



# FEDERAL REGISTER

---

Vol. 80

Monday,

No. 201

October 19, 2015

---

Part IV

## Department of Homeland Security

---

8 CFR Parts 214 and 274a

Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students; Proposed Rule

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 214 and 274a

[DHS Docket No. ICEB–2015–0002]

RIN 1653–AA72

### Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) proposes to amend its F–1 nonimmigrant student visa regulations on optional practical training (OPT) for certain students with degrees in science, technology, engineering, or mathematics (STEM) from U.S. institutions of higher education. Specifically, the proposal would allow such F–1 STEM students who have elected to pursue 12 months of OPT in the United States to extend the OPT period by 24 months (STEM OPT extension). This 24-month extension would effectively replace the 17-month STEM OPT extension currently available to certain STEM students. The rule also improves and increases oversight over STEM OPT extensions by, among other things, requiring the implementation of formal mentoring and training plans by employers, adding wage and other protections for STEM OPT students and U.S. workers, and allowing extensions only to students with degrees from accredited schools.

As with the current 17-month STEM OPT extension, the proposed rule would authorize STEM OPT extensions only for students employed by employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment eligibility verification program. The proposal also includes the "Cap-Gap" relief first introduced in 2008 for any F–1 student with a timely filed H–1B petition and request for change of status. This Cap-Gap relief allows such students to automatically extend the duration of F–1 status and any current employment authorization until October 1 of the fiscal year for which such H–1B visa is being requested.

In addition to improving the integrity and value of the STEM OPT program, this proposed rule also responds to a court decision that vacated a 2008 DHS regulation on procedural grounds. The proposed rule includes changes to the policies announced in the 2008 rule to further enhance the academic benefit

provided by STEM OPT extensions and increase oversight, which will better ensure that students gain valuable practical STEM experience that supplements knowledge gained through their academic studies, while preventing adverse effects to U.S. workers. By earning a functional understanding of how to apply their academic knowledge in a work setting, students will be better positioned to begin careers in their fields of study. These on-the-job educational experiences would be obtained only with those employers that commit to developing students' knowledge and skills through practical application. The proposed changes would also help ensure that the nation's colleges and universities remain globally competitive in attracting international STEM students to study and lawfully remain in the United States.

**DATES:** Comments must be received by DHS on or before November 18, 2015. Comments on the information collection provisions proposed in this rule must be received by DHS and the Office of Management and Budget (OMB) on or before November 18, 2015.

**ADDRESSES:** You may submit comments, identified by the DHS docket number to this rulemaking, Docket No. ICEB–2015–0002, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, by one of the following methods:

- *Electronically:* Submit comments to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Address your written comments to the individual in the **FOR FURTHER INFORMATION CONTACT** section below. DHS docket staff, which maintains and processes U.S. Immigration and Customs Enforcement's (ICE's) official regulatory dockets, will scan the submission and post it to FDMS.

*Collection of information.* You must submit comments on the collection of information discussed in this notice of proposed rulemaking both to DHS's docket and to OMB's Office of Information and Regulatory Affairs (OIRA). OIRA submissions can be made using one of the listed methods.

- *Electronically (preferred):* [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@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, ATTN: Desk Officer, U.S. Immigration and Customs Enforcement, DHS.

See the Public Participation portion of the **SUPPLEMENTARY INFORMATION** section below for additional instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Katherine Westerlund, Policy Chief (Acting), Student and Exchange Visitor Program, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536; telephone (703) 603–3400; email [sevp@ice.dhs.gov](mailto:sevp@ice.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Public Participation
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act
  - D. Public Meeting
- II. Abbreviations
- III. Executive Summary
  - A. Purpose of the Regulatory Action
  - B. Summary of the Major Provisions of the Regulatory Action
  - C. Costs and Benefits
- IV. Background and Purpose
  - A. Authority, Regulatory History, and Recent Litigation
  - B. ICE and SEVIS
  - C. Basis and Purpose of Regulatory Action
- V. Discussion of Elements of the STEM OPT Extension
  - A. Including a STEM OPT Extension Within the OPT Program
  - B. STEM Extension Period for OPT
  - C. STEM Definition and CIP Categories for STEM OPT Extension
  - D. Mentoring and Training Plan
  - E. USCIS E-Verify Employment Verification Program
  - F. Previously Obtained STEM Degrees
  - G. Safeguarding U.S. Workers through Measures Consistent with Labor Market Protections
  - H. Oversight through School Accreditation Requirements and Employer Site Visits
  - I. Additional Compliance Requirements
  - J. Cap-Gap Extension for F–1 Students with Timely Filed H–1B Petitions and Change of Status Requests
- VI. Statutory and Regulatory Requirements
  - A. Executive Orders 12866 and 13563: Regulatory Planning and Review
  - B. *Regulatory Flexibility Act*
  - C. Small Business Regulatory Enforcement Fairness Act of 1996
  - D. Unfunded Mandates Reform Act
  - F. Collection of Information
  - G. Federalism
  - H. Civil Justice Reform
  - I. Energy Effects
  - J. Environment
  - K. Indian Tribal Governments
  - L. Taking of Private Property
  - M. Protection of Children
  - N. Technical Standards

#### I. Public Participation

We encourage you to participate in this rulemaking by submitting

comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide unless you request that your personally identifiable information be redacted. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See the **ADDRESSES** section above for methods to submit comments.

#### A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and materials online or by mail, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. ICE will file all comments sent to our docket address, as well as items sent to the address or email under the **FOR FURTHER INFORMATION CONTACT** section above, in the public docket, except for comments containing marked confidential information. If you submit a comment, it will be considered received by ICE when it is received at the Docket Management Facility.

To submit your comments online, go to <http://www.regulations.gov>, and insert the complete Docket number starting with "ICEB" in the "Search" box. Click on the "Comment Now!" box and input your comment in the text box provided. Click the "Continue" box, and if you are satisfied with your comment, follow the prompts to submit it. If you submit your comments by mail, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic scanning and filing. Mailed submissions may be on paper, electronic disk, or CD-ROM. If you would like us to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard or envelope on which the docket number appears. We will stamp the date of receipt on the postcard and mail it to you.

We will consider all comments and materials received during the comment period and may change this proposed rule based on your comments. The docket is available for public inspection before and after the comment closing date.

#### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the complete Docket number starting with "ICEB" in the "Search" box. Click on the "Open Docket Folder," and you can click on "View Comment" or "View All" under the "Comments" section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the **FOR FURTHER INFORMATION CONTACT** section above.

#### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

#### D. Public Meeting

We do not currently plan to hold a public meeting, but you may submit a request for one on or before November 18, 2015 using one of the methods specified under the **ADDRESSES** section above. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### II. Abbreviations

CIP	Classification of Instructional Program
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
DOS	Department of State
DSO	Designated School Official
EBSVERA	Enhanced Border Security and Visa Entry Reform Act of 2002
FDMS	Federal Document Management System
ICE	U.S. Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IFR	Interim Final Rule
OPT	Optional Practical Training
RIA	Regulatory Impact Analysis
IRFA	Initial Regulatory Flexibility Analysis
SEVP	Student and Exchange Visitor Program

SEVIS Student and Exchange Visitor Information System  
 STEM Science, Technology, Engineering, or Mathematics  
 U.S.C. United States Code  
 USCIS U.S. Citizenship and Immigration Services

### III. Executive Summary

#### A. Purpose of the Regulatory Action

This proposed rule would affect F-1 nonimmigrant students who seek to obtain a STEM OPT extension, as well as F-1 nonimmigrant students who seek so-called Cap-Gap relief. The F-1 nonimmigrant classification is available to certain academic students seeking temporary admission to the United States as full-time students at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program. To obtain F-1 nonimmigrant classification, the student must be enrolled in a full course of study at a qualifying institution and have sufficient funds to self-support during the entire proposed course of study. Such course of study must occur at a school authorized by the U.S. government to accept international students.

OPT is a form of temporary employment available to F-1 students (except those in English language training programs) that directly relates to and complements a student's study in the United States. A student can apply to engage in OPT during their academic program, known as "pre-completion OPT," or after completing the academic program, known as "post-completion OPT." A student can apply for 12 months of OPT at each education level (e.g., one 12-month OPT period at the bachelor's level and another 12-month period at the master's level). While school is in session, the student may work up to 20 hours per week pursuant to OPT.

