additional specialty education or training has an exceptional need for an individual with such additional qualification. *See* 22 CFR 62.27(e).
- *International visitors:* The length of time necessary to complete the program, not to exceed 1 year. *See* 22 CFR 62.28(g).
- *Government visitors:* The length of time necessary to complete the program, not to exceed 18 months. *See* 22 CFR 62.29(h).
- *Camp counselors:* 4 months. *See* 22 CFR 62.30(h)(2).
- *Au pairs:* Not more than 1 year. *See* 22 CFR 62.31(c)(1).
- *Summer work travel:* Up to 4 months. *See* 22 CFR 62.32(c).

As with the F classification, many J exchange visitors are admitted to participate in programs shorter than 4 years. Some J exchange visitors, like most F nonimmigrants, enter as post-secondary students. Similar to the F–1 Ph.D. student, some J nonimmigrants, like physicians, may need to stay longer than a 4-year period to complete their J program. However, all categories of J nonimmigrants would be covered by the same 4-year period proposed for F nonimmigrants. As such, DHS strives to treat these similarly situated nonimmigrants in a consistent manner by providing them with the same proposed maximum admission period.

[131] A student who is in a degree program may be authorized to participate in the Exchange Visitor Program as long as he or she is either: (i) Studying at the post-secondary accredited academic institution listed on his or her Form DS–2019 and: (A) Pursuing a full course of study as set forth in 22 CFR 62.23(e), and (B) Maintaining satisfactory advancement towards the completion of the student's academic program; or (ii) Participating in an authorized academic training program as permitted in 22 CFR 62.23(f). *See* 22 CFR 62.23(h).

DHS is implementing the same 4-year maximum period of admission. *See* proposed 8 CFR 214.2(j)(1)(ii)(A). This would help ensure compliance by providing consistency between the J program and the F program, which have programmatic similarities in that both go through the SEVIS system and need approval by their respective DSOs or ROs for exchanges and changes.

DHS proposes to retain the 30-day period that J nonimmigrants are provided before the report date or start of the approved program listed on the DS–2019 and the 30-day period for preparation for departure. As DHS expects these nonimmigrants to use the 30-day period of time after the program ends to prepare for departure, the Department proposes to revise the language currently in 8 CFR 214.2(j)(1)(ii) that reads, ''period of 30 days for the purposes of travel or for the period designated by the Commissioner . . .,'' to instead read ''a period of 30 days from the program end date or the 4-year maximum period of admission, whichever is earlier, for the purposes of departure or to otherwise seek to maintain lawful status.'' *See* proposed 8 CFR 214.2(j)(1)(ii)(C). DHS believes that the proposed language more accurately reflects the purpose of the period at the end of the program and accounts for other ways J exchange visitors may seek to maintain status during this period, such as by filing an EOS or change of status application. As explained in the context of F–1s above, DHS proposes changes to clarify that all J–1 nonimmigrants will be allowed the 30-day departure period following their program end date or the 4-year maximum period of admission.

2. Dependents

Consistent with the EOS eligibility requirements for J–1 nonimmigrants found at 8 CFR 214.1(c)(4), DHS proposes to codify the policy that extensions for spouses or children who are granted J–2 status based on their derivative relationship as a spouse or child of the principal J–1 nonimmigrant may not exceed the period of authorized admission of the principal J–1. The existing regulations state that the initial admission of a spouse or children may not be for longer than the principal exchange visitor.[132] That is, the authorized period of initial admission for J–2 dependents would be subject to the same requirements as the J–1 exchange visitor and may not exceed the period of authorized admission of the principal J–1 exchange visitor. *See* proposed 8 CFR 214.2(j)(1)(ii)(B).

ii. EOS

The shift from D/S to admission for a fixed time period would mean that J nonimmigrants wishing to remain in the United States beyond their authorized period of stay would need to file for an EOS with USCIS. Like other nonimmigrants applying for EOS, they would need to file an EOS application on the form and in the manner designated by USCIS, with the required fee and in accordance with filing instructions, including any biometrics required by 8 CFR 103.16. *See* proposed 8 CFR 214.2(j)(1)(iv)(A). J–1 nonimmigrants seeking a program extension will continue to first request such an extension through the RO, as provided for under existing regulations.[133] If such a program extension is recommended by the RO and approved by DOS, if necessary, the J–1 must apply for an EOS with USCIS to remain in the U.S. beyond the status expiration date on their I–94.

There are times when an exchange visitor's program status becomes inactive prior to program completion, which would result in the RO recommending a reinstatement of J–1 status to include an extension of the program beyond the end date noted on the most recent Form DS–2019 or successor form.[134] A request for reinstatement must be filed in the manner designated by DOS, with the required fee. If the DOS approves the reinstatement, the RO shall provide the exchange visitor with a new Form DS–2019 and the exchange visitor must file for an extension of stay with USCIS within 30 calendar days of the DOS's decision.

A dependent J–2 spouse and children seeking to accompany the J–1 exchange visitor in eligible J–1 categories during the additional period of admission would either need to be included on the primary applicant's request for extension or file their own EOS applications on the form designated by USCIS and may be required to provide biometrics consistent with 8 CFR 103.16. *See* proposed 8 CFR 214.2(j)(1)(iv)(D). If a J–1 exchange visitor is denied EOS, then the J–2 family members will also be denied EOS, and all will be required to leave the United States immediately. However, a J–2 family member also could be denied EOS for other reasons, including due to criminal activity or not maintaining his or her status, for example, by working when not authorized, and would be required to depart the United States, but the J–1 and other J–2 dependents would be allowed to remain in the United States if EOS is approved for them.

As with other nonimmigrant classifications, the period of stay for J–2 dependents cannot exceed the period of stay authorized for the principal J–1 exchange visitor, including any EOS granted. And, as with other nonimmigrant classifications, if an EOS request is denied, the aliens would need to immediately depart the United States once their authorized period of stay expires.

iii. Employment and Pending EOS and Employment Authorization Applications

Like I nonimmigrants, J–1 exchange visitors in some categories are authorized to engage in employment incident to status.[135] This means that they are authorized to work per the terms of their program, and they do not have to apply to USCIS for authorization to engage in employment. If an alien's J–1 status has expired, but he or she timely filed an EOS application, DHS proposes to allow the alien to continue engaging in activities consistent with the terms and conditions of the alien's program, including any employment authorization, beginning on the day after the admission period expires, for up to 240 days. *See* 8 CFR 274a.12(b)(20). As discussed in more detail below, DHS also proposes to allow an alien whose J–1 status has expired but who timely filed an extension of stay application on or before 6 months after the effective date of the final rule (or longer if extended by DHS by an announcement in the **Federal Register**), to engage in J–1 activities, including authorized training and employment, as permitted by the alien's exchange visitor program, while the EOS application is pending with USCIS, for the period up to the program end date on the DS–2019 (or successor

[132] *See* 8 CFR 214.2(j)(1)(ii).

[133] *See* 22 CFR 62.43, describing J–1 program extension procedures.

[134] One example is when a sponsor issues Form DS–2019 for one year at a time for exchange visitors on multi-year programs. Prior to the end of the first year, the sponsor should have submitted an extension prior to the Program End Date but failed to do so and now must submit a Reinstatement. If approved, the request would change the status of the exchange visitor from Inactive to Active and extend the Program End Date for another year.

[135] *See* 8 U.S.C. 1101(a)(15)(J) (including teaching, instructing, lecturing, and consulting among the permissible activities of nonimmigrants in the J classification for participation in programs authorized by the Department of State); 8 CFR 214.2(j)(1)(v) (discussing employment authorization for J exchange visitors); 22 CFR 62.16 (stating that an exchange visitor program participant may receive compensation ''when employment activities are part of the exchange visitor's program'').

form) filed with the pending application. Such authorization would be subject to any conditions and limitations of the initial authorization. *See* proposed 8 CFR 214.2(j)(1)(vii). This policy is consistent with current practice and prevents J–1 exchange visitors from being penalized on account of USCIS processing times, allows the alien to participate in the program without interruption, and, as applicable, prevents disruption to U.S. institutions employing or otherwise relying on the alien.

If the alien's initial date of admission passes, DHS proposes to consider the alien's I–94 unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed EOS application and a valid, properly endorsed Form DS–2019 indicating his or her program's end date. An EOS application would be considered timely filed if the date on the receipt notice for the application of EOS is on or before the date the authorized stay expires. The extension of an alien's employment authorization would terminate on the date of denial of an individual's application for an EOS. *See* proposed 8 CFR 214.2(j)(1)(iv)(E). DHS believes that such provision would clarify how exchange visitors would demonstrate authorization to continue engaging in employment authorized pursuant to their program and better facilitate employer compliance with I–9 employment verification requirements.

Unlike J–1 exchange visitors, J–2 spouses and eligible children may only engage in employment with authorization by USCIS. *See* 8 CFR 214.2(j)(1)(v) and 8 CFR 274a.12(c)(5). DHS also proposes to retain the current restriction on the J–2 dependent's income described in 8 CFR 214.2(j)(1)(v)(A); the J–2 nonimmigrant's income may be used to support the family's customary recreational and cultural activities and related travel, among other things, but not to support the J–1. *See* proposed 8 CFR 214.2(j)(1)(v).

Consistent with current regulatory requirements, if a J–2 dependent wants to engage in employment, he or she will need to file an application for employment authorization, in the manner designated by USCIS, with the required fee and in accordance with form instructions. If a J–2 dependent nonimmigrant's requested period of employment authorization exceeds his or her current admission period, the J–2 dependent would need to file an EOS application or be included as part of the J–1 principal's EOS application in the manner designated by USCIS, with the required fee and in accordance with form instructions. The validity of the J–2 dependent's employment authorization may not exceed the authorized admission period granted to the J–2 dependent pursuant to the EOS application. *See* proposed 8 CFR 214.2(j)(1)(iv)(A), (j)(1)(v), and (j)(1)(vii)(C).

As noted above in the discussion concerning EOS applications for F nonimmigrants, DHS considered but declined to adopt a policy that will result in abandonment of the EOS application upon traveling outside the United States while the EOS is pending. A J–1 or J–2 alien who travels during the time the EOS is pending may not be considered to have abandoned the EOS application. *See* proposed 8 CFR 214.1(c)(8).

DHS proposes to allow J–1 nonimmigrants to continue employment or authorized training while an EOS application is pending with USCIS. Specifically, DHS proposes to allow J–1s who have properly filed an EOS on or before 6 months after the effective date of the final rule, to engage in the activities consistent with pursuing the terms and conditions of the exchange program objectives, including authorized training, while the EOS is pending, up to the DS–2019 end date filed with the EOS application. If a J–1 nonimmigrant's EOS is still pending upon the end date of the DS–2019 filed with the EOS application, and the J–1 obtains a program extension from the sponsor and/or DOS, as applicable, DHS proposes to allow the alien to continue engaging in activities consistent with the exchange program objectives, including authorized training, so long as the EOS application is pending, and he or she has filed a subsequent EOS request with an end date beyond the DS–2019 end date requested in the preceding EOS request. In the future, the date which is initially 6 months after the effective date of the final rule may be extended, if DHS determines such an extension is necessary. *See* proposed 8 CFR 214.2(j)(1)(vii).