This notice of proposed rulemaking (NPRM) would make changes to the current OPT program by lengthening the extension of the OPT period for certain F-1 students who have earned STEM degrees. DHS first introduced an extension of OPT for STEM graduates in a 2008 interim final rule (2008 IFR). See 73 FR 18944. Under the 2008 IFR, an F-1 student with a STEM degree from a U.S. institution of higher education may be eligible for an additional 17 months of OPT (17-Month STEM OPT Extension), provided that the employer from which the student sought employment was enrolled in USCIS's E-Verify employment eligibility verification program. As discussed in

further detail below, on August 12, 2015, the U.S. District Court for the District of Columbia ordered the vacatur of the 2008 IFR for procedural deficiencies in its promulgation, and remanded the issue to DHS. DHS is proposing this rule to reinstate the STEM OPT extension, with changes intended to enhance the academic benefit afforded by the extension and increase program oversight, including safeguards to protect U.S. workers.<sup>1</sup>

### *B. Summary of the Major Provisions of the Regulatory Action*

The proposal would again provide for an extension of OPT for certain F–1 students with STEM degrees. As compared to the 2008 IFR, the proposed rule includes the following changes:

- *Lengthened STEM Extension Period for OPT.* The proposal would increase the OPT extension period for STEM OPT students from the 2008 IFR's 17 months to 24 months. The proposal would also make F–1 students who subsequently enroll in a new academic program and earn another qualifying STEM degree at a higher educational level eligible for one additional 24-month STEM OPT extension.

- *STEM Definition and CIP Categories for STEM OPT Extension.* The proposed rule would more clearly define which fields of study (more specifically, which Department of Education Classification of Instructional Program (CIP) categories) may serve as the basis for a STEM OPT extension. The proposal also sets forth a process for public notification in the **Federal Register** when DHS updates the list of eligible STEM fields on the Student and Exchange Visitor Program's (SEVP's) Web site.

- *Mentoring and Training Plan.* The proposal would require employers to implement formal mentoring and training programs to augment students' academic learning through practical experience, intended to equip students with a more comprehensive understanding of their selected area of study and broader functionality within that field.

- *Previously Obtained STEM Degrees.* The proposal would permit an F–1

student participating in post-completion OPT to use a prior eligible STEM degree from a U.S. institution of higher education as a basis to apply for a STEM OPT extension, as long as the student's most recent degree was also received from an accredited educational institution. Additionally, in order for such a student to be eligible for the STEM OPT extension, the employment opportunity must be directly related to the previously obtained STEM degree.

- *Safeguards for U.S. Workers in Related Fields.* To guard against adverse effects on U.S. workers, this proposal would require terms and conditions of a STEM practical training opportunity (including duties, hours, and compensation) to be commensurate with those applicable to similarly situated U.S. workers. In addition to requiring a related attestation in the Mentoring and Training Plan, an employer would also be required to attest that: (1) The employer has sufficient resources and trained personnel available to provide appropriate mentoring and training in connection with the specified opportunity; (2) the employer will not terminate, lay off, or furlough any full- or part-time, temporary or permanent U.S. workers as a result of providing the STEM OPT to the student; and (3) the student's opportunity assists the student in attaining his or her training objectives.

- *School Accreditation and Employer Site Visits.* The proposal would enhance the academic benefit and oversight of STEM OPT extensions by (1) generally limiting eligibility to students with degrees from schools that are accredited by an accrediting agency recognized by the Department of Education; and (2) clarifying DHS discretion to conduct employer on-site reviews at worksites to verify whether employers are meeting program requirements, including that they possess and maintain the ability and resources to provide structured and guided work-based learning experiences.

- *Compliance Requirements.* In addition to reinstating the 2008 IFR's reporting and compliance requirements, the proposal would revise the number of days that an F–1 student may remain unemployed during the practical training period. The current program allows a student to be unemployed up to 90 days during his or her initial period of post-completion OPT, and up to an additional 30 days (for an aggregate of 120 days) if the student receives a 17-month STEM OPT extension. The proposed rule would retain the 90-day maximum period of unemployment during the initial period of post-completion OPT, but allow an

additional 60 days (for an aggregate of 150 days) for students who obtain a 24-month STEM OPT extension.

In addition to these changes (as compared to the 2008 IFR), the proposal would retain other provisions of the 2008 IFR, as follows:

- *E-Verify and Reporting Requirements for STEM OPT Employers.* The proposal would require STEM OPT employers to be enrolled in USCIS' E-Verify program and to report certain changes in the STEM OPT student's employment.

- *Reporting Requirements for STEM OPT Students.* The proposal would require STEM OPT students to report to DHS any changes to their names or addresses, as well as any changes to their employers' names or addresses. Students would also be required to periodically verify the accuracy of this reporting information.

- *Cap-Gap Extension for F–1 Nonimmigrants with Timely Filed H–1B Petitions and Requests for Change of Status.* The proposal would include the 2008 IFR's "Cap-Gap" provision, under which DHS would temporarily extend an F–1 student's duration of status and any current employment authorization if the student is the beneficiary of a timely filed H–1B petition and requests a change of status. The Cap-Gap extension would extend the OPT period until October 1 of the fiscal year for which the H–1B visa is being requested.

### *C. Costs and Benefits*

The anticipated costs of compliance with the proposed rule, as well as the benefits, are discussed at length in section VI, entitled "Statutory and Regulatory Requirements—Executive Orders 12866 and 13563." A combined Regulatory Impact Analysis (RIA) and an Initial Regulatory Flexibility Analysis (IRFA) are available in the docket as indicated under the Public Participation section of this preamble. A summary of the analysis follows.

As shown in the Summary Table below, DHS estimates that the costs of the standards proposed in this rule would be approximately \$503.3 million over the period 2016–2025, discounted at 7 percent, or \$71.7 million per year when annualized at a 7 percent discount rate.

With respect to benefits, making the STEM OPT extension available to additional students and extending the current 17-month extension will enhance students' ability to achieve the objectives of their courses of study by gaining valuable knowledge and skills through on-the-job training that is often unavailable in their home countries. The proposed changes will also benefit

<sup>1</sup> These changes are consistent with the direction provided in the Secretary of Homeland Security's November 20, 2014 memorandum entitled, "Policies Supporting U.S. High Skilled Businesses and Workers." DHS recognizes the nation's need to evaluate, strengthen, and improve practical training as part of an overall strategy to enhance our nation's economic, scientific, and technological competitiveness. Highly skilled persons educated in the United States contribute significantly to the U.S. economy, including advances in entrepreneurial and research and development endeavors, which correlate highly with overall economic growth and job creation.

the U.S. educational system, U.S. employers, and the United States. The rule will benefit the U.S. educational system by helping ensure that the nation’s colleges and universities remain globally competitive in attracting international students in STEM fields. U.S. employers will benefit from the increased ability to rely on the skills acquired by STEM OPT students while studying in the United States, as well as their knowledge of markets in their home countries. And the nation will benefit from the increased retention of such students in the United States, including through increased research, innovation, and other forms of productivity that enhance the nation’s economic, scientific, and technological competitiveness.

Furthermore, strengthening the STEM OPT extension by implementing

requirements for training and mentoring, tracking objectives, reporting on program compliance, and accreditation of participating schools would further prevent abuse of the limited on-the-job training opportunities provided by this program. These and other proposals would also improve program oversight, strengthen the requirements for program participation, and better ensure that U.S. workers are protected.

The Summary Table below presents a summary of the benefits and costs of the proposed rule. The costs are discounted at seven percent. Students will incur costs for completing application forms and paying application fees; reporting to designated school officials (DSOs); preparing, with their employers, the Mentoring and Training Plan required by this rule; and periodically submitting

updates to employers and DSOs. DSOs will incur costs for reviewing information and forms submitted by students, inputting required information into the Student and Exchange Visitor Information System (SEVIS), and complying with other oversight requirements related to prospective and participating STEM OPT students. Employers of STEM OPT students will incur burdens for preparing the Mentoring and Training Plan with students, evaluating whether the students are receiving on-the-job learning experiences as outlined in the Mentoring and Training Plan, enrolling in (if not previously enrolled) and using the E-Verify system to verify employment eligibility for all new hires, and complying with additional requirements related to the E-Verify system.

SUMMARY TABLE—ESTIMATED COSTS AND BENEFITS OF NPRM, (\$2014 MILLIONS)

	STEM OPT	E-Verify	Total
10-Year Cost Annualized at 7 Percent Discount Rate .....	\$64.9 .....	\$6.8 .....	\$71.7
10-Year Cost Annualized at 3 Percent Discount Rate .....	\$66.9 .....	\$7.2 .....	\$74
Qualitative Costs .....	<ul style="list-style-type: none"> <li>• Cost to students and schools resulting from proposed accreditation requirement;</li> <li>• Cost to employers from the proposed requirement to provide STEM OPT students commensurate compensation to similarly situated U.S. workers; and</li> <li>• Decreased practical training opportunities for students no longer eligible for the program due to proposed improvements to the STEM OPT extension.</li> </ul>		
Monetized Benefits .....	N/A .....	.....	N/A
Non-monetized Benefits .....	<ul style="list-style-type: none"> <li>• Increased ability of students to gain valuable knowledge and skills through on-the-job training in their field that is often unavailable in their home countries;</li> <li>• Increased global attractiveness of U.S. colleges and universities; and</li> <li>• Increased program oversight and strengthened requirements for program participation, and new protections for U.S. workers.</li> </ul>		
Net Benefits .....	N/A .....	N/A .....	N/A

**IV. Background and Purpose**

*A. Authority, Regulatory History, and Recent Litigation*

The Secretary of Homeland Security (Secretary) has broad authority to administer and enforce the nation’s immigration laws. See generally 6 U.S.C. 202; Immigration and Nationality Act of 1952, as amended, (INA) section 103, 8 U.S.C. 1103. Section 101(a)(15)(F)(i) of the INA establishes the F–1 nonimmigrant classification for individuals who wish to come to the United States temporarily to enroll in a full course of study at an academic or language training school certified by ICE’s SEVP. 8 U.S.C. 1101(a)(15)(F)(i). The INA provides the Secretary with broad authority to determine the time and conditions under which nonimmigrants, including F–1 students,

may be admitted to the United States. 8 U.S.C. 1184(a)(1), INA section 214(a)(1). The Secretary also has broad authority to determine which individuals are “authorized” for employment in the United States. 8 U.S.C. 1324a(h)(3).

Federal agencies dealing with immigration have long interpreted section 101(a)(15)(F)(i) of the INA and related authorities to encompass on-the-job-training that supplements classroom training. See, e.g., 12 FR 5355, 5357 (Aug. 7, 1947) (authorizing employment for practical training under certain conditions, pursuant to statutory authority substantially similar to current INA section 101(a)(15)(F)(i)); 38 FR 35425, 35426 (Dec. 28, 1973) (also authorizing, pursuant to the INA,

employment for practical training under certain conditions).<sup>2</sup>

ICE manages and oversees significant elements of the F–1 nonimmigrant student process, including the certification of schools and institutions in the United States that enroll nonimmigrant students. In overseeing these institutions, ICE uses SEVIS to track and monitor foreign students, and communicate with the schools that enroll them, while they are in the United States and participating in educational opportunities. This tracking

<sup>2</sup>During a brief period following the Immigration Act of 1990, Congress expanded employment authorization for foreign students by allowing for a three-year pilot program in which students could be employed off-campus in positions unrelated to the student’s field of study, Pub. L. 101–649, sec. 221(a), 104 Stat. 4978, 5027 (Nov. 29, 1990). In general, however, practical training has historically been limited to the student’s field of study.

and monitoring program is required and supported by additional statutory and other authority.<sup>3</sup>

#### OPT Background

A student in F–1 status may remain in the United States for the duration of his or her education if otherwise meeting the requirements for the maintenance of status. 8 CFR 214.2(f)(5)(i). Once an F–1 student has completed his or her academic program and any subsequent period of OPT, the student must generally leave the United States unless he or she: enrolls in another academic program, either at the same school or at another SEVP-certified school; changes to a different nonimmigrant status; or otherwise legally extends his or her period of authorized stay in the United States. As noted, DHS regulations have long defined an F–1 student's duration of status to include a foreign student's practical training. *See, e.g.*, 48 FR 14575, 14583 (Apr. 5, 1983).<sup>4</sup> An F–1

<sup>3</sup> DHS derives its authority to manage these programs from several sources, including, in addition to the authorities cited above, section 641 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3009–546, 3009–704 (Sep. 30, 1996) (codified as amended at 8 U.S.C. 1372), which authorizes the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F and other 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 by HSPD—5 (Management of Domestic Incidents, Feb. 28, 2003, Compilation of HSPDs (updated through Dec. 31, 2007) available at <http://www.gpo.gov/fdsys/pkg/CPRT-110HPR239618/pdf/CPRT-110HPR239618.pdf>), which 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, *see* Weekly Comp. Pres. Docs., 37 WCPD 1570, <http://www.gpo.gov/fdsys/granule/WCPD-2001-11-05/WCPD-2001-11-05-Pg1570/content-detail.html>; and Section 502 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Pub. L. 107–173, 116 Stat. 543, 563 (May 14, 2002), which directs the Secretary to review the compliance with recordkeeping and reporting requirements under 8 U.S.C. 1101(a)(15)(F) and 1372, and INA 101(a)(15)(F), of all schools approved for attendance by F students within two years of enactment, and every two years thereafter. Moreover, the programs discussed in this rule, as is the case with all DHS programs, are carried out in keeping with DHS's primary mission that includes the responsibility to “ensure that the overall economic security of the United States is not diminished by the efforts, activities, and programs aimed at securing the homeland.” 6 U.S.C. 111(b)(1)(F).

<sup>4</sup> *See Washington Alliance of Tech. Workers v. U.S. Dep't of Homeland Security*, No. 1:14-cv-00529, WL (D.D.C. Aug. 12, 2015) (slip op.), 25–26 (finding that DHS's interpretation permitting “employment for training purposes without requiring school enrollment” is “‘longstanding’ and entitled to [judicial] deference”).

student is allowed a 60-day “grace period” after the completion of the academic program or OPT to prepare for departure from the United States. 8 CFR 214.2(f)(5)(iv).

Unless an F–1 student meets certain limited exceptions, he or she may not be employed in the United States during the term of his or her F–1 status. DHS permits an F–1 student who has been enrolled on a full-time basis for at least one full academic year in a college, university, conservatory, or seminary certified by SEVP, and who has otherwise maintained his or her status, to apply for practical training to work for a U.S. employer in a job directly related to his or her major area of study. 8 CFR 214.2(f)(10). DHS had previously limited the duration of OPT to a period of up to 12 months at a given educational level. An F–1 student may seek employment through OPT either during his or her academic program (pre-completion OPT) or immediately after graduation (post-completion OPT). The student remains in F–1 nonimmigrant status throughout the OPT period. Thus, an F–1 student in post-completion OPT does not have to leave the United States within 60 days after graduation, but instead has authorization to remain for the entire post-completion OPT period. 8 CFR 214.2(f)(5)(i). This initial post-completion OPT period (*i.e.*, a period of practical training immediately following completion of an academic program) can be up to 12 months, except in certain circumstances involving students who engaged in either pre-completion OPT or what is known as “curricular practical training” (CPT).<sup>5</sup> On April 8, 2008, DHS published an interim final rule in the **Federal Register** (73 FR 18944) that, in part, extended the maximum period of OPT from 12 to 29 months (through a 17-month “STEM OPT extension”) for an F–1 student who obtained a degree in a designated STEM field from a U.S. institution of higher education and who

<sup>5</sup> CPT provides a specially-designed program through which students can participate in an internship, alternative study, cooperative education, or similar programs. 52 FR 13223 (April 22, 1987). Currently defined to also include practicums, CPT allows sponsoring employers to train F–1 nonimmigrant students as part of the students' established curriculum within their schools. 8 CFR 214.2(f)(10)(i). CPT must relate to and be integral to a student's program of study. Unlike OPT and other training or employment, however, CPT can be full time even while a student is attending school that is in session. Schools have oversight of CPT through their DSOs, who are currently responsible for authorizing CPT that is directly related to the student's major area of study and reporting certain information, including the employer and location, the start and end dates, and whether the training is full time or part time. 8 CFR 214.2(f)(10)(i)(B).

was engaged in practical training with an employer enrolled in the E-Verify employment eligibility verification program. As a result of that rule, F–1 students granted STEM OPT extensions were required to report to their DSOs any changes in their names or addresses, as well as any changes in their employer's information (including name or address), and periodically validate the accuracy of this information. The rule further required employers of such students to report to the relevant DSO within two business days if a student was terminated from or otherwise left employment prior to the end of the authorized period of OPT. The rule allowed an F–1 student to apply for post-completion OPT within the 60-day grace period at the conclusion of his or her academic program. The rule also limited the total period in which students on initial post-completion OPT could be unemployed to 90 days. Students granted 17-month STEM OPT extensions were provided an additional 30 days in which they could be unemployed, for an aggregate period of 120 days.