Finally, DHS proposes minor technical updates. First, in 8 CFR 214.2(j)(1)(vi) DHS proposes to strike the reference to duration of status, to update references to the ''Commissioner'' to refer to USCIS, and to replace the title with '*Automatic Extension of J–1 stay and grant of employment authorization for aliens who are the beneficiaries of a cap-subject H–1B petition'* to eliminate the prior reference to ''duration of status'' and to provide more details on the paragraph. Second, because proposed 8 CFR 214.2(j)(1)(vii) is being revised to describe J nonimmigrants with pending EOS applications and their employment authorization, it is necessary to revise and reassign existing 8 CFR 214.2(j)(1)(vii) and (viii) to proposed 8 CFR 214.2(j)(1)(viii) and (ix) respectively. Third, DHS proposes conforming amendments to the provision which requires exchange visitors to report legal changes to their name and any changes in their address, replacing the term 'Service' with 'USCIS' and clarifying the number of days during which changes need to be reported by revising from 10 days to 10 'calendar' days for exchange visitors to report changes in their names and addresses and from 21 days to 10 business days for the RO to update SEVIS, in order to conform with existing DOS regulations.[136] *See* proposed 8 CFR 214.2(j)(1)(ix). This change is proposed because the differing number of days for ROs to report changes between DHS and DOS regulations may cause confusion given that the time frames are both regarding the requirement for ROs to update changes in SEVIS, and this change provides for a common timeframe. In that same provision, DHS proposes to strike the sentence which references non-SEVIS programs, as SEVIS enrollment is now a mandatory requirement. Finally, in the event a provision in the paragraph was not implemented, DHS proposes that the remaining provisions be implemented as an independent rule in a severability clause. *See* proposed 8 CFR 214.2(j)(6).

G. Requirements for Admission, Extension, and Maintenance of Status of I Nonimmigrants

i. Definition of Foreign Media Organization

Changes in technology and in the way that the public consumes media information have raised novel questions as to whether certain individuals fit within the statutory and regulatory provisions that are applicable to representatives of foreign information media. To address these questions, DHS proposes to define a foreign media organization as ''an organization engaged in the regular gathering, production or dissemination via print, radio, television, internet distribution, or other media, of journalistic information and has a home office in a foreign country.'' *See* proposed 8 CFR 214.2(i)(1).

[136] 22 CFR 62.10(d)(3) clarifies that the J–1 exchange visitor must inform the RO or ARO of address changes within ''10 calendar days'' of the change, and 22 CFR 62.10(d)(4) states that the reporting window for ROs or AROs to update SEVIS is ''10 business days'' from receiving the J–1 exchange visitor's address change notification from the J–1 exchange visitor.

This proposal clarifies long-standing practice that the alien be a representative of a media organization with a home office in a foreign country by codifying what is considered a foreign media organization when seeking qualification as an I nonimmigrant.[137] By requiring evidence that shows that the foreign organization that employs or contracts the I nonimmigrant has a home office in a foreign country, and that the office in a foreign country continues to operate while the I nonimmigrant is in the United States, DHS would help ensure that the I nonimmigrant, at the time of application for admission, change of status, or application for EOS, is a bona fide representative of *foreign* media organization. *See* proposed 8 CFR 214.2(i)(2). Further, to conform to the statutory intent of the I classification, DHS is proposing to clarify and codify the DOS and USCIS long-standing practice interpreting ''foreign information media'' under INA 101(a)(15)(I) as ''journalistic information.'' This standard is in place when aliens apply for an I visa abroad or seek to change to I nonimmigrant status in the United States and aligns with statutory intent, which is to facilitate foreign press and journalism, rather than for entertainment or promotional purposes, such as performing or appearing on reality television programs. There are other options for those aliens, such as the O or P nonimmigrant classifications.[138]

DOS is the entity that determines whether an alien qualifies for an I visa, while USCIS is the entity that determines whether an alien who is in the United States in another nonimmigrant status can change to I status or whether an I alien who is already in the United States and seeks to change his or her employer or information medium continues to qualify for an I status. USCIS and DOS guidance discuss the distinction between journalistic content and content that is primarily for entertainment. DOS considers journalistic information as content that is primarily informational in nature, such as the reporting on recent or important events, investigative reporting, or producing educational materials, such as documentaries. It does not include content that is primarily designed to provide entertainment rather than information, including scripted or contrived situations, such as most ''reality television'' shows. It also does not include most personal content, such as discussions of personal experiences in the United States or materials aimed at fan engagement or works produced for promotional or marketing purposes.[139] DOS' definition aligns with current USCIS practice where the ''officer should consider whether the intended use is journalistic, informational, or educational, as opposed to entertainment. The officer should also consider the foreign distribution of the film or video footage in addition to other factors, including the timeliness of the project relative to the subject event.'' [140]

Consistent with DOS guidance and current USCIS practice, whether content is journalistic information would depend on the nature of the content featured on the new media outlet. For example, a political blogger traveling to the United States to cover an election could qualify for I status, as election coverage would generally be considered journalistic information. In this example, the applicant would still need to demonstrate that he or she satisfies the other qualifications of an information media representative, including that he or she represents an organization involved in the regular gathering, production, or dissemination of journalistic information that has a home office in another country.[141]

Similarly, a professional travel blogger traveling to the United States to obtain and produce materials on national parks in the United States could also qualify for I classification if all aspects of the definition of an information media representative are established, including the requirement that the media content generated will be journalistic information and that he or she represents an organization having an office in a foreign country and that is involved in the regular gathering, production, or dissemination of journalistic information. However, a blogger traveling to the United States to report on his or her own activities at a national park may not qualify for I status if the applicant does not represent an organization involved in the regular gathering, production, or dissemination of journalistic information and the media content is not primarily journalistic information. Individuals who are not professional bloggers, but maintain a personal blog and will produce content on their blog based on their personal experiences in the United States, such as providing information and reviews of their personal vacation, generally would not qualify for I classification, but may qualify for a B classification, depending on the circumstances.

These standards facilitate the travel of representatives of foreign information media. These proposed standards codify and clarify existing U.S. government practice and thus would not significantly alter the current guidance used by DHS officers adjudicating these cases or by DOS when determining whether an I visa should be issued. Rather, codifying these standards in the regulation would clarify how representatives of foreign press, radio, film or other journalistic information media qualify for the I classification. DHS does not anticipate that the changes proposed in this rule would represent a significant departure from current processing.

ii. Evidence

In order to be granted I classification, an alien would need to meet his or her burden of proof to establish eligibility for admission in that nonimmigrant classification. DHS believes that evidence presented by such individuals to establish employment as a bona fide representative of foreign press, radio, film or other journalistic information media should be provided in a letter from the employing foreign media organization verifying the employment, the work to be performed, and the remuneration involved. *See* proposed 8 CFR 214.2(i)(2). This evidence would provide a standard basis for DHS to evaluate whether the applicant intends to comply with the I classification and only engage in the regular gathering, production or dissemination via print, radio, television, internet distribution or other media of journalistic information and represents, as an employee or under contract, an organization with an office in a foreign country. For example, such

[137] *See generally* USCIS Policy Manual, Vol. 2, Part K, Chap. 2. Available at *https://www.uscis.gov/policy-manual/volume-2-part-k-chapter-2* (last visited Apr. 8, 2025); 22 CFR 41.52; 9 FAM 402.11–3(a)(1), available at *https://fam.state.gov/FAM/09FAM/09FAM040211.html* (last visited Apr. 9, 2025).

[138] INA section 101(a)(15)(O) or (P), 8 U.S.C. 1101(a)(15)(O) or (P).

[139] *See* DOS guidance for consular officers adjudicating I visa applications at 9 FAM 402.11–3, Definitions of ''Information Media Representative'' and ''Journalistic Information,'' available at *https://fam.state.gov/FAM/09FAM/09FAM040211.html* (last visited Apr. 9, 2025).

[140] *See* USCIS Policy Manual, Vol. 2, Part K, Chap. 3, available at *https://www.uscis.gov/policy-manual/volume-2-part-k-chapter-3* (last visited Apr. 8, 2025) (stating that ''[i]ncreasingly, because of the growing popularity of documentary-type biographies and similar nonfiction film productions, the distinction between commercial filmmaking for entertainment and genuine news gathering is less clear. For example, filmed biographies may be regarded as documentary filmmaking or as news gathering.'').

[141] *See* 9 FAM 402.11–10, New Media—Blogging And Other Electronic Media Platforms, available at *https://fam.state.gov/FAM/09FAM/09FAM040211.html* (last visited Apr. 9, 2025).

a letter would be able to describe the content that the foreign information media representative is covering in the United States, which must be primarily journalistic information in nature, such as the reporting on recent or important events, investigative reporting, or producing educational materials, such as documentaries. Foreign media organizations would be able to describe how the content is primarily designed to provide information rather than entertainment, such as scripted or contrived situations, such as most ''reality television'' shows, which do not qualify an individual for admission under the I nonimmigrant classification.[142]

Where an alien is self-employed or freelancing, the alien must provide an attestation that verifies the employment, establishes that he or she is a representative of a qualifying foreign media organization that meets the foreign home office requirement, and describes the remuneration and work to be performed. In order to maintain the home office in another country, a self-employed applicant would need to demonstrate that he or she intends to depart the United States within a reasonable time frame consistent with the intended purpose of travel. Like the letter from the employing foreign media organization, the attestation from the alien would help to ensure that the individual is engaging in qualifying activities, not activities primarily intended for personal fan engagement, or promotional or marketing purposes, which are unrelated to the regular gathering, production, or dissemination of journalistic information. *See* proposed 8 CFR 214.2(i)(2).

iii. Admission Period and EOS

DHS is proposing that aliens in I nonimmigrant classification have admission periods not to exceed 240 days or the period of time necessary to complete their activities, whichever is shorter, while also allowing such alien to apply for an ''extension of stay'' of up to 240 days. *See* proposed 8 CFR 214.2(i)(3)(i) and 214.2(i)(5)(i). The proposed rule further provides that an I nonimmigrant ''may be eligible for an extension of stay, each of up to 240 days or until the activities or assignments consistent with the I classification are completed, whichever is shorter.'' *See* proposed 8 CFR 214.2(i)(5)(i). However, I nonimmigrants presenting passports from the PRC (other than a Hong Kong SAR passport or Macau SAR passport) would be given admission and extension of stay periods of up to 90 days or until the activities or assignments consistent with the I classification are completed, whichever is shorter. *See* proposed 8 CFR 214.2(i)(3)(ii) and 214.2(i)(5). In each instance of applying for an EOS, DHS proposes that the I nonimmigrant must demonstrate planned work activities consistent with the I classification to justify the additional time sought. *See* proposed 8 CFR 214.2(i)(5).

As I nonimmigrants who file a Form I–539 request with USCIS to request a change in information medium are currently allowed an automatic extension of employment authorization with the same employer while a Form I–539 application is pending for a period not to exceed 240 days, CFR 274a.12(b)(20), DHS believes that it is appropriate to extend such period of time to most other I nonimmigrant contexts. As stated above and in 8 CFR 214.2(i)(5), DHS proposes allowing an I nonimmigrant to continue activities consistent with the I classification while the timely application for EOS is pending, as provided for in 8 CFR 274a.12(b)(20), for a period not to exceed 240 days or the actual additional time requested on the EOS application, whichever is shorter (with the exception of an I nonimmigrant submitting a passport from the PRC, except Hong Kong SAR and Macau SAR, who can request extensions of up to 90 days), and beginning on the date of the expiration of the authorized period of stay.

In the event that the EOS application remains pending at the end of this period (the 240 day auto-extension or 90 days for certain aliens from PRC), DHS proposes the I nonimmigrant, whose status has expired, may remain in the United States so long as the EOS application is pending, and he or she has filed a subsequent EOS request to remain beyond the period requested in the preceding EOS request. But DHS proposes that the alien cease working until his or her initial/preceding EOS application is approved, and USCIS may deny an EOS application if it finds that the alien did not cease working. *See* proposed 8 CFR 214.2(i)(5)(i) and (iii).

DHS proposes each extension request for an I nonimmigrant conform to the current requirements outlined in 8 CFR 214.1(c)(4) that the request be timely filed, and that an alien file his or her EOS while the alien maintains his or her previously accorded lawful status or prior to the expiration of his or her status.[143] Thus, under 8 CFR 214.1(c)(4), if an EOS remains pending and the alien needs to continue working in the United States beyond the time period requested in that particular EOS application, then DHS proposes he or she must file a second EOS application before the date (up to 240 days or 90 days for an I nonimmigrant submitting a passport from the PRC or the actual time period requested, whichever is shorter) when the preceding EOS request would have expired. When multiple, timely filed consecutive EOS applications are necessary, and the alien is required to cease work activities as described above because the preceding EOS application(s) remain pending, DHS proposes the filing of a subsequent EOS application does not confer authorization to continue work activities until the preceding EOS application(s) are approved. Upon approval of any and all preceding EOS application(s), DHS proposes the alien may resume work activities for the period of time remaining on the latest EOS request. At any time, the denial of an extension application requires the alien to cease work activities and depart the United States immediately. *See* proposed 8 CFR 214.2(i)(6). As with other nonimmigrant classifications, they will not be given any period of time to prepare for departure from the United States after the denial, and there may be significant immigration consequences for failing to depart the country immediately. For example, such aliens generally will begin to accrue unlawful presence the day after the issuance of the denial. DHS believes this standard provides parity across nonimmigrant classifications.

DHS proposes amendments at 8 CFR 214.2(i)(5)(ii) to clarify that the dependents of an I nonimmigrant may be eligible for an EOS, under the same conditions and subject to the same restrictions as the principal I nonimmigrant. DHS also proposes regulatory text at 8 CFR 214.2(i)(5)(iv), clarifying the meaning of ''timely filing'' in the context of these I EOS applications.

Aliens applying for an EOS currently file a Form I–539 with USCIS, with required fee and in accordance with form instructions, but DHS is using general terms in the proposed regulatory text when referencing the EOS application. DHS is using general terms, rather than referencing form names and

[142] For more information about what qualifies as 'journalistic information' *see* 9 FAM 402.11–3 Definitions of ''Information Media Representative'' and ''Journalistic Information,'' available at *https://fam.state.gov/FAM/09FAM/09FAM040211.html* (last visited Apr. 9, 2025).

[143] Current DHS regulations allow for USCIS, in its discretion, to excuse an alien's failure to file before the period of previously authorized status expired where the alien is able to demonstrate that certain circumstances apply to him or her: *See generally* 8 CFR 214.1(c)(4).

numbers, in the regulatory text to provide flexibility for the future—if the form name or number changes, the Department would not need to engage in rulemaking to make the update. *See* proposed 8 CFR 214.2(i)(5). And, as with other applicants who file a Form I–539, under the proposed rule applicants might be required to submit biometrics. *See* proposed 8 CFR 214.2(i)(5). Specific guidance and any changes to the filing procedure would be provided in the form instructions, which USCIS would post on its website, making it easily accessible to applicants.

DHS proposes to apply the same fixed period of admission applicable to aliens seeking to change from a different nonimmigrant status to, if eligible, I status. *See* proposed 8 CFR 214.2(i)(7).

iv. Severability

In the event a provision in the paragraph was not implemented, DHS proposes that the remaining provisions be implemented as an independent rule in a severability clause. *See* proposed 8 CFR 214.2(i)(8).

H. Change of Status

DHS is proposing to add two provisions to 8 CFR part 248, which governs changes of status. First, DHS is proposing to clarify that aliens who were granted a change to F or J status before the effective date of the final rule, and are applying for admission as an F or J after the final rule's effective date may be admitted up to the program end date as noted on the Form I–20 or DS–2019 that accompanied the change of status application that was approved prior to the alien's departure, not to exceed 4 years, plus a period of 30 days following their program end date, to prepare for departure or to otherwise seek to obtain lawful authorization to remain in the United States. *See* proposed 8 CFR 248.1(e). CBP may admit these aliens into the United States up to the program end date, on the Form I–20 or DS–2019 that accompanied the approved change of status prior to the alien's departure, plus an additional 30 days, thus ensuring that they do not get more time than allocated by their program end date, since these F and J nonimmigrants would have received an admission period for D/S on the I–94 that accompanied the change of status approval.

Second, DHS is proposing to codify the long-standing policy that, when an alien timely files an application to change to another nonimmigrant status, including F or J status, but departs the United States while the application is pending, USCIS will consider the application abandoned. Under section 248 of the INA, DHS may authorize a change of status to a nonimmigrant who, among other things, continues to maintain his or her status. Thus, pursuant to a policy that has been in place for decades, the change of status application of an alien who travels outside of the United States during the pendency of his or her request for a change of status is deemed abandoned. *See* proposed 8 CFR 248.1(f). Note, however, if there is an underlying petition filed along with the change of status, that petition may still be approved, but the alien generally would have to obtain the necessary visa at a U.S. Embassy or Consulate abroad before applying for admission to the United States in the new nonimmigrant classification.

I. Classes of Aliens Authorized To Accept Employment

DHS is proposing the following updates to regulations pertaining to employment authorization:

First, DHS proposes to strike the reference to D/S and update the reference to 8 CFR 214.2(f)(5)(vi) in 8 CFR 274a.12(b)(6)(v).

Second, in proposed 8 CFR 274a.12(b)(10), DHS proposes to cross-reference language in proposed 8 CFR 214.2(i) for I nonimmigrants, which clarifies that limitations currently in the provision (stating that an alien in this status may be employed only for the sponsoring foreign news agency or bureau) allow for freelance and self-employment situations where the I nonimmigrant may not have a ''sponsoring'' foreign news agency or bureau, and instead would need to show, among other requirements indicated in proposed 8 CFR 214.2(i), that they are working for a qualifying foreign media organization.

VI. Statutory and Regulatory Requirements

DHS developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. The below sections summarize our analyses based on a number of these statutes or executive orders.

A. Executive Order 12866: Regulatory Review

Executive Orders 12866 (Regulatory Planning and Review), and 13563 (Improving Regulation and Regulatory Review), direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that ''any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.''

This rule has been designated a ''significant regulatory action'' that is economically significant under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA § 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation' '' (Mar. 26, 2025).

DHS provides a summary of the Regulatory Impact Analysis (RIA) of the economic impacts below. For the full analysis, please see the RIA posted in the docket of this proposed rule on *regulations.gov.*

Under the proposed changes, DHS would more frequently have opportunities to review and collect nonimmigrant information, enhancing the Government's oversight and monitoring of these aliens, resulting in costs and benefits. Over a 10-year period of analysis, DHS estimates the proposed rule would have annualized costs ranging from $390.3 million to $392.4 million (using 3 and 7 percent discount rates, respectively) when considering both U.S. and non-U.S. parties. When considering U.S. parties only, DHS estimates that annualized costs would range from $86.3 million to $88.1 million (using 3 and 7 percent discount rates, respectively).

Need for the Rule

The proposed rule would ensure an effective mechanism for DHS to periodically and directly assess whether these nonimmigrants are complying with the conditions of their classifications and U.S. immigration laws, as well as allow DHS to obtain

timely and accurate information about the activities they have engaged in and plan to engage in during their temporary stay in the United States. The opportunity to assess the nonimmigrant status with timely and accurate information allows immigration officers to verify that the nonimmigrants have not obtained any criminal convictions and do not pose a threat to national security. In addition, as F, J, and I nonimmigrants would be admitted for a fixed period of admission under the proposed rule, they would generally begin to accrue unlawful presence following the expiration of their authorized period of admission, as noted on the Form I–94 (Arrival/Departure Record issued at the port of entry), and could potentially become inadmissible based on that accrual of unlawful presence under INA section 212(a)(9)(B) and (C), 8 U.S.C. 1182(a)(9)(B) and (C), upon departing the United States. These grounds of inadmissibility have important and far-reaching implications on an alien's future eligibility for a nonimmigrant or immigrant visa, admission to the United States, or adjustment of status to that of a lawful permanent resident. Therefore, the proposed regulatory changes may deter F, J, and I nonimmigrants from failing to maintain status and deter them from engaging in fraud and abuse. By increasing DHS assessments and clarifying when unlawful presence accrual begins, the proposed rule would strengthen the integrity of these nonimmigrant classifications.

Affected Population

The proposed rule would impact F, J, and I nonimmigrants, DSOs and ROs from SEVP-certified schools and exchange visitor sponsors that run a SEVP- or DOS-designated program and foreign media representatives. Overall, approximately 2.1 million persons participated annually in the F, J, and I nonimmigrant programs combined.[144] DHS estimated the 3-year average active nonimmigrants based on data from fiscal years 2022 to 2024.[145] Active nonimmigrants are those present in the United States with a valid visa. Over the 3-year period, there were approximately 1.6 million F nonimmigrants, 523,000 J nonimmigrants, and 24,000 I nonimmigrants active per year.

The number of nonimmigrant EOS requests under the proposed rule depends on the unique circumstances of each nonimmigrant visa holder. For example, in situations when the nonimmigrant intends to extend their stay in the United States in furtherance of their academic training and following the proposed regulatory criteria for their visa and program, they would be expected to file an EOS. Therefore, DHS estimates the number of EOS requests over the 10-year analysis period based on the historical nonimmigrant data and criteria from the proposed regulatory provisions. Further, DHS accounts for the proposed transition period in the estimated number of EOS requests. Based on the historical data, regulatory criteria, and the transition period assumptions, DHS estimates an annual average of 205,000; 203,000; 6,000 EOS requests for F, J, and I nonimmigrants, respectively, over the ten-year period of analysis.

Costs

DHS recognizes that the proposed rule would incur costs. Some of the costs have been quantified based on available data, and the remaining costs are qualitative. DHS welcomes comments on these costs, including data or information that could support quantification as well as proposed alternatives to reduce burdens and impacts.

Quantitative Costs

Depending on each nonimmigrant's need to extend his or her stay in the United States, nonimmigrants on an F1, F2, J1, J2 and I visa would incur costs to request an EOS. The cost burden includes application fees and time for filing Form I–539 or I–539A. DHS assumes a percentage of nonimmigrants would incur costs for additional help filing their request for EOS. DHS estimates the annualized EOS costs for the nonimmigrants would range from $304.0 million to $304.3 million (using 3 and 7 percent discount rates, respectively).

Further, DSOs and ROs would incur a burden for processing additional EOS requests resulting from this proposed rule. When a nonimmigrant is or would be employed under OPT or CPT, DHS assumes HR staff would incur burden per EOS request to track form updates and avoid inadvertent unauthorized employment due to form discrepancies with the Form I–9. DHS estimates the annualized EOS costs for the DSOs and ROs, and HR staff would range from $76.1 million to $76.2 million (using 3 and 7 percent discount rates, respectively).

Additionally, DHS assumes DSOs and ROs would incur costs to familiarize themselves with the rule and to create and modify training materials, and other adaptations such as system wide briefings and systemic changes. DHS estimates the annualized familiarization and adaptation costs to DSOs and ROs would range from $10.1 million to $11.8 million (using 3 and 7 percent discount rates, respectively).

Qualitative Costs

DHS acknowledges there could be other costs that the Department was not able to quantify and discusses these in the following section. Generally, DHS lacked data and information to quantify the qualitative costs below. DHS welcomes comments on these costs, including data or information that could support quantification as well as proposed alternatives to reduce burdens and impacts.

Federal Government Costs

DHS acknowledges there would be implementation and operational costs to the U.S. Government associated with assessing aliens at POEs for purposes of authorizing an admission period of 4 years. CBP officers would need training on new systems and procedures for conducting inspections at POEs. DHS continues to explore the necessary upgrades to systems and procedures that would allow CBP officers to perform their duties in accordance with this proposed rule. There may be additional costs to DHS associated with potential requests for additional information, in-person interviews, or biometric appointments.

Costs to Schools and Enrollments

The global market for nonimmigrant students is competitive and many U.S. schools hold an advantage over foreign institutions due to the quality of the programs they offer, however the proposed rule may have a marginal impact on nonimmigrant student enrollment. The proposed rule affects only those F–1 and J–1 nonimmigrants who need additional time to complete their program; however, DHS maintains that eligible students should have no difficulty with getting their EOS requests approved, which should alleviate concerns about the uncertainty of EOS approval. Schools may also incur costs for changes to their information systems and practices to implement processing under the proposed rule.