The 2008 IFR also addressed the so-called “Cap-Gap” problem, which resulted when the expiration of an F–1 student's OPT authorization occurred prior to the commencement of the validity of an H–1B petition filed on his or her behalf. Specifically, F–1 students on initial post-completion OPT frequently complete their period of authorized practical training in June or July of the year following graduation. If such students are beneficiaries of H–1B petitions and requests for change of status for H–1B classification commencing in the following fiscal year (beginning on October 1), they will be unable to obtain their H–1B status before their OPT period expires. Prior to the 2008 IFR, such students were often required to leave the country for a few months until they were able to obtain their H–1B status on October 1. The 2008 IFR addressed this problem through a Cap-Gap provision that briefly extended the F–1 nonimmigrant's authorized period of stay and employment authorization to enable the student to remain in the United States until they could obtain their H–1B status.

DHS received over 900 comments in response to the 2008 IFR. Such comments were submitted by a range of entities and individuals, including schools and universities, students, professional associations, labor organizations, advocacy groups, and businesses. In addition, DHS engaged the public and affected schools in a series of meetings held across the

country during the 2008 IFR's public comment period. DHS added transcripts of questions and comments from those meetings to the docket for the 2008 IFR.<sup>6</sup> Public comments received on the 2008 IFR, and other records, may be reviewed at the Docket for that rule, No. ICEB-2008-0002, available at [www.regulations.gov](http://www.regulations.gov).

As described immediately below, in light of the period of time that has elapsed since the 2008 IFR, and due to the *vacatur* of that rule, DHS has established a new docket for this rulemaking. DHS welcomes comments on all aspects of this new proposal. Comments submitted on the 2008 IFR will not be automatically incorporated into the docket for this rulemaking; commenters should resubmit those comments as necessary. DHS intends to respond to any significant comments submitted in connection with this proposed rule in the final rule for this proceeding.

#### Washington Alliance Litigation Regarding the 2008 IFR

On August 12, 2015, the U.S. District Court for the District of Columbia issued an order in the case of *Washington Alliance of Tech. Workers v. U.S. Dep't of Homeland Security*, No. 1:14-cv-00529, \_\_\_\_\_ WL \_\_\_\_\_ (D.D.C. Aug. 12, 2015) (*Washington Alliance*) (slip op.). Although the court held that the 2008 IFR rested upon a reasonable interpretation of the INA, the court also held that DHS violated the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, by promulgating the 2008 IFR without advance notice and opportunity for public comment.<sup>7</sup> In its order, the court invalidated the 2008 IFR as procedurally deficient, and remanded the issue to DHS.

With respect to DHS's interpretation of the F-1 student visa provisions in the INA, the court found ample support for DHS's longstanding practice of

“permit[ting F-1 student] employment for training purposes without requiring ongoing school enrollment.” *Washington Alliance*, at \*26–27. The court recognized the Secretary's broad authority under the INA “to regulate the terms and conditions of a nonimmigrant's stay, including its duration.” *Id.* at \*29 (citing 8 U.S.C. 1103(a), 1184(a)(1)). The court also recognized the Secretary's authority to consider the potential economic contributions and labor market impacts that may result from particular regulatory decisions. *Id.* (citing 6 U.S.C. 111(b)(1)(F)).

As noted above, the court ultimately vacated the 2008 IFR on procedural grounds. Recognizing the disruption and uncertainty that an immediate *vacatur* might cause, however, the court stayed the *vacatur* until February 12, 2016, to provide time for DHS to correct the deficiency through notice-and-comment rulemaking. *Id.* at \*37.<sup>8</sup> The court specifically explained that the stay was necessary to avoid “substantial hardship for foreign students and a major labor disruption for the technology sector” and that immediate *vacatur* of the STEM OPT extension would be “seriously disruptive.” *Id.* at \*36.

Litigation in this matter is ongoing, as the plaintiff has appealed a portion of the court's August 12, 2015 decision. It is thus unclear what the final disposition of the case may be. Nevertheless, it is clear that if DHS does not act before the court's *vacatur* takes effect on February 12, 2016, a significant number of students may be unable to pursue valuable training opportunities that would otherwise be available to them.

With this proposed rule, DHS proposes to provide an extension of OPT for certain STEM students, but with significant revisions as compared to the 2008 IFR. DHS thanks the public for its helpful input and engagement during the public comment period related to the 2008 IFR. In light of the aforementioned developments, however, DHS has determined that it will replace the 2008 IFR in its entirety and seek a fresh round of public

comment via this proposed rule. As described in more detail throughout this preamble, the revisions proposed by this rule are intended to continue and further enhance the academic benefit of the STEM OPT extension, while protecting STEM OPT students and U.S. workers. DHS welcomes public input on all aspects of this proposal and will consider and respond to comments on the newly proposed rule following the comment period.

#### B. ICE and SEVIS

As noted above, ICE's SEVP serves as the central liaison between the U.S. educational community and U.S. government agencies that have an interest in information regarding F and M nonimmigrants.<sup>9</sup> ICE directs and oversees the process by which schools interact with F and M students to obtain information relevant to their immigration status and relay that information to the U.S. Government. ICE uses the SEVIS system to certify schools and designate exchange visitor programs, and to monitor F, J,<sup>10</sup> and M nonimmigrants during their stay in the United States.<sup>11</sup>

ICE's SEVP carries out its programmatic responsibilities through SEVIS, a Web-based data entry, collection and reporting system. DHS, DOS, and other government agencies, as well as SEVP-certified schools and DOS-designated exchange visitor programs, use SEVIS data to monitor F, J, and M nonimmigrants for the duration of their admission in the United States. ICE and DOS require certified schools and designated exchange visitor programs to update information on their approved F, J, and M nonimmigrants regularly after their admission into the United States and throughout their stay. SEVIS data is also used to verify the eligibility of individuals applying for F, J, and M nonimmigrant status, to expedite port of entry screening by U.S. Customs and

<sup>6</sup> Many of the comments submitted to the docket for the 2008 IFR were requests for the addition of specific programs of study to the STEM Designated Degree Programs list. Other comments addressed a variety of key issues, including concerns about the potential impact of the extension of OPT, unemployment limits during the 17-month extension of STEM OPT, the E-Verify requirement for the 17-month extension of STEM OPT, the distinction between pre- and post-completion OPT, and student reporting requirements. As noted below, this rule proposes changes in a number of these areas, based in part on public input received in 2008.

<sup>7</sup> The court withheld judgment on the agency's substantive rationale for the 2008 IFR specifically. See *Washington Alliance*, at p. 29, n.9. As noted, however, the court found ample support for the Government's longstanding practice of granting F-1 students employment authorization for practical training.

<sup>8</sup> In an earlier preliminary ruling in the case regarding plaintiffs challenge to DHS's general OPT and STEM OPT program, the court held that plaintiff did not have standing to challenge the general OPT program on behalf of its members because it had not identified a member of its association who suffered any harm from the general OPT program. See *Washington Alliance of Tech. Workers v. U.S. Dep't of Homeland Security*, 74 F. Supp. 3d 247, 252 & n.3 (D.D.C. 2014). The court held in the alternative that the challenge to the general OPT program was barred by the applicable statute of limitations.

<sup>9</sup> A foreign student is admitted into the United States in F-1 nonimmigrant status to attend an academic or language training school or in M-1 status to attend a vocational education school. An accompanying spouse or minor child may be admitted as an F-2 or M-2 dependent.

<sup>10</sup> Under section 101(a)(15)(J) of the INA, 8 U.S.C. 1101(a)(15)(J), a foreign citizen may be admitted into the United States in nonimmigrant status as an exchange visitor (J visa). The Department of State (DOS) designates and manages exchange visitor programs.

<sup>11</sup> See IIRIRA sec. 641 (codified as amended at 8 U.S.C. 1372) (requiring the creation of a program to collect current and ongoing information provided by schools and exchange visitor programs regarding F, J, or M nonimmigrants during the course of their stay in the United States, using electronic reporting technology where practicable). IIRIRA also authorized the Secretary, acting through SEVP, to certify schools to participate in F or M student enrollment.

Border Protection, to assist USCIS in processing immigration benefit applications, to monitor nonimmigrant status maintenance and, as needed, to facilitate timely removal.

### C. Basis and Purpose of Regulatory Action

As noted above, this proposed rule would effectively reinstate portions of the 2008 IFR, with significant modifications and enhancements. Public comments received on the 2008 IFR were overwhelmingly positive. Although, as described in more detail below, many commenters recommended specific changes to the STEM OPT extension and some commenters objected to the 2008 IFR altogether, the vast majority of commenters—including students, educational institutions, advocacy groups, and STEM employers—expressed strong support for the rule’s main provisions. DHS continues to believe that practical training is frequently a key element of F–1 students’ educational experience, and that STEM students in particular may benefit from an extended period of time in practical training. For the reasons discussed below, DHS also believes that attracting and retaining such students is in the short-term and long-term economic, cultural, and security interests of the nation.

DHS also recognizes that it must quickly address the imminent *vacatur* of the 2008 IFR, and the significant uncertainty surrounding the status of thousands of students in the United States. As of September 16, 2015, over 34,000 students were in the United States on a STEM OPT extension. In addition, hundreds of thousands of international students, most of whom are in F–1 status, have already chosen to enroll in U.S. educational institutions and are currently pursuing courses of study in fields that may provide eligibility for this program. Some of those students may have considered the opportunities offered by the STEM OPT extension when deciding whether to pursue their degree in the United States. DHS must therefore act swiftly to mitigate the uncertainty surrounding the 2008 IFR. Prompt action is particularly appropriate with respect to those students who have already committed to study in the United States, in part based on the possibility of furthering their education through an extended period of practical training in the world’s leading STEM economy.<sup>12</sup>

<sup>12</sup> The National Science Foundation reports that the United States is the largest single science and engineering R&D-performing nation in the world, accounting for just under 30% of the global total.

### 1. Benefits of International Students in the United States

In proposing this rule, DHS recognizes the substantial economic, scientific, technological, and cultural benefits provided by the F–1 nonimmigrant program generally, and the STEM OPT extension in particular. As described below, international students have historically made significant contributions to the United States, both through the payment of tuition and other expenditures in the U.S. economy, as well as by significantly enhancing academic discourse and cultural exchange on campuses throughout the United States. In addition to these general benefits, STEM students further contribute through research, innovation, and the provision of knowledge and skills that help maintain and grow increasingly important sectors of the U.S. economy.

Foreign students, for example, regularly contribute a significant amount of money into the U.S. economy. According to statistics compiled by the Association of International Educators (NAFSA), foreign students made a net contribution of \$26.8 billion to the U.S. economy in the 2013–2014 academic year.<sup>13</sup> This contribution included tuition (\$19.8 billion) and living expenses for self and family (\$16.7 billion), after adjusting for U.S. financial support (\$9.7 billion).<sup>14</sup> And public colleges and universities particularly benefit from the payment of tuition by foreign students, especially in comparison to the tuition paid by in-state students.<sup>15</sup>

Foreign students also increase the benefits of academic exchange, while reinforcing ties with foreign countries and fostering increased understanding of American society.<sup>16</sup> International

See Science and Engineering Indicators 2014 (NSF) at Chapter 4 (International Comparisons), at 4–17, available at <http://www.nsf.gov/statistics/seind14/index.cfm/chapter-4>. According to NSF, the United States expends \$429 billion of the estimated \$1.435 trillion in global science and engineering R&D (p. 4–17), and business, government, higher education, and non-profits in the United States expend more than double that of any other country (Table 4–5).

<sup>13</sup> NAFSA: Association of International Educators, “The Economic Benefits of International Students: \$26.8 billion Contributed; 340,000 U.S. Jobs Supported; Economic Analysis for Academic Year 2013–2014”, available at [http://www.nafsa.org/\\_/File/\\_eis2014/USA.pdf](http://www.nafsa.org/_/File/_eis2014/USA.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> Washington Post, “College Group Targets Incentive Payments for International Student Recruiters” (June 2, 2011), available at [http://www.washingtonpost.com/local/education/college-group-targets-incentive-payments-for-international-student-recruiters/2011/05/31/AGv15aHH\\_story.html](http://www.washingtonpost.com/local/education/college-group-targets-incentive-payments-for-international-student-recruiters/2011/05/31/AGv15aHH_story.html).

<sup>16</sup> See The White House, National Security Strategy 29 (May 2010), available at [https://](https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf)

students, for example “enrich U.S. universities and communities with unique perspectives and experiences that expand the horizons of American students and [make] U.S. institutions more competitive in the global economy.”<sup>17</sup> At the same time, “the international community in American colleges and universities has implications regarding global relationships, whether that is between nation-states, or global business and economic communities.”<sup>18</sup> International education and exchange at the post-secondary level in the United States builds relationships that “promote cultural understanding and dialogue,” integrating a global dimension into the purpose and functions of higher education through the “diversity in culture, politics, religions, ethnicity, and worldview” brought by international students in the United States.<sup>19</sup>

Accordingly, foreign students provide substantial benefits to their U.S. colleges and universities, including beneficial economic and cultural impacts. A study by Duke University in 2013 analyzing 5,676 alumni surveys showed that “substantial international interaction was positively correlated with U.S. students’ perceived skill development in a wide range of areas across three cohorts.”<sup>20</sup> Current research also suggests that international students contribute to the overall economy by building global connections between their hometowns and U.S. host cities.<sup>21</sup> Evidence links skilled migration to transnational business creation, trade,

[www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf).

<sup>17</sup> U.S. Department of State, “Why Internationalize,” available at <https://educationusa.state.gov/us-higher-education-professionals/why-internationalize> (last visited Sept. 29, 2015).

<sup>18</sup> Pamela Leong, “Coming to America: Assessing the Patterns of Acculturation, Friendship Formation, and the Academic Experiences of International Students at a U.S. College,” *Journal of International Students* Vol. 5 (4): 459–474 (2015) at p. 459.

<sup>19</sup> Hugo Garcia and Maria de Lourdes Villareal, “The “Redirecting” of International Students: American Higher Education Policy Hindrances and Implications,” *Journal of International Students* Vol. 4 (2): 126–136 (2014) at p. 132.

<sup>20</sup> Jiali Luo and David Jamieson-Drake, “Examining the Educational Benefits of Interacting with International Students” at 96 (June 2013), available at <https://jistudents.files.wordpress.com/2013/05/2013-volume-3-number-3-journal-of-international-students-published-in-june-1-2013.pdf>. The authors noted that U.S. educational institutions play an important role in ensuring U.S. students benefit as much as possible from this interaction.

<sup>21</sup> Brookings Institution, “The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations” (August 29, 2014), available at <http://www.brookings.edu/research/interactives/2014/geography-of-foreign-students#M10420>.

and direct investment between the United States and a migrant's country of origin.<sup>22</sup>

Foreign STEM students, of course, contribute to the United States in all the ways mentioned above. But they also contribute more specifically to a number of advanced and innovative fields that are critical to national prosperity and security. By conducting scientific research, developing new technologies, advancing existing technologies, and creating new products and industries, for example, STEM workers diversify the economy and drive economic growth, while also producing increased employment opportunities and higher wages.<sup>23</sup> A premise supported by economic research is that Scientists, Technology professionals, Engineers, and Mathematicians (STEM workers) are fundamental inputs in scientific innovation and technological adoption, critical drivers of productivity growth in the United States.<sup>24</sup> For example, research has shown that foreign students who earn a degree and remain in the United States are more likely than native-born workers to engage in activities, such as patenting and the commercialization of patents, that increase U.S. labor productivity.<sup>25</sup> Similarly, other research has found that a one percentage-point increase in immigrant college graduates' population share increases patents per capita by 9

to 18 percent.<sup>26</sup> Research has also shown that foreign-born workers are particularly innovative, especially in research and development, and that they have positive spillover effects on native-born workers.<sup>27</sup> One paper, for example, shows that foreign-born workers patent at twice the rate of U.S.-born workers, and that U.S.-born workers patent at greater rates in areas with more immigration.<sup>28</sup> The quality of the nation's STEM workforce in particular has played a central role in ensuring national prosperity over the last century and helps bolster the nation's economic future.<sup>29</sup> This, in turn, has helped to enhance national security, which is dependent on the nation's ability to maintain a growing and innovative economy.<sup>30</sup> Innovation is crucial for economic growth, which in turn is vital to continued funding for defense and security.<sup>31</sup>