DHS expects this proposed rule would affect relatively few English language programs; the majority of English language training students were enrolled in programs shorter than 2 years. Some schools may choose to change their curriculum to be covered in a 2-year time period. It is possible

[144] Source: ICE SEVIS and U.S. Customs and Border Protection Arrival and Departure Information System (ADIS).

[145] In 2022, this cutoff is 10/01/2022; in 2023, it is 10/01/2023; in 2024 it is 10/01/2024.

that some language training programs would experience reduced enrollment due to the proposed rule.

DHS expects that the proposed rule would not have a significant impact on participation of other J exchange visitors or I foreign information media representatives. Equivalent U.S.-based exchange visitor programs (outside of academia) may be more difficult to find in other countries, providing less of an incentive for nonimmigrants to choose an alternative.

Benefits

DHS expects this proposed rule to have qualitative benefits for national security by providing DHS additional opportunities to evaluate whether F, J, and I nonimmigrants are complying with their status requirements, or if they present a national security concern. It would deter fraud and abuse of the F, J, and I visa classifications, as requiring EOS requests at frequent intervals allow DHS to review the standing of the nonimmigrant. DHS would be able to enforce the unlawful presence provisions of the INA for those who are not complying with the terms of their visa status.

Accounting Statement

DHS has prepared a full analysis according to E.O. 12866 and E.O. 13563, which can be found in the docket for this rulemaking or by searching for RIN 1653–AA95 on *www.regulations.gov.* Table 1 presents the accounting statement as required by Circular A–4 for total impacts of the rule. The proposed rule would have a quantified annualized cost ranging from $390.3 million to $392.4 million (with 3- and 7-percent discount rates, respectively) when considering U.S. and non-U.S. parties. When considering U.S. parties only, annual costs would range from $86.3 million to $88.1 million (with 3- and 7-percent discount rates, respectively).

TABLE 1—OMB A–4 ACCOUNTING STATEMENT, U.S. AND NON-U.S. PARTIES

[2024$]

Category	3-percent discount rate	7-percent discount rate	Source citation (RIA, preamble, etc.)
Benefits:			
Annualized Monetized $millions/year	N/A	N/A	N/A.
Annualized Quantified	N/A	N/A	N/A.
Qualitative	• Would enhance DHS's ability to enforce the unlawful presence provisions of the INA at the conclusion of F, J, and I nonimmigrants' fixed period of admission. • Would deter F, J, and I nonimmigrants from engaging in fraud and abuse and strengthen the integrity of these nonimmigrant classifications. • Would provide DHS with additional information to promptly detect national security concerns. • Would increase DHS's ability to detect those nonimmigrants who are not complying with the terms and conditions of their status. • Would ensure that immigration officers, who are U.S. Government officials, are responsible for reviewing and deciding each F, J, or I nonimmigrant's extension of stay (EOS) request.		Preamble, RIA Section A.4.
Costs:			
Annualized Monetized $millions/year	$390.3	$392.4	RIA Section A.4.
Annualized Quantified	N/A	N/A	N/A.
Qualitative	• Potential burden for DHS and nonimmigrants associated with government requests for additional information or in-person interviews.		RIA Section A.4.
	• Potential reduction in enrollment of nonimmigrant students and exchange visitors and subsequent revenue effects on sponsoring institutions. • DHS costs for rule familiarization and training and additional steps at POEs to assess fixed period of time for admission.		

TABLE 1—OMB A–4 ACCOUNTING STATEMENT, U.S. AND NON-U.S. PARTIES—Continued

[2024$]

Category	3-percent discount rate	7-percent discount rate	Source citation (RIA, preamble, etc.)
	• Potential burden to schools/program sponsors and DHS to update batch processing systems that facilitate exchange of data between DSOs/ROs and SEVIS. • Potential costs to F–1 students and schools from limitations on changes to only higher educational levels. • Potential burden on F–1 English language training (ELT) program students and schools from the restriction against ELT study beyond 24 months.		
Transfers:			
Annualized Monetized $millions/year	N/A	N/A	N/A.
Annualized Quantified	N/A	N/A	N/A.
Qualitative	Potential reduction in fees collected by SEVP and DOS to cover the cost of the programs due to a potential reduction in international enrollment.		RIA Section A.4.
State, Local, and/or Tribal Government	Some public schools will incur incremental costs to comply with the proposed rule and a potential decline in international enrollment.		RIA Section A.4.
Small Business	Some small businesses will incur incremental costs to comply with the proposed rule.		RIA Section B. Initial Regulatory Flexibility Analysis.
Wages	N/A		N/A.
Growth	N/A		N/A.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' is comprised of small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. DHS requests information and data from the public that would assist in better understanding the impact of this proposed rule on small entities. DHS also seeks input from the public on alternatives that will accomplish the same objectives and minimize the proposed rule's economic impact on small entities. DHS has prepared a full initial regulatory flexibility analysis (IRFA), which can be found in the docket for this rulemaking or by searching for RIN 1653–AA95 on www.regulations.gov. A summary of the initial regulatory flexibility analysis (IRFA) follows.

DHS performed an IRFA of the impacts on small entities from this proposed rule in the first year of the analysis and found that it may affect an estimated 6,665 U.S. entities (5,494 SEVP-certified institutions (schools), and 1,171 J exchange visitor program sponsors). DHS analyzed all the entities that would be affected by the proposed rule and DHS found that 78 percent of SEVP-certified institutions and 60 percent of J exchange visitor program sponsors would be considered small entities.

Under the proposed rule, DSOs and ROs will have to spend approximately 67 hours for rule familiarization and adaptation in the first year after the rule takes effect. For each DSO, rule familiarization would cost $3,342 in the first year after the rule takes effect. Further, each year DSOs/ROs will spend approximately 3 hours per F–1/J–1 EOS request to review the Form I–539 completed by the F–1/J–1 nonimmigrant, update the SEVIS record and track EOS requests, and advise the F–1/J–1 nonimmigrant about the extension process and the requirements to file an EOS with USCIS. Additionally, HR staff will spend approximately 1.5 hours per F–1 EOS request to track form updates related to each EOS request and avoid inadvertent unauthorized employment due to form discrepancies with the I–9. The DSO cost per EOS request is $233.

DHS estimates that 93.4% of small schools will experience an impact less than or equal to one percent of their annual revenue. DHS estimates that the majority of small J sponsors would experience an impact less than or equal to one percent of their annual revenue. DHS invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the requirements in the proposed rule.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE using the contact information

provided in the **FOR FURTHER INFORMATION CONTACT** section above.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any year. Though this proposed rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble.

E. Paperwork Reduction Act—Collection of Information

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. DHS, USCIS and ICE are revising one information collection and proposing non-substantive edits to one information collection in association with this rulemaking action:

ICE Forms I–20 and I–17

DHS and ICE invite the general public and other federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1653–0038 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Student and Exchange Visitor Information System (SEVIS).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–20 and I–17, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary Non-profit institutions and individuals or households. SEVIS is an internet-based data entry, collection and reporting system. It collects information on SEVP-certified school via the Form I–17, ''Petition for Approval of School for Attendance by Nonimmigrant Student,'' and collects information on the F and M nonimmigrant students that the SEVP-certified schools admit into their programs of study via the Forms I–20s: ''Certificate of Eligibility for Nonimmigrant (F–1) Students Status—For Academic and Language Students'' and ''Certificate of Eligibility for Nonimmigrant (M–1) Students Status—For Vocational Students.'' Revisions to the SEVIS collections include substantive and non-substantive changes to SEVIS to support additional recordkeeping and reporting requirements associated with recommendations for an F–1 student extension of stay. The revision is to add fields to facilitate a DSO recommendation for an F student Extension of Stay, add a field to collect graduation/degree conferral date, update the list of educational levels, and update the Form I–20 instructions page.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information requests Form I–17 and Form I–20 is 47,757. The estimated hour burden per response is 22.3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information in hours is 1,064,757.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $50,807,659.

USCIS Forms I–539 and I–539A

DHS, USCIS and ICE invite the general public and other federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0003 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and Public Participation section of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–539 and I–539A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to

another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–539 (paper) is 459,860 and the estimated hour burden per response is 1.667 hours; the estimated total number of respondents for the information collection Form I–539 (e-file) is 197,083 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Supplement A is 207,600 and the estimated hour burden per response is .35 hours; the estimated total number of respondents providing biometrics is 864,543 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information in hours is 2,072,660.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $103,652,444.

USCIS Form I–765

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. Although this rule does not impose any new reporting or recordkeeping requirements under the PRA for this information collection, this rule will require non-substantive edits to USCIS Form I–765, Application for Employment Authorization. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

F. Executive Order 13132: Federalism

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect that this proposed rule would impose substantial direct compliance costs on State and local governments or preempt State law. Therefore, in accordance with section 6 of Executive Order 13132, *Federalism,* it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988: Civil Justice Reform

This proposed rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform,* to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

DHS has analyzed this proposed rule under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* DHS has determined that it is not a ''significant energy action'' under that order because it is a ''significant regulatory action'' under Executive Order 12866 but is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Environmental Policy Act (NEPA)

DHS and its components analyze final actions to determine whether the National Environmental Policy Act of 1969 (''NEPA''), 42 U.S.C. 4321 *et seq.,* applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 [146] and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) [147] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment (EA) or environmental impact statement (EIS).[148] An agency is not required to prepare an EA or EIS for a proposed action ''if the proposed agency action is excluded pursuant to one of the agency's categorical exclusions.'' See 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A, Table 1, lists the DHS Categorical Exclusions.[149]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[150] DHS proposes to amend its regulations to eliminate the practice of admitting F–1 nonimmigrant students, I nonimmigrant representatives of information media, and J–1 exchange visitors (and F–2/J–2 family members) for D/S. The proposed rule would provide for nonimmigrants seeking entry under F, J, or I visas to be admitted for the period required to complete their academic program, foreign information media employment, or exchange program, not to exceed the periods of time defined in this proposed rule. The proposed rule would also require nonimmigrants seeking to continue their studies, foreign information media employment, or exchange program beyond the admission period granted at entry to apply for extension.

DHS has analyzed this proposed rule under MD 023–01 Rev. 01 and IM 023–01–001–01 Rev. 01. DHS has determined that this proposed rulemaking action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule completely fits within the Categorical Exclusion found in IM 023–01–001–01 Rev. 01, Appendix A, Table 1, number A3(d): ''Promulgation of rules. that interpret or amend an existing regulation without changing its environmental effect.'' This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

[146] Dept. of Homeland Sec., Implementation of the National Environmental Policy Act, Directive 023–01, Revision 01 (Oct. 31, 2014), available at *https://www.dhs.gov/sites/default/files/publications/mgmt/environmental-management/mgmt-dir_023-01-implementation-national-environmental-policy-act_revision-01.pdf* (last visited Apr. 16, 2025).

[147] Dept. of Homeland Sec., Instruction Manual 023–01–001–01, Rev 01, ''Implementation of the National Environmental Policy Act (NEPA)'' (Nov. 6, 2014).

[148] See also 40 CFR 1501.4 and 1507.3(e)(2)(ii).

[149] *See* Appendix A, Table 1.

[150] Dept. of Homeland Sec., Instruction Manual 023–01–001–01, Rev 01, ''Implementation of the National Environmental Policy Act (NEPA)'' (Nov. 6, 2014).

DHS seeks any comments or information that may lead to the discovery of any significant environmental effects from this proposed rule.

J. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

L. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks,* requires agencies to consider the impacts of environmental health risk or safety risk that may disproportionately affect children. DHS has reviewed this proposed rule and determined that even though this rule is an economically significant rule, it would not create an environmental risk to health or risk to safety that might disproportionately affect children. Therefore, DHS has not prepared a statement under this executive order.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Family Assessment

DHS has determined that this proposed action will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

Regulatory Amendments

Accordingly, DHS proposes to amend parts 214, 248, and 274a of chapter I, subchapter B, of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 131 Stat. 1547 (48 U.S.C. 1806).