## 2. Increased Competition for International Students

DHS recognizes that the United States has long been a global leader in international education. The number of foreign students affiliated with U.S. colleges and universities grew by 72 percent between 1999 and 2013 to a total of 886,052.<sup>32</sup> However, although

the overall number of foreign students increased over that period, the nation's share of such students decreased. In 2001, the United States received 28 percent of international students; by 2011 that share had decreased to 19 percent.<sup>33</sup> Countries such as Canada, the United Kingdom, New Zealand, Australia, Malaysia, Taiwan, and China are actively instituting new strategies to attract international students.<sup>34</sup>

For example, Canada also recognizes that educational institutions need international students to compete in the "global race for research talent."<sup>35</sup> In April, 2008, Canada modified its Post-Graduation Work Permit Program to allow international students who have graduated from a recognized Canadian post-secondary institution to stay and gain valuable post-graduate work experience for a period equal to the length of the student's study program, up to a maximum of three years, with no restrictions on type of employment.<sup>36</sup> This change resulted in a 64% increase in the number of post-graduation work permits issued to international students in 2008.<sup>37</sup> By 2014, the number of international

International Students: Enrollment Trends, available at <http://www.iie.org/Research-and-Publications/Open-Doors/Data/International-Students/Enrollment-Trends/1948-2014>.

<sup>33</sup> Organization for Economic Co-operation and Development (OECD) 2014, "Education at a Glance 2014: OECD Indicators," OECD Publishing at <http://dx.doi.org/10.1787/eag-2014-en> or <http://www.oecd.org/edu/eag.htm>.

<sup>34</sup> University World News Global Edition Issue 376, "Schools are the New Battleground for Foreign Students" (July 15, 2015), available at <http://www.universityworldnews.com/article.php?story=201507150915156>.

<sup>35</sup> Citizenship and Immigration Canada, "Evaluation of the International Student Program" 14 (July 2010) available at <http://www.cic.gc.ca/english/pdf/research-stats/2010-eval-isp-e.pdf> (citing Association of Universities and Colleges of Canada, Momentum: The 2008 report on university research and knowledge mobilization: A Primer: Driver 2: Global race for research talent, 3 (2008) [hereinafter Evaluation of the Int'l Student Program]).

<sup>36</sup> Citizenship and Immigration Canada, Study permits: Post Graduation Work Permit Program, available at <http://www.cic.gc.ca/english/resources/tools/temp/students/post-grad.asp> [hereinafter Canadian Study permits]. Similarly, Australia, now offers international students who graduate with a higher education degree from an Australian education provider, regardless of their field of study, a post-study work visa for up to four years, depending on the student's qualification. Students who complete a bachelor's degree may receive a two-year post study work visa, research graduates with a master's degree are eligible for a three-year work visa, and doctoral graduates are eligible for a four-year work visa. See Australian Department of Immigration and Border Protection, Application for a Temporary Graduate visa, available at <http://www.border.gov.au/FormsAndDocuments/Documents/1409.pdf> [hereinafter Australian Temporary Grad. visa].

<sup>37</sup> Evaluation of the Int'l Student Program, *supra* note 29, at 9.

<sup>22</sup> Sonia Plaza, *Diaspora resources and policies*, in *International Handbook on the Economics of Migration*, 505–529 (Amelie F. Constant and Klaus F. Zimmermann, eds., 2013).

<sup>23</sup> See Michael Greenstone and Adam Looney, "A Dozen Economic Facts About Innovation" 2–3, available at [http://www.brookings.edu/~media/research/files/papers/2011/8/innovation-greenstone-looney/08\\_innovation\\_greenstone\\_looney.pdf](http://www.brookings.edu/~media/research/files/papers/2011/8/innovation-greenstone-looney/08_innovation_greenstone_looney.pdf) [hereinafter Greenstone and Looney]; Bureau of Labor Statistics 2014 data show that employment in occupations related to STEM has been projected to grow more than 9 million, or 13 percent, during the period between 2012 and 2022, 2 percent faster than the rate of growth projected for all occupations. Bureau of Labor Statistics, Occupational Outlook Quarterly, Spring 2014, "STEM 101: Intro to Tomorrow's Jobs" 6, available at <http://www.stemedcoalition.org/wp-content/uploads/2010/05/BLS-STEM-Jobs-report-spring-2014.pdf>. See also, Australian Government, Strategic Review of the Student Visa Program 2011 Report, ix, 1 (June 30, 2011), available at <http://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/2011-knight-review.pdf#search=knight%20review> (concluding that the economic benefit of international masters and doctoral research students includes third-party job creation).

<sup>24</sup> See e.g., Giovanni Peri, Kevin Shih, Chad Sparber, "Foreign STEM Workers and Native Wages and Employment in U.S. Cities," (National Bureau of Economic Research, May 2014), available at <http://www.nber.org/papers/w20093>.

<sup>25</sup> Jennifer Hunt, "Which Immigrants are Most Innovative and Entrepreneurial? Distinctions by Entry Visa," *Journal of Labor Economics* Vol 29 (3): 417–457 (2011).

<sup>26</sup> Jennifer Hunt and Marjolaine Gauthier-Loiselle, "How Much Does Immigration Boost Innovation?" *American Economic Journal: Macroeconomics* 2: 31–56 (2010).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Greenstone and Looney, *supra* note 23, at 2–3.

<sup>30</sup> See Congressional Research Service, Economics and National Security: Issues and Implications for U.S. Policy 28, available at <https://www.fas.org/sgp/crs/natsec/R41589.pdf> [hereinafter Economics and National Security]; see also The White House, National Security Strategy 16 (Feb. 2015), available at [https://www.whitehouse.gov/sites/default/files/docs/2015\\_national\\_security\\_strategy.pdf](https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf) ("Scientific discovery and technological innovation empower American leadership with a competitive edge that secures our military advantage, propels our economy, and improves the human condition.") [hereinafter 2015 National Security Strategy]; The White House, National Security Strategy 29 (May 2010), available at [https://www.whitehouse.gov/sites/default/files/rss\\_viewer/national\\_security\\_strategy.pdf](https://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf) ("America's long-term leadership depends on educating and producing future scientists and innovators.").

<sup>31</sup> The 2015 National Security Strategy concludes that "the American economy is an engine for global growth and a source of stability for the international system. In addition to being a key measure of power and influence in its own right, it underwrites our military strength and diplomatic influence. A strong economy, combined with a prominent U.S. presence in the global financial system, creates opportunities to advance our security." 2015 National Security Strategy, *supra* note 30, at 15.

<sup>32</sup> Pew Research Center, "Growth from Asia Drives Surge in U.S. Foreign Students" (June 18, 2015), available at <http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/> (citing Institute for International Education, Open Doors Data:

students in the program more than doubled its 2008 total.<sup>38</sup> In addition, Canada aims to double the number of international students in the country to 450,000 by 2022.<sup>39</sup>

In light of the United States' decrease in the percentage of international students received, and increased global efforts to attract them, DHS believes that the United States must take additional steps to improve these students' educational experience (both academic and practical) to ensure that we do not continue to lose ground. This is particularly true for foreign STEM students, who have comprised a significant portion of students in STEM degree programs in the United States, particularly at the graduate degree level.

The difference is particularly stark at the doctoral level, where foreign students earned 56.9 percent of all doctoral degrees in engineering; 52.5 percent of doctoral degrees in computer and information sciences; and approximately half the doctoral degrees in mathematics and statistics in the 2012–2013 academic year.<sup>40</sup> Recognizing that the international education programs for these students are increasingly competitive, DHS is committed to helping U.S. educational institutions contend with the expanded and diverse global opportunities for international study.