■ 2. Section 214.1 is amended by:
■ a. Adding paragraph (a)(4);
■ b. Revising paragraphs (b) subject heading, (b)(1) introductory text, (b)(2) introductory text, and (b)(3) introductory text;
■ c. Removing paragraph (b)(4);
■ d. Revising paragraphs (c)(2), (c)(3)(v), and (c)(5);
■ e. Adding paragraph (c)(8); and
■ f. Adding paragraph (m).

The additions and revisions read as follows:

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

(a) * * *

(4) *Requirements for admission of aliens under section 101(a)(15)(F) and (J).* Aliens applying for admission as F or J nonimmigrants after [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] will be inspected and may be admitted into the United States, if in possession of a valid Form I–20 or Form DS–2019, or successor form, and otherwise eligible, and subject to the following:

(i) *Aliens applying for admission as F nonimmigrants.*

(A) Aliens seeking admission to the United States, including those seeking admission with a properly filed pending application for an extension of stay, as an F nonimmigrant after a previously authorized period of admission as an F nonimmigrant expired, may be admitted for a maximum period of 4 years or the length of program as specified on Form I–20, whichever is shorter, plus additional 30 day periods for arrival and departure as provided in 8 CFR 214.2(f)(5)(i);

(B) Aliens seeking admission to the United States as an F nonimmigrant with a properly filed pending application for extension of stay as an F nonimmigrant may, if they have time remaining on the period of stay authorized prior to departure, be admitted for a period up to the unexpired period of stay authorized prior to the alien's departure, plus an additional 30 days as provided in 8 CFR 214.2(f)(5)(v), subject to the requirements in paragraph (c)(8) of this section, or if the alien seeks admission with a Form I–20 for a program end date beyond their previously authorized period of admission, the alien may be admitted for the period specified in 8 CFR 214.2(f)(5), subject to the requirements in paragraph (c)(8) of this section;

(C) Aliens seeking admission to the United States as an F nonimmigrant with an approved extension of stay for F nonimmigrant status may be admitted until the expiration of the approved extension of stay, plus an additional 30 days, as provided in 8 CFR 214.2(f)(5)(v);

(ii) *Aliens applying for admission as J nonimmigrants.*

(A) Aliens seeking admission to the United States, including those seeking admission with a properly filed,

pending application for an extension of stay as a J nonimmigrant after a previously authorized period of admission as a J nonimmigrant expired, may be admitted for the period specified in 8 CFR 214.2(j)(1)(ii);

(B) Aliens seeking admission to the United States as a J nonimmigrant with a properly filed pending extension of stay as a J nonimmigrant may, if they have time remaining on the period of stay authorized prior to departure, be admitted for a period up to the unexpired period of stay authorized prior to the alien's departure, plus an additional 30 days as provided in 8 CFR 214.2(j)(1)(ii)(C), subject to the requirements in paragraph (c)(8) of this section, provided that if the alien seeks admission with a Form DS–2019 for a program end date beyond his or her previously authorized period of admission, the alien may be admitted for the period specified in 8 CFR 214.2(j)(1), subject to the requirements in paragraph (c)(8) of this section;

(C) Aliens seeking admission to the United States as a J nonimmigrant with an approved extension of stay in J nonimmigrant status may be admitted up to the expiration of the approved extension of stay, plus an additional 30 days as provided in 8 CFR 214.2(j)(1)(ii)(C).

(iii) *Post-completion Optional Practical Training (OPT) and Science Technology Engineering and Mathematics (STEM) OPT extension.* Aliens seeking admission to the United States as an F nonimmigrant to pursue post-completion OPT or a STEM OPT extension may be admitted until the end date of the approved employment authorization for post-completion OPT or STEM OPT, or if the Application for Employment Authorization, Form I–765 or successor form for post-completion OPT or STEM OPT is still pending with USCIS, as evidenced by a notice issued by USCIS indicating receipt of such application, until the Designated School Official's recommended employment end date for post-completion OPT or STEM OPT specified on the Form I–20, subject to the requirements in paragraphs (c)(8) of this section and 8 CFR 274a.12(b)(6)(iv), plus a 30-day period as provided in 8 CFR 214.2(f)(5)(v).

(b) *Admission of nonimmigrants under section 101(a)(15) (F), (J), or (M) whose visa validity is considered automatically extended to complete unexpired periods of previous admission or extension of stay—*

(1) *Section 101(a)(15)(F).* The inspecting immigration officer may admit, up to the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(F) of the Act, if the alien:

* * * * *

(2) *Section 101(a)(15)(J).* The inspecting immigration officer may admit, up to the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(J) of the Act, if the alien:

* * * * *

(3) *Section 101(a)(15)(M).* The inspecting immigration officer may admit, up to the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa validity is considered automatically extended pursuant to 22 CFR 41.112(d) and who is applying for admission under section 101(a)(15)(M) of the Act, if the alien:

* * * * *

(c) * * *

(2) *Filing for an extension of stay.* Any other nonimmigrant who seeks to extend his or her stay beyond the currently authorized period of admission must apply for an extension of stay by filing an extension request in the manner and on the form prescribed by USCIS, together with the required fees and all initial evidence specified in the applicable provisions of 8 CFR 214.2, and in the form instructions, including the submission of any biometrics required by 8 CFR 103.16. More than one person may be included in an application if the co-applicants are all members of a single-family unit and either all hold the same nonimmigrant status, or one holds a nonimmigrant status, and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family unit must be for the same period of time. The shortest period granted to any member of the family will be granted to all members of the family. In order to be eligible for an extension of stay, nonimmigrant aliens in K–3/K–4 status must do so in accordance with 8 CFR 214.2(k)(10).

(3) * * *

(v) Any nonimmigrant admitted for duration of status.

* * * * *

(5) *Decisions for extension of stay applications.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at USCIS's discretion. The denial of an application for extension of stay may not be appealed.

* * * * *

(8) *Abandonment of extension of stay and pending employment authorization applications for F, I, and J nonimmigrant aliens.* (i) If an alien in F, I, or J nonimmigrant status timely files an application for an extension of stay, USCIS will not consider the application abandoned if the alien departs the United States while the application is pending, provided that when the alien seeks admission, the previously authorized period of admission has not expired, and the alien seeks admission for the balance of the previously authorized admission period.

(ii) An application for extension of stay in F, I, or J nonimmigrant status may be deemed abandoned if an alien departs the United States and seeks admission with a Form I–20 or DS–2019 for a program end date beyond their previously authorized period of admission while the application for an extension of stay is pending. USCIS will not consider as abandoned any corresponding applications for employment authorization.

(iii) When an alien described in paragraphs (c)(8)(i) or (ii) of this section departs, the alien should travel with a copy of their Form I–797C, Notice of Action, or successor form, which confirms the receipt of either their Form I–539, Application to Extend/Change Nonimmigrant Status, or Form I–765, Application for Employment Authorization, along with proposed length of stay as evidenced by the Form I–20, DS–2019, or letter of employment for a foreign media organization.

* * * * *

(m) *Transition period from duration of status to a fixed admission date.*

(1) *Transition from duration of status admission to a fixed admission period for aliens properly maintaining F and J status on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].* Aliens with F or J status who are properly maintaining their status on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] and who were admitted for duration of status are authorized to remain in the United States in F or J nonimmigrant status until the later date of either the expiration date on an Employment Authorization Document, Form I–766, or successor form or the program end date noted on their Form I–20 or Form DS–2019, as applicable, not to exceed a period of 4 years from [DHS WILL

INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], plus the departure period of 60 days for F nonimmigrants, which is [DHS WILL INSERT DATE 4 YEARS AND 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], and 30 days for J nonimmigrants, which is [DHS WILL INSERT DATE 4 YEARS AND 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. Subject to 8 CFR 274a.14, any authorized employment or training continues until the program end date on such F or J nonimmigrant's Form I–20 or DS–2019, as applicable and as endorsed by the designated school official or responsible officer for employment or training, or expiration date on the alien's Employment Authorization Document, Form I–766, or successor form. Aliens who need additional time to complete their current program of study, including requests for post-completion optional practical training (OPT) and Science Technology Engineering and Mathematics (STEM) OPT, or exchange visitor program, including academic training, or would like to start a new program of study or exchange visitor program must apply for an extension of stay with USCIS in accordance with paragraph (c)(2) of this section for an admission period to a fixed date.

(i) Notwithstanding paragraph (m)(1) of this section, an F–1 student recommended for post-completion OPT who files before his or her period of admission expires, including the 60 day departure period, an Application for Employment Authorization, Form I–765, or successor form on the form and in the manner designated by USCIS, with the required fee, as described in the form's instructions, on or before [DHS WILL INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], is not required to file an Application to Extend/Change Nonimmigrant Status, Form I–539, or successor form for the requested period of post-completion OPT. An F–1 student recommended for STEM OPT who files, prior to his or her current OPT Employment Authorization Document, Form I–766, or successor form expires, an Application for Employment Authorization, Form I–765, or successor form on or before [DHS WILL INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], is not required to file an Application to Extend/Change Nonimmigrant Status, Form I–539, or successor form for the requested period of STEM OPT. If the alien's application for post-completion OPT or STEM–OPT employment authorization is approved, the alien will be authorized to remain in the United States in F status until the expiration date of the employment authorization document, plus 60 days. If the employment authorization application is denied, the F–1 student would continue to be authorized to remain in the United States until the program end date listed on their Form I–20, valid on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] plus 60 days, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F–1 status, or until the end date of the employment authorization document for post-completion OPT, as long as he or she continues to meet the requirements for F–1 status, plus 60 days.

(ii) An F–1 student described in this paragraph who departs the United States before filing the application for post-completion OPT or STEM OPT, and is admitted to the United States with a fixed period of admission is required to file both an Application for Employment Authorization, Form I–765, or successor form and an Application to Extend/Change Nonimmigrant Status, Form I–539, or successor form pursuant to 8 CFR 214.2(11)(i)(B)(2) or (C). An alien described in this section who departs the United States while the Application for Employment Authorization, Form I–765, or successor form is pending or once approved will be admitted pursuant to 8 CFR 214.1(a). DHS reserves the discretion to extend the period exempting the filing of the Application to Extend/Change Nonimmigrant Status, Form I–539, or successor form beyond [DHS WILL INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], in 6 month increments through announcement in the **Federal Register**.

(2) *Pending employment authorization applications with USCIS on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] filed by F–1 students.* F–1 students described in paragraph (m)(1) of this section who have timely and properly filed applications for employment authorization pending with USCIS on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] do not have to file for an extension or re-file such applications for employment authorization, unless otherwise requested by USCIS.

(i) If the F–1 student's application for post-completion OPT or STEM–OPT employment authorization is approved, the F–1 student will be authorized to remain in the United States in F status until the expiration date of the employment authorization document, plus 60-days. If the employment authorization application is denied, the F–1 student would continue to be authorized to remain in the United States until the program end date listed on their Form I–20, plus 60 days, as long as he or she continues to pursue a full course of study and otherwise meets the requirements for F–1 status.

(ii) F–1 students with pending employment authorization applications, other than post-completion OPT and STEM–OPT, who continue to pursue a full course of study and otherwise meet the requirements for F–1 status, continue to be authorized to remain in the United States until the program end date listed on the Form I–20, plus 60 days, regardless of whether the employment authorization application is approved or denied.

(3) *Transition from duration of status admission to a fixed admission period for aliens with I status present in the United States on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].* Except for those aliens described in 8 CFR 214.2(i)(3)(ii), aliens in I nonimmigrant status who are properly maintaining their status on [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] and who were admitted for duration of status are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DHS WILL INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] with the exception of aliens in I nonimmigrant status presenting with passports described in 8 CFR 214.2(i)(3)(ii), who are authorized to remain in the United States in I nonimmigrant status for a period necessary to complete their activity, not to exceed [DHS WILL INSERT DATE 150 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE]. Aliens who need additional time to complete their employment beyond [DHS WILL INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] or [DHS WILL INSERT DATE 150 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], as applicable, must apply for an extension of stay with USCIS in accordance with paragraph (c)(2) of this section and 214.2(i)(5).

(4) *Severability.* The provisions in 8 CFR 214.1(m) are intended to be independent severable parts. In the

event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

■ 3. Section § 214.2 is amended by:

■ a. Redesignating paragraphs (f)(5)(iii), (iv), (v), (vi) as (f)(5)(iv), (v), (vi), and (vii) respectively;

■ b. Revising redesignated paragraphs (f)(5)(vii)(B)–(D) to remove the citation to ''paragraph (f)(5)(vi)(A)'' and add, in its place, the citation to ''paragraph (f)(5)(vii)(A)'';

■ c. Revising the paragraph (f)(5) subject heading and paragraphs (f)(5)(i) and (ii) and redesignated paragraph (f)(5)(v);

■ d. Revising redesignated paragraph (f)(5)(vii) to remove the words ''duration of'' in the subject heading and throughout all paragraphs and subparagraphs;

■ e. Adding paragraph (f)(5)(iii) and (f)(5)(viii);

■ f. Revising paragraph (f)(7);

■ g. Revising paragraph (f)(8);

■ h. Revising paragraph (f)(10)(ii)(D);

■ i. Revising paragraph (f)(11)(i)(B)(*2*) by removing the number ''60'' and add, in its place, the number ''30'';

■ j. Revising paragraph (f)(18)(iii) by removing the words ''duration of status and'' from the last sentence;

■ k. Adding paragraph (f)(20);

■ l. Revising paragraphs (i), (j)(1)(ii), and (j)(1)(iv)–(viii); and

■ m. Adding paragraphs (j)(1)(ix) and (j)(6).

The revisions and additions read as follows:

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

* * * * *

(f) * * *

(5) *Period of Stay*—(i) *General.* An F–1 student is admitted for a fixed period of time, which is the period necessary to complete the course of study indicated on the Form I–20, or successor form, not to exceed a period of 4 years, plus additional times noted in this paragraph. A continuing F–1 student may be granted additional time following the completion of studies to engage in post-completion optional practical training (OPT) and Science Technology Engineering and Mathematics (STEM) OPT, as described in paragraph (f)(5)(i)(D) of this section. An F–1 student described in this section may be admitted for a period of up to 30 days before the indicated report date or program start date listed on Form I–20 or successor form. An alien described in this paragraph may remain in the United States for an additional 30 days as provided in paragraph (f)(5)(v) of this section. The 30-day period before the indicated report date or program start date and 30 additional days following the program end date or the 4-year maximum period of admission do not count toward the maximum length of stay. The admission periods described in this paragraph are subject to the following exceptions:

(A) F–1 students whose course of study is in an English language training program are restricted to a maximum of 24 months admission period, plus an additional 30-day period of stay for the purposes of departure or to otherwise seek to maintain lawful status.

(B) Border commuter students under the provisions in paragraph (f)(18) of this section may be admitted for the applicable period described under that paragraph.

(C) F–1 students attending a public high school are restricted to an aggregate of no more than 12 months to complete their course of study, including any school breaks and annual vacations.

(D) Students with pending employment authorization applications who are admitted based on the designated school official's recommended employment end date for post-completion OPT or STEM OPT specified on their Form I–20, with a notice issued by USCIS indicating receipt of the Application for Employment Authorization, Form I–765, or successor form for post-completion OPT or STEM OPT, who cease employment pursuant to an employment authorization document (EAD) that expires before the alien's fixed date of admission as noted on their Arrival-Departure Record, Form I–94, or successor form, will be considered to be in the United States in a period of authorized stay from the date of the expiration noted on their EAD until the fixed date of admission as noted on their Form I–94.

(E) The authorized period of stay for F–2 dependents may not exceed the authorized period of stay of the principal F–1 student.

(ii) *Change of educational objectives.*

(A) An F–1 student at any level below the graduate degree level may not change programs or educational objectives, *i.e.* programs, majors, or educational levels, within the first academic year of a program of study, unless an exception is authorized by SEVP for extenuating circumstances that may include, but are not limited to, a school closure or a school's prolonged inability to hold in-person classes due to a natural disaster or other cause. An F–1 student at the graduate degree level or above may not change programs at any point during a program of study.

(B) An F–1 student who has completed a program in the United States at one educational level and begins a new program at a higher educational level is considered to be maintaining F–1 status if otherwise complying with requirements under 8 CFR 214.2(f).

(C) An alien who has completed a program in the United States as an F–1 nonimmigrant at one educational level may not maintain, be admitted, or otherwise be provided F–1 status through a program at the same educational level or a lower educational level.

(D) When seeking a change in educational objectives, F–1 students referenced in paragraphs (f)(5)(ii)(A) through (C) of this section must, if seeking an extension of stay, apply for an extension of stay on the form designated by USCIS, with the required fee and in accordance with the form instructions, including any biometrics required by 8 CFR 103.16.

(E) DHS may delay or suspend the implementation of paragraphs (f)(5)(ii)(A) through (C) of this section, in its discretion, if it determines that implementation is infeasible for any reason. If DHS delays or suspends any provisions in paragraphs (f)(5)(ii)(A) through (C) governing the change in educational objectives, DHS will make an announcement of the delay or suspension on SEVP's website at *https://www.studyinthestates.dhs.gov* (or successor uniform resource locator). DHS thereafter will announce the implementation dates of a delayed or suspended educational objective provision on the SEVP website at *https://www.studyinthestates.dhs.gov* (or successor uniform resource locator), at least 30 calendar days in advance.

(iii) *Report date on Form I–20 or successor form.* When determining the report date on the Form I–20 or successor form, the designated school official may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes. Such required activities may include, but are not limited to, research projects and orientation sessions. However, for purposes of employment, the designated school official may not indicate a report date more than 30 days prior to the start of classes.

* * * * *

(v) *Period of preparation for departure or to otherwise maintain lawful status in the United States.* An F–1 student who has completed a course of study and any authorized practical training will be allowed an additional 30-day period

from the program end date or the 4 year maximum period of admission, or the end date of the approved employment authorization for post-completion OPT or STEM OPT, as applicable, to prepare for departure from the United States, or to otherwise seek to maintain lawful status, including timely filing an extension of stay application in accordance with paragraph (f)(7) of this section and § 214.1 or timely filing a change of status application in accordance with 8 CFR 248.1(a). The 30-day period will be reflected on the F–1 student's Arrival-Departure Record, Form I–94, or successor form. An F–1 student authorized by the designated school official to withdraw from classes will be allowed a 15-day period from the date of the withdrawal to depart the United States. An F–1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for any additional period of time for departure.

* * * * *

(viii) *Automatic Extension of F stay and employment authorization while extension of stay and employment authorization applications are pending.* An F–1 student whose status as indicated on the Arrival-Departure Record, Form I–94, or successor form has expired will be considered to be in a period of authorized stay if he or she has timely filed an extension of stay application pursuant to paragraph (f)(7) of this section until USCIS issues a decision on the extension of stay application. Subject to paragraphs (f)(9)(i), (f)(9)(ii) and (f)(10)(i) of this section and 8 CFR 274a.12(b)(6)(i) and (iii) and 8 CFR 274a.12(c)(3)(iii), any F–1 student's current on-campus, curricular practical training (CPT), and severe economic hardship authorized employment is automatically extended during the pendency of the extension of stay application, but such automatic extension may not exceed 240 days beginning from the end date of his or her period of admission as indicated on the alien's Arrival-Departure Record, Form I–94, or successor form. However, severe economic hardship employment authorization resulting from emergent circumstances under paragraph (f)(5)(vi) of this section is automatically extended for up to 240 days or until the end date stated in the **Federal Register** notice announcing the suspension of certain requirements, whichever is earlier. If an F–1 student files an extension of stay application during the 30-day period provided in paragraph (f)(5)(v) of this section, he or she does not receive an automatic extension of authorized employment, including on-campus, CPT, and severe economic hardship, and must wait for approval of the extension of stay application (and employment authorization application, if required) before engaging in CPT or employment. For purposes of employment eligibility verification (Form I–9) under 8 CFR 274a.2(b)(1)(v), for CPT under (f)(10)(i) of this section, on-campus employment under (f)(9)(i) of this section, and severe economic hardship employment authorization resulting from emergent circumstances under paragraph (f)(5)(vi) of this section, the alien's authorized employment period, which ends 30 days before their Form I–94 or successor form admit until date, or Employment Authorization Document, Form I–766, or successor form based on severe economic hardship, when combined with a notice issued by USCIS indicating receipt of an extension of stay application, is considered unexpired for up to 240 days or until USCIS issues a decision on the extension of stay application, or for CPT, until the CPT end date authorized by the designated school official on Form I–20 or successor form, whichever is earlier, or for severe economic hardship employment based on emergent circumstances under paragraph (f)(5)(vi) of this section, the end date stated in the **Federal Register** notice announcing suspension of certain requirements, whichever is less.

* * * * *

(7) *Extension of stay*

(i) *Eligibility.* USCIS may grant an extension of stay to an F–1 student who has maintained his or her F–1 status, but who is unable to complete his or her program by the end of his or her authorized period of admission. Such student may be eligible for an extension if the designated school official issues a new Form I–20 or successor form certifying that the student is eligible under this paragraph. An F–1 student may be granted an extension if it is established that the student:

(A) Has continually maintained lawful status;

(B) Is currently pursuing a full course of study; and

(C) Has one of the following:

(*1*) A currently issued Form I–20, or successor form, indicating additional time is left to complete his or her program of study; or

(2) Documentation demonstrating the request for an extension is based on one of the following reasons:

(i) A compelling academic reason, such as a change of major or research topic or unexpected research problems. Unexpected research problems are those caused by an unexpected change in faculty advisor, need to refine an investigatory topic based on initial research, research funding delays, and similar issues. Delays including, but not limited to, those caused by academic probation or suspension or a student's repeated inability or unwillingness to complete his or her course of study are not acceptable reasons for an extension;

(ii) A documented illness or medical condition that is a compelling medical reason, such as a serious injury, that is supported by medical documentation from a licensed medical doctor, a licensed doctor of osteopathy, a licensed psychologist, or a licensed clinical psychologist; or

(*iii*) Circumstances beyond the student's control, including a natural disaster, national health crisis, or the closure of an institution.

(ii) *SEVIS Update.* The Form I–20 or successor form must be endorsed with the designated school official recommendation and new program end date for submission to USCIS.

(iii) *USCIS Application.*

(A) *Form.* An F–1 student must file an extension of stay application using the form and in the manner designated by USCIS, including submitting the updated, properly endorsed Form I–20 or successor form; submitting evidence of sufficient funds to cover expenses; appearing for any biometrics collection required by 8 CFR 103.16; and remitting the appropriate fee. The F–1 student must be maintaining his or her status and must never have engaged in any unauthorized employment.

(B) *Timely filing.* An extension of stay application is considered timely filed if the receipt date, pursuant to 8 CFR 103.2(a)(7), is on or before the date the authorized period of stay expires, which includes the 30-day period provided in paragraph (f)(5)(v) of this section. USCIS must receive the extension application on or before the expiration of the authorized period of stay, including the 30-day period provided in paragraph (f)(5)(v) of this section that is allowed after the completion of studies or any authorized practical training. If the extension of stay application is received during the 30-day period provided in paragraph (f)(5)(v) of this section, the F–1 student is authorized to continue a full course of study but may not continue or begin engaging in practical training or other employment. Notwithstanding 8 CFR 214.1(c)(4), USCIS must receive the extension of stay application on or before the expiration of the previously authorized period of stay.