### 3. The Need to Improve the Existing STEM OPT Extension

With this proposed rule, DHS also recognizes the need to strengthen the existing STEM OPT extension to enhance the academic benefit of the program and maintain the nation's economic, scientific, and technological competitiveness. DHS is working to find new and innovative ways to encourage international STEM students to choose the United States as a destination for their studies. This proposal, in addition to including a modified version of the STEM OPT extension from the 2008 IFR, would increase the maximum training time period for STEM students, require a formal mentoring and training plan for each STEM OPT extension, and take steps to strengthen protections for

F–1 nonimmigrant students and U.S. workers. Providing an on-the-job educational experience through a U.S. employer qualified to develop and enhance skills through practical application has been DHS's primary guiding objective.

Many of the elements of this proposed rule have been the result of public comment on the 2008 IFR, which contained input from a range of stakeholders, including students and the broader academic community. This proposal also incorporates recommendations from the Homeland Security Academic Advisory Committee (HSAAC).<sup>41</sup> Following an in-depth review of stakeholder feedback, DHS believes that the changes proposed by this rule to the existing STEM OPT extension would benefit both F–1 students and international study programs in the United States, while adding important protections.

The changes will help improve the ability of F–1 STEM students to gain valuable on-the-job training from employers qualified to develop and enhance skills through practical application. Maintaining and improving practical training for STEM students provides these students with an improved ability to absorb a full range of project-based practical skills and knowledge directly related to their study.

The proposed changes will also help the nation's colleges and universities remain globally competitive, including by improving their ability to attract foreign STEM students to study in the United States. As noted above, these students enrich the cultural and academic life of college and university campuses throughout the United States and make important contributions to the U.S. economy and academic sector. The changes proposed in this rule will help strengthen the overall F–1 program in the face of growing international competition for the world's most promising international students.

Additionally, safeguards such as employer attestations, requiring employers to enroll in E-Verify, providing for DHS site visits, and requiring that STEM training opportunities provide commensurate terms and conditions to those provided

to U.S. workers will help protect both STEM OPT students and U.S. workers. Implementing the changes proposed in this rule thus will more effectively assist STEM OPT students with achieving the objectives of their courses of study while also benefiting U.S. academic institutions and guarding against adverse effects on U.S. workers.

Finally, DHS notes that the focus of this rule on the extension of OPT for STEM students also represents a step by the agency to improve a discrete portion of the practical training program.<sup>42</sup> DHS is not considering adding the requirements contained within this rulemaking to the general OPT program at this time. DHS may, however, consider the impacts of these proposed changes, once implemented, as a model for possible future changes to practical training programs more generally.

## V. Discussion of Elements of the STEM OPT Extension

### A. Including a STEM OPT Extension Within the OPT Program

As referenced above, DHS is taking this action to include a STEM OPT extension as part of the OPT program under the F–1 nonimmigrant classification in order to better ensure, among other important national interests, that the U.S. academic sector can remain competitive globally. Enabling continued extended OPT for qualifying students with experience in STEM fields is consistent with DHS's "Study in the States" initiative, announced after the 2008 IFR in September 2011 to encourage international students to study in the United States. That initiative particularly focused on enhancing our nation's economic, scientific and technological competitiveness by finding new ways to encourage talented international students to become involved in expanded post-graduate opportunities in the United States. The initiative has taken various steps to enhance and improve the Nation's nonimmigrant student programs.<sup>43</sup>

The proposed rule would enhance the ability of F–1 students to achieve the objectives of their courses of study while also benefiting the U.S. economy. More students will return home confident in their training, ready to begin a career in their field of study; others may take advantage of other provisions proposed herein to request to

<sup>38</sup> Citizenship and Immigration Canada, Quarterly Administrative Data Release, available at <http://www.cic.gc.ca/english/resources/statistics/data-release/2014-Q4/index.asp>.

<sup>39</sup> University World News Global Edition, *Schools are the New Battleground for Foreign Students*, July 15, 2015, Issue 376, available at <http://www.universityworldnews.com/article.php?story=201507150915156>.

<sup>40</sup> Pew Research Center, "Growth from Asia Drives Surge in U.S. Foreign Students" (June 18, 2015), available at <http://www.pewresearch.org/fact-tank/2015/06/18/growth-from-asia-drives-surge-in-u-s-foreign-students/>.

<sup>41</sup> The HSAAC provides advice and recommendations to the Secretary and senior leadership on matters related to homeland security and the academic community, including: student and recent graduate recruitment, international students, academic research and faculty exchanges, campus resilience, homeland security academic programs, and cybersecurity. See U.S. Department of Homeland Security, Homeland Security Academic Advisory Council Charter, available at <http://www.dhs.gov/publication/hsaac-charter>.

<sup>42</sup> During calendar year 2014, the number of students participating in a STEM OPT extension represented approximately 8.5 percent of all OPT participation.

<sup>43</sup> See "Study in the States," U.S. Department of Homeland Security, <http://studyinthestates.dhs.gov>.

change status following a STEM OPT extension and help further drive economic growth and cultural exchange in the United States.

#### B. STEM Extension Period for OPT

As noted above, in the 2008 IFR, DHS implemented a 17-month STEM OPT extension to provide STEM students and employers with improved OPT opportunities beyond the initial year of practical training. The 17-month period was intended to allow STEM students to receive additional practical experience aligned with their educational degree, and it would generally terminate near the beginning of the fiscal year. Following seven years of experience with the STEM OPT extension, DHS has decided in this rule to re-evaluate its length. Consistent with the discussion above, DHS believes the STEM OPT extension should first and foremost be targeted to complement the student's academic experience. The length of any extension should aim to produce an optimal educational experience in the relevant field of study, particularly given the complex nature of STEM projects and associated skill-development that require relatively lengthy time frames. The length should be conditioned on full compliance with the other requirements set forth in this preamble.

DHS proposes in this rule to increase the STEM OPT extension period to 24 months for students meeting the qualifying requirements. This 24-month extension, when combined with the 12 months of initial post-completion OPT, would effectively allow STEM students up to 36 months of practical training. DHS would also provide, for students who subsequently attain another STEM degree at a higher educational level, the ability to participate in an additional 24-month extension of any post-completion OPT based upon that second STEM degree.<sup>44</sup> The duration of an extension would be set at 24 months, rather than limited to a shorter period, due to the complexity and typical durations of research, development, testing, and other projects commonly undertaken in STEM fields. Affording greater participation in STEM training through changes to the period of the STEM OPT extension would also help the nation and its academic institutions remain

<sup>44</sup> DHS notes that, under this proposal, a student seeking to obtain a second STEM OPT extension during his or her lifetime will be unable to link this extension with his or her first extension. The student would need to complete a new initial post-completion practical training period and request a new STEM extension based on a different STEM degree. DHS welcomes comments on this aspect of the proposal.

competitive in light of global efforts offering international students longer post-study training experience without restrictions on the type of work that may be performed.<sup>45</sup>

DHS considered many factors in determining the proposed length for an improved STEM OPT extension period. An important consideration was the general duration of projects to be pursued by students on STEM OPT extensions. DHS believes that students participating in practical training in STEM fields should be encouraged to pursue meaningful projects that contribute to a deeper understanding of their field of study and help develop the practical skills necessary to advance their careers. This type of significant project—often involving a grant or fellowship application, management of grant money, focused research, and publication of a report—typically requires several years to complete. Stakeholders have indicated, moreover, that this process often takes longer in the STEM community than in other academic or business areas. For example, the National Science Foundation (NSF) typically funds projects through grants that last for up to three years.<sup>46</sup> And in many fields such as mathematics, computer science, and the social sciences, NSF is the major source of federal funding.<sup>47</sup>

Fostering integration of research and education through the types of programs, projects, and activities described above will help recruit, train, and prepare a diverse STEM workforce to advance the frontiers of science and participate in the U.S. technology-based

<sup>45</sup> See, e.g., *Canadian Study permits and Australian Temporary Grad. visa*, *supra* note 36.

<sup>46</sup> *Id.* at sec. II.c.2.a.(4)(b) (“The proposed duration for which support is requested must be consistent with the nature and complexity of the proposed activity. Grants are normally awarded for up to three years but may be awarded for periods of up to five years.”). For instance, NSF funding rate data show that in fiscal years 2012–2014, grant awards for biology were provided for an average duration of 2.87, 2.88, and 2.81 years, respectively.