(iv) *Dependents.* An F–2 spouse and unmarried children under the age of 21 seeking to accompany the principal F–

1 student during the additional period of admission must either be included on the principal F–1 student's application for an extension of stay or file their own extension of stay application on the form designated by USCIS. The application must be submitted using the form, and in the manner, designated by USCIS, including submitting the updated, properly endorsed Form I–20, or successor form; submitting evidence of sufficient funds to cover expenses; appearing for any biometrics collection required by 8 CFR 103.16; and remitting the appropriate fee. The F–2 dependents must demonstrate the qualifying relationship with the principal F–1 student, be maintaining his or her status, and must not have engaged in any unauthorized employment.

(v) *Practical training.* If seeking an extension of stay to engage in any type of practical training, the alien in F–1 status also must have a valid, properly endorsed Form I–20 and be eligible to receive the specific type of practical training requested.

(vi) *Period of Stay.* If an application for extension is granted, the F–1 student and the student's F–2 spouse and children, if applicable, are to be given an extension of stay for the period of time necessary to complete the program as listed on the F–1 student's Form I–20, or successor form, or requested practical training, not to exceed 4 years. The 30-day period before the indicated report date or program start date and 30 additional days following the program end date or the 4-year maximum period of admission do not count toward the maximum length of an extension. Extensions of stay for F–2 dependents may not exceed the authorized admission period of the principal F–1 student.

(vii) *Denials.* If an F–1 student's extension of stay application is denied and the F–1 student's authorized admission period has expired, the F–1 student and his or her dependents must immediately depart the United States.

(viii) *Late requests of extension of current program end date.* If the designated school official enters an extension of the program end date in SEVIS after the end date noted on the most recent Form I–20 or successor form, the F–1 student must file a request for reinstatement of F–1 status in the manner and on the form designated by USCIS, with the required fee, including any biometrics required by 8 CFR 103.16. F–2 dependents seeking to accompany the F–1 principal student must file applications for an extension of stay or reinstatement, as applicable.

(8) *School transfer and change in educational objectives.*

(i) *Eligibility.* An F–1 student may change educational objectives or transfer to SEVP-certified schools if he or she is maintaining status as described in paragraphs (f)(5)(ii)(A) through (D) of this section. ''Educational objectives'' refers to an F–1 student's educational level or major. An F–1 student changing educational objectives or transferring to an SEVP-certified school also must meet the following requirements:

(A) The student is currently maintaining status;

(B) To be eligible to transfer, the student must:

(*1*) Have been pursuing a full course of study, unless a reduced course load was properly authorized under 8 CFR 214.2(f);

(*2*) Have completed a degree program; or

(*3*) Be currently completing or have completed post-completion or STEM optional practical training (OPT);

(C) The student is not currently in a graduate level program of study;

(D) Unless an exception has been authorized by SEVP, the student has completed his or her academic year of a program of study at the school that initially issued his or her Form I–20 or successor form;

(E) The student has not been placed on academic probation or school suspension;

(F) The student does not have a pattern of behavior demonstrating a repeated inability or unwillingness to complete his or her course of study;

(G) The student will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I–20, or successor form, whichever is earlier; and

(H) If the F–1 student is authorized to engage in post-completion or STEM OPT, he or she must be able to resume classes within 5 months of transferring out of the school that recommended the post-completion or STEM OPT or the date the post-completion or STEM OPT authorization ends, whichever is earlier.

(ii) *Transfer procedure.* An F–1 student must first notify his or her current school (''transfer-out school'') of the intent to transfer and then obtain a valid Form I–20 or successor form from the school to which he or she intends to transfer (''transfer-in school''). Upon notification by the student, the transfer-out school will update the student's record in SEVIS as a ''transfer-out'' and indicate the transfer-in school and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the completion date of the established academic cycle. The transfer-out school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date, whichever is earlier. At the request of the student, the designated school official of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current designated school official, the transfer-in school will be granted full access to the student's SEVIS record and then becomes responsible for that student.

(iii) *Change of education level procedures.* A change of education level can be accomplished according to the transfer procedures outlined in paragraph (f)(8)(ii) of this section.

(iv) *Extension of Stay.* If the new program to which the student transferred will not be completed within the authorized period of stay established in paragraph (f)(5)(i) of this section, the F–1 student must apply to USCIS for an extension of stay in the manner and using the form designated by USCIS, with the required fee and in accordance with form instructions, including any biometrics required by 8 CFR 103.16, together with a valid, properly endorsed Form I–20 or successor form indicating the new program end date. Upon approval of the extension of stay application, USCIS will transmit the approval to SEVIS. If the application is denied, the student is out of status, and the student's record must be terminated in SEVIS.

* * * * *

(10) * * *

(ii) * * *

(D) *Extension of stay for post-completion optional practical training (OPT).* Unless described in section 214.1(m)(1)(i), an F–1 student recommended for post-completion OPT must apply for an extension of stay and employment authorization and may not engage in post-completion OPT unless such employment authorization is granted. If the application for an extension of stay and post-completion OPT are granted, the student will receive an additional 30-day period provided in paragraph (f)(5)(v) of this section following the expiration of the status approved to complete post-completion OPT.

* * * * *

(20) *Severability.* The provisions in 8 CFR 214.2(f) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

* * * * *

(i) *Representatives of information media.* (1) *Foreign Media Organization.* A foreign information media organization is an organization engaged in the regular gathering, production or dissemination via print, radio, television, internet distribution, or other media, of journalistic information and has a home office in a foreign country.

(2) *Evidence.* Aliens applying for I nonimmigrant status must:

(i) Demonstrate that the foreign media organization that the alien represents has a home office in a foreign country, and that the home office will continue to operate in the foreign country while the alien is in the United States; and

(ii) Provide a letter from the employing foreign media organization or, if self-employed or freelancing, an attestation from the alien, that verifies the employment, establishes that the alien is a representative of that media organization, and describes the remuneration and work to be performed.

(3) *Admission.*

(i) *Length of admission.* Generally, aliens seeking admission in I nonimmigrant status may be admitted for a period of time necessary to complete the planned activities or assignments consistent with the I classification, not to exceed 240 days unless paragraph (i)(3)(ii) of this section applies.

(ii) *Foreign nationals travelling on a passport issued by the People's Republic of China (with the exception of Hong Kong Special Administrative Region passport holders and Macau Special Administrative Region passport holders).* An alien who presents a passport from the People's Republic of China (with the exception of Hong Kong Special Administrative Region passport holders and Macau Special Administrative Region passport holders), may be admitted until the activities or assignments consistent with the I classification are completed, not to exceed 90 days.

(4) *Change in activity.* Aliens admitted pursuant to section 101(a)(15)(I) of the Act may not change the information medium or employer until they obtain permission from USCIS. Aliens must request permission by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate.

(5) *Extensions of stay.* (i) *Eligibility; effect of timely filing.*

(A) Aliens in I nonimmigrant status may be eligible for extensions of stay, each of up to 240 days or until the activities or assignments consistent with the I classification are completed, whichever is shorter (except for aliens who present a passport from the People's Republic of China, with the exception of Hong Kong Special Administrative Region passport holders and Macau Special Administrative Region passport holders, who may be eligible for extensions of stay, each up to 90 days or until the activities or assignments consistent with the I classification are completed, whichever is shorter).

(B) To request an extension of stay, aliens in I nonimmigrant status must file an application to extend their stay by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, and provide all the evidence required in paragraph (2) of this section, as appropriate. An alien whose I nonimmigrant status, as indicated on the alien's Arrival/Departure Record, Form I–94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with the I classification on the day after the Form I–94 expired, for a period of up to 240 days, as provided in 8 CFR 274a.12(b)(20). Such authorization shall be subject to any conditions and limitations of the initial authorization.

(C) If an extension of stay application remains pending at the end of this 240-day period, the I nonimmigrant alien, whose status has expired, may remain in the United States so long as the extension of stay application is pending, he or she has timely filed a subsequent extension of stay request to remain beyond the period requested in the preceding request, and he or she does not otherwise violate the terms of his or her authorized period of stay. The alien, however, must cease working until his or her initial extension of stay application is approved. USCIS will deny the extension of stay application if the alien did not cease working after the 240-day period and before the extension of stay request was approved.

(ii) *Dependents accompanying or following to join the principal I representative of foreign information media.* A spouse or unmarried children under the age of 21 of an alien in I nonimmigrant status may be eligible for extensions of stay. The dependent applicant must either be included on the primary applicant's request for an extension of stay or file his or her own extension of stay application on the form designated by USCIS in accordance with paragraph (i)(5)(i) or (i)(5)(iii) of this section. The dependents must demonstrate the qualifying relationship with the principal I representative of foreign information media, be maintaining status, and must not have engaged in any unauthorized employment. Extensions of stay for I dependents may not exceed the authorized admission period of the principal I representative of foreign information media.

(iii) *Aliens with a passport from People's Republic of China.*

(A) In the case of an alien who presents a passport issued by the People's Republic of China (other than a Hong Kong Special Administrative Region passport or a Macau Special Administrative Region passport), an extension of stay may be authorized until the activities or assignments consistent with the I classification are completed, not to exceed the maximum period of stay of 90 days. To request an extension of stay, these aliens must file an application to extend their stay by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate. Notwithstanding paragraph (i)(5)(i) of this section and 8 CFR 274a.12(b)(20), an alien in I nonimmigrant status who is described in paragraph (i)(3)(ii) of this section whose status, as indicated on the alien's Arrival/Departure Record, Form I–94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with the I classification and continue employment with the same employer on the day after the status indicated on the Form I–94 expired, for a period of up to 90 days. Such authorization shall be subject to any conditions and limitations of the initial authorization.

(B) If an extension of stay application remains pending at the end of this 90-day period, the I nonimmigrant alien, whose status has expired, may remain in the United States so long as the extension of stay application is pending, he or she has timely filed a subsequent extension of stay request to remain beyond the period requested in the preceding request, and he or she does not otherwise violate the terms of his or her authorized period of stay. The alien, however, must cease working until his or her initial extension of stay application is approved. USCIS may deny the extension of stay application if the alien did not cease working after the 90-day period and before the extension of stay request was approved.

(iv) *Documentation.* The facially expired Arrival-Departure Record, Form I–94, or successor form of an alien described in (i)(5)(i), (ii), and (iii) is

considered unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed extension of stay application. An application is considered timely filed if the receipt notice for the application is on or before the date the admission period expires. Such extension may not exceed the earlier of 240 days (90 days for aliens who present a passport issued by the People's Republic of China (with the exception of Hong Kong Special Administrative Region passport holders and Macau Special Administrative Region passport holders)) as provided in 8 CFR 274a.12(b)(20), or the date of denial of the alien's application for an extension of stay.

(6) *Denials.* If an alien's extension of stay application is denied and the alien's authorized admission period has expired, the alien and his or her dependents must immediately depart the United States.

(7) *Change of status.* An alien seeking to change from a different nonimmigrant status to, if eligible, an I nonimmigrant status as described in this section, may be granted a period of stay until the activities or assignments consistent with the I classification are completed, not to exceed the maximum period of stay stated in paragraph (i)(3) of this section. To request a change from a different nonimmigrant status to an I nonimmigrant status as described in this section, an alien must file an application to change his or her status by submitting the form designated by USCIS, in accordance with that form's instructions, and with the required fee, including any biometrics required by 8 CFR 103.16, as appropriate.

(8) *Severability.* The provisions in this paragraph (i) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

(j) *Exchange visitors*

(1) * * *

(ii) *Admission period and period of stay.* (A) *J–1 exchange visitor.* A J–1 exchange visitor may be admitted for the duration of the exchange visitor program, as stated by the program end date noted on Form DS–2019 or successor form, not to exceed a period of 4 years.

(B) *J–2 accompanying dependents.* The authorized period of initial admission for a J–2 spouse and unmarried children under the age of 21 may not exceed the period of authorized admission of the principal J–1 exchange visitor.

(C) *Period of stay.* A J–1 exchange visitor and J–2 spouse and unmarried children under the age of 21 may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS–2019 or successor form. The dependents accompanying a J–1 exchange visitor are eligible for admission in J–2 status if the exchange visitor is admitted in J–1 status. A J–1 exchange visitor and J–2 accompanying dependents may remain in the United States for a period of 30 days from the program end date or the 4-year maximum period of admission, whichever is earlier, for the purposes of departure or to otherwise seek to maintain lawful status. The 30-day period will be reflected on the alien's Arrival/Departure Record, Form I–94 or successor form. The 30-day period before the indicated report date or program start date and 30 additional days following the program end date or the 4-year maximum period of admission do not count towards the maximum period of admission.

* * * * *

(iv) *Extension of stay.* A program end date as indicated on the Form DS–2019 or successor form, standing alone, does not allow aliens with J status to remain in the United States in lawful status. An alien in J–1 status seeking to extend his or her stay beyond the currently authorized period of admission must apply for an extension of stay, including if a sponsor issues a Form DS–2019 or successor form extending an alien's program end date for any reason, including for a request for reinstatement, academic training, change of program, or program extension or the alien requires additional time to complete his or her program.

(A) *Form.* To request an extension of stay, an alien in J status must file an extension of stay application on the form and in the manner designated by USCIS, including submitting the valid Form DS–2019 or successor form, appearing for any biometrics collection required by 8 CFR 103.16, and remitting the appropriate fee.

(B) *Timely filing.* An extension of stay application is considered timely filed if the receipt date, pursuant to 8 CFR 103.2(a)(7), is on or before the date the authorized admission period expires. USCIS must receive the extension of stay application on or before the expiration of the authorized period of admission, which includes the 30-day period of preparation for departure. If the extension application is received during the 30-day period provided in paragraph (j)(1)(ii)(C) of this section following the completion of the exchange visitor program, the alien in J–1 status may continue to participate in his or her exchange visitor program.

(C) *Length of extensions.* Subject to the restrictions in the regulations at 22 CFR part 62, extensions of stay may be granted for a period up to the length of the program, as listed on the Form DS–2019, or successor form, not to exceed 4-years, unless the J–1 exchange visitor is otherwise restricted by regulations at 22 CFR part 62. The 30-day period before the indicated report date or program start date and 30 additional days following the program end date or the maximum period of admission do not count towards the maximum length of an extension.

(D) *Late requests for extension of current program end date.* If the responsible officer is required to reinstate the program status and submits an extension of the program end date in SEVIS after the end date noted on the most recent Form DS–2019 or successor form, the sponsor must file a request for reinstatement of J–1 status in the manner required by the Department of State, with the required fee at 22 CFR 62.43. If the Department of State approves the request, the J–1 exchange visitor must file a request for extension of stay with USCIS within 30 days of the decision.

(E) *Dependents.* A J–2 spouse and unmarried children under the age of 21 seeking to accompany the J–1 exchange visitor during the additional period of admission must either be included on the primary applicant's request for extension or file their own extension of stay applications on the form designated by USCIS, including any biometrics required by 8 CFR 103.16. USCIS must receive the extension of stay applications on or before the expiration of the previously authorized period of admission, including the 30-day period following the completion of the program provided in paragraph (j)(1)(ii)(C) of this section, as indicated on the J–2 dependent's Form I–94 or successor form. J–2 dependents must demonstrate the qualifying relationship with the principal J–1 exchange visitor, be maintaining status, and not have engaged in any unauthorized employment. Extensions of stay for J–2 dependents may not exceed the authorized admission period of the principal J–1 exchange visitor.

(F) *Denials.* If an alien's extension of stay application is denied, and the alien's authorized admission period has expired, he or she and his or her dependents must immediately depart the United States.

(v) *Employment of J–2 dependents.* The accompanying spouse or unmarried children under the age of 21 of a J–1

exchange visitor may only engage in employment if authorized by USCIS. The employment authorization is valid only if the J–1 is maintaining status, and the J–2 employment authorization dates may not exceed the J–1 principal alien's authorized stay as indicated on Form I–94. An application for employment authorization must be filed in the manner prescribed by USCIS, together with the required fee and any additional evidence required in the filing instructions. Income from the J–2 dependent's employment may be used to support the family's customary recreational and cultural activities and related travel, among other things. Employment will not be authorized if this income is needed to support the J–1 principal exchange visitor. If the requested period of employment authorization exceeds the current admission period, the J–2 dependent must file an extension of stay application or be included in the J–1 principal's extension of stay application, in addition to the application for employment authorization, in the manner designated by USCIS, with the required fee and in accordance with form instructions.

(vi) *Automatic extension of J–1 stay and grant of employment authorization for aliens who are the beneficiaries of a cap-subject H–1B petition.* USCIS may, by notice in the **Federal Register**, at any time it determines that the H–1B numerical limitation as described in section 214(g)(1)(A) of the Act will likely be reached prior to the end of a current fiscal year, extend for such a period of time as deemed necessary to complete the adjudication of the H–1B petition, the status of any J–1 alien on behalf of whom an employer has timely filed an H–1B petition requesting change of status. The alien, in accordance with 8 CFR part 248, must not have violated the terms of his or her nonimmigrant stay and not be subject to the 2-year foreign residence requirement at 212(e) of the Act. Any J–1 exchange visitor whose status has been extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J–2 dependent alien.

(vii) *Pending extension of stay applications and employment authorization.*

(A) An alien whose J–1 status, as indicated on the alien's Arrival/Departure Record, Form I–94, has expired but who has timely filed an extension of stay application is authorized to continue engaging in activities consistent with pursuing the terms and conditions of the alien's program objectives and including authorized training, beginning on the day after the admission period expires, for a period of up to 240 days as provided in 8 CFR 274a.12(b)(20). An alien whose J–1 status, as indicated on the alien's Arrival/Departure Record, Form I–94, has expired but who has timely filed an extension of stay application on or before [DHS WILL INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], is authorized to continue engaging in activities consistent with pursuing the terms and conditions of the alien's program objectives, including authorized training and activities pursuant to a new or transferred program, while the extension of stay application is pending with USCIS, not to exceed the program end date on the Form DS–2019 (or successor form) filed with the pending application. Such authorization may be subject to any conditions and limitations of the initial authorization. If the extension of stay application remains pending beyond the Form DS–2019 (or successor form) end date filed with the application, the alien, whose status has expired, may remain in the United States and continue engaging in activities consistent with pursuing the terms and conditions of the alien's program objectives and including authorized training so long as the extension of stay application is pending and he or she has filed a subsequent extension of stay request with a Form DS–2019 (or successor form) indicating an end date beyond the Form DS–2019 (or successor form) end date requested in the preceding extension of stay request. DHS reserves the discretion to extend the period permitting an alien in J–1 status to continue engaging in activities consistent with pursuing the terms and conditions of the alien's program objectives and including authorized training, up to the end date of the Form DS–2019 (or successor form) so long as the extension of stay application is pending, beyond [DHS WILL INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], in 6 month increments through announcement in the **Federal Register**. Consistent with 8 CFR 214.2(j)(1)(iv)(E), the denial of an extension of stay application requires the alien to cease activities and depart the United States immediately.

(B) The facially expired Arrival-Departure Record, Form I–94, or successor form of an alien described in (j)(1)(vii)(A) is considered unexpired when combined with a USCIS receipt notice indicating receipt of a timely filed extension of stay application and a valid Form DS–2019, or successor form, indicating the duration of the program. An application is considered timely filed if the receipt notice for the application is on or before the date the admission period expires. Such extension may not exceed the earlier of 240 days, as provided in 8 CFR 274a.12(b)(20), or for those extension of stay applications filed on or before [DHS WILL INSERT DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the end date of the Form DS–2019 (or successor form) filed with the application, or the date of denial of the alien's application for an extension of stay.

(C) An alien in J–2 status whose admission period has expired (as indicated on his or her Form I–94) may not engage in employment until USCIS approves his or her application for employment authorization.

(viii) *Use of SEVIS.* The use of the Student and Exchange Visitor Information System (SEVIS) is mandatory for designated program sponsors. All designated program sponsors must issue a SEVIS Form DS–2019 to any exchange visitor requiring a reportable action (*e.g.,* program extensions and requests for employment authorization), or for any aliens who must obtain a new nonimmigrant J visa. As of 2003, the records of all current or continuing exchange visitors must be entered in SEVIS.

(ix) *Current name and address.* A J–1 exchange visitor must inform DHS and the responsible officer of the exchange visitor program of any legal changes to his or her name or of any change of address within 10 calendar days of the change, in a manner prescribed by the program sponsor. A J–1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying USCIS by providing a notice of a change of address within 10 calendar days to the responsible officer, who in turn shall enter the information in SEVIS within 10 business days of notification by the exchange visitor. In cases where an exchange visitor provides the sponsor a mailing address that is different than his or her actual physical address, he or she is responsible to provide the sponsor his or her actual physical location of residence. The exchange visitor program sponsor is responsible for maintaining a record of, and must provide upon request from USCIS, the actual physical

location where the exchange visitor resides.

* * * * *

(6) *Severability.* The provisions in this paragraph (j) are intended to be independent severable parts. In the event that any provision in this paragraph is not implemented, DHS intends that the remaining provisions be implemented as an independent rule.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

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

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

■ 5. Section 248.1 is amended by redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f);

The additions read as follows:

§ 248.1 Eligibility.

* * * * *

(e) *Admission of aliens under section 101(a)(15)(F) and (J) previously granted duration of status*—Aliens who were granted a change to F or J status prior to [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] and who departed the United States and are applying for admission on or after [DHS WILL INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE] will be inspected and may be admitted into the United States up to the program end date as noted on the Form I–20 or Form DS–2019 that accompanied the change of status application that was approved prior to the alien's departure, not to exceed a period of 4 years. To be admitted into the United States, all aliens must be eligible for the requested status and possess the proper documentation including a valid passport, valid nonimmigrant visa, if required, and valid Form I–20 or Form DS–2019 or successor form.

(f) *Abandonment of change of status application.* If an alien timely files an application to change to another nonimmigrant status but departs the United States while the application is pending, USCIS will consider the change of status application abandoned.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

Authority: 8 U.S.C. 1101, 1103, 1105, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Title VII of Pub. L. 110–229, 122 Stat. 754; Pub. L. 115–218, 132 Stat. 1547; 8 CFR part 2.

■ 7. Section 274a.12 is amended by:

■ a. Revising paragraph (b)(6)(v) to remove the words ''duration of''

■ b. Revising paragraph (b)(6)(v) to remove the words ''8 CFR 214.2(f)(5)(vi)'' and add, in their place, the words ''8 CFR 214.2(f)(5)(vii)''; and

■ c. Revising paragraphs (b)(10), and (c)(3)(iii) to read as follows:

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

* * * * *

(b) * * *

* * * * *

(10) An alien who is a foreign information media representative in I status under 8 CFR 214.2(i) may be employed pursuant to the requirements of 8 CFR 214.2(i). Employment authorization does not extend to the dependents of a foreign information media representative.

* * * * *

(c) * * *

(3) * * *

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has an Employment Authorization Document, Form I–766 or successor form, based on severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C), and whose timely filed application for employment authorization and application for extension of stay, both filed on applicable forms and in the manner designated by USCIS, with the required fees, as described in the form's instructions, are pending, is authorized to engage in employment beginning on the expiration date of the Employment Authorization Document issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current Application for Employment Authorization, Form I–765, or successor form, but not to exceed 240 days. For this same period, such Employment Authorization Document, Form I–766 or successor form, is automatically extended and is considered unexpired when combined with a Certificate of Eligibility for Nonimmigrant (F–1/M–1) Students, Form I–20 or successor form, endorsed by the Designated School Official recommending such an extension.

* * * * *

Kristi Noem,

Secretary, U.S. Department of Homeland Security.

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