<sup>47</sup> “About the National Science Foundation,” NSF, <http://www.nsf.gov/about/>. Such grants are commonly solicited by and awarded to organizations similar to those in the STEM OPT employer community, including universities, colleges, and research laboratories having strong capabilities in scientific or engineering research or education, and cooperative projects that involve both universities and the private sector. See NSF, “Grant Proposal Guide” (December 2014), available at [http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg\\_1.jsp#categories](http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg_1.jsp#categories) (listing categories of organizations that are eligible to submit grant proposals). Based on SEVIS data, three of the top six employers offering STEM OPT opportunities and employing STEM OPT students that have begun over the past five years are either higher education institutions or entities conducting research affiliated with universities.

economy.<sup>48</sup> Combined with the initial 12-month OPT period, a maximum 24-month STEM OPT extension would provide students a sufficient opportunity to participate through the life of such a grant.<sup>49</sup> Accordingly, and following consultation with the Department of Education and the National Science Foundation (NSF), DHS believes that an appropriate benchmark for the maximum duration of OPT for STEM students is the standard duration of an NSF grant—approximately three years.

DHS anticipates that the 24-month extension would significantly enhance the academic benefit of a STEM student's OPT experience. As noted above, many research projects take years to complete, and under the new STEM OPT extension, a student would have increased opportunities to learn how to apply for a grant or fellowship, become a responsible steward of grant money, initiate a study or project, see the study or project through to conclusion, write a report and obtain peer review, and have the report published. *DHS requests public comment and the submission of empirical data in relation to this proposition. In addition, DHS requests public comment regarding the length of research, development, testing and other projects for which STEM graduates (regardless of nationality) from U.S. universities are typically assigned in the workplace.*

DHS also proposes to allow a student who has completed a STEM OPT extension pursuant to previous study in the United States and who obtains another qualifying degree at a higher degree level (or has a qualifying prior degree, as discussed in more detail below), to qualify for eligibility for a second 24-month STEM OPT extension upon the expiration of the general period of OPT based on that additional degree.

*DHS requests public comment on the proposed 24-month STEM OPT extension and the ability for qualifying students to receive an additional such STEM OPT extension based on a second STEM degree.* In particular, DHS requests comment from STEM students, educational institutions, and employers on the appropriate STEM OPT extension length to ensure that practical training

<sup>48</sup> *Id.*, available at [http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg\\_2.jsp](http://www.nsf.gov/pubs/policydocs/pappguide/nsf15001/gpg_2.jsp).

<sup>49</sup> Although DHS has considered tailoring the length of the STEM OPT extension in this rule to individual student practical training proposals, DHS's initial assessment is that an across-the-board maximum period for such extensions would be significantly more straightforward to administer and would also be consistent with past administration of the general OPT program, as well as the existing STEM OPT extension.

for STEM students is most meaningfully educational and beneficial to them, and less disruptive for institutions and employers. DHS is particularly interested in public input regarding whether 24 months is the appropriate duration for STEM OPT extensions, or whether a shorter or longer duration (e.g., 17 months or 36 months) is preferable, and why.

As a transitional measure, DHS is also proposing to allow a subset of students already on a 17-month extension to take advantage of the proposed 24-month program, consistent with the requirements set forth in this proposed rule. Qualifying students would be able to request the balance of the modified extension up to 120 days before the end of the student's 17-month period. Such requesting students would have to meet all requirements of the new STEM OPT extension proposal, including submission of the Mentoring and Training Plan described below.

With respect to applications for STEM OPT extension currently pending before DHS or submitted prior to the effective date of any final rule, DHS intends to adjudicate the application consistent with the regulations that existed at the time the application was submitted (*i.e.*, such applications, if approved, would result in a 17-month extension). Following the effective date of a final rule with a different STEM OPT extension duration, a student would then be able to request the balance of the modified extension up to 120 days before the end of the student's 17-month period, provided the student meets all requirements of the new STEM OPT extension proposal, including submission of the Mentoring and Training Plan. In the alternative, a student with a pending application for a 17-month extension may also choose to withdraw that application and file a new application for the proposed 24-month STEM OPT extension.

DHS is making every effort to have a final rule take effect prior to February 13, 2016, when the stay on the vacatur of the 2008 IFR is currently set to expire. In the event, however, that a final rule resulting from this rulemaking does not take effect before the vacatur of the 2008 IFR, DHS will lack clear regulatory authority to grant pending applications for STEM OPT extensions. In that case, DHS will evaluate options to address pending applications, such as returning such applications and requiring re-filing upon completion of a final rule. DHS seeks comments on these and other options for addressing pending applications if a final rule is not in place prior to the court's vacatur,

including comments on the harm that such a gap may cause.

*DHS welcomes comments regarding each of the proposed transition procedures described above, including alternatives to the potential courses of action identified here.*

### *C. STEM Definition and CIP Categories for STEM OPT Extension*

The 2008 IFR first introduced the STEM Designated Degree Program list, which includes all Department of Education CIP codes that are eligible for the current 17-month extension. The 2008 IFR noted that any future changes to the list would be posted on SEVP's Web site, but did not set forth a formal definition for "STEM fields" or a public notice process regarding updates to the list. Many commenters on the 2008 IFR indicated that the STEM OPT extension should be available to students in all fields of study, or that the list promulgated at that time be expanded to include various other degree programs. DHS has taken these concerns into consideration in crafting a proposed approach for this rule that seeks to strike a reasonable balance between the current understanding of STEM needs and potential future changes in these fields. The approach focuses on generally understood STEM degree fields that are of particular academic and practical demand for the U.S. and international community, while also ensuring flexibility for potential changes as fields of study in STEM sectors evolve with changes in technology, as well as in academic programs, interests and trends.

DHS proposes in this rulemaking a general definition of "STEM fields" and proposes a process for public notification in the **Federal Register** when DHS updates the Designated Degree Program list on SEVP's Web site. DHS would continue to produce a list identifying the groups within the Department of Education's CIP taxonomy that qualify as appropriate categories for the STEM OPT extension. DHS may from time to time revise the Designated Degree Program list based upon the dynamic nature of STEM fields and potential changes to the CIP taxonomy.

To provide a clear definition to guide changes to the STEM Designated Degree Program list, DHS proposes to utilize the description referenced by the Department of Education's National Center for Education Statistics (NCES), Institute of Education Services, to define "STEM fields." DHS would define "STEM field" as a field included in the Department of Education's CIP taxonomy within the summary groups

containing mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences, and related fields. DHS believes the NCES definition provides a sound basis because it not only encompasses many of the fields already contained on the current STEM Designated Degree Program list, but draws on the Department of Education's expertise in the area of higher education and academic studies generally. ICE often defers to the Department of Education's definitions or processes in the area of higher education. DHS therefore proposes that the definition of STEM fields encompass mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences, as well as related fields.<sup>50</sup> DHS believes that a clear definition of the types of degree fields eligible under the regulation would improve the process for altering categories contained within the STEM Designated Degree Program list.

DHS believes that its definition of STEM fields should be tailored to capture those STEM fields of study for which an extension of practical training is most beneficial. *DHS requests comment from the public on the academic benefit of the STEM OPT extension for STEM students generally as well as for specific STEM fields. DHS also requests comment on whether changes to the current content or structure of the list may be helpful or appropriate.*<sup>51</sup> Although DHS is not currently considering expanding the STEM OPT extension to non-STEM fields, commenters are encouraged to compare STEM and non-STEM fields of study for purposes of commenting on this definition. As is the current process, DHS envisions that, upon finalizing this proposed rule, the agency would continue to accept, for DHS review, suggested additions to the STEM Designated Degree Program list at [SEVP@ice.dhs.gov](mailto:SEVP@ice.dhs.gov)

<sup>50</sup> U.S. Department of Education National Center for Education Statistics Institute of Education Sciences, "Stats in Brief" (July 2009), available at <http://nces.ed.gov/pubs2009/2009161.pdf>.

<sup>51</sup> The current list is available in the docket for this rulemaking. Future revisions may include additional degrees, including degrees listed within the summary groups for Agriculture, Agriculture Operations, and Related Sciences; Computer and Information Sciences and Support Services; Engineering; Engineering Technologies and Engineering-Related Fields; Biological and Biomedical Sciences; Mathematics and Statistics; and Physical Sciences.

#### D. Mentoring and Training Plan

Multiple commenters to the 2008 IFR highlighted the important academic benefits associated with OPT participation. Commenters emphasized that real-world experience is a vital part of the educational experience, and that the opportunity for OPT participation draws high-quality students to the United States from around the world. Other commenters noted that the 2008 IFR did not include an explicit mechanism to inform employers of the purpose of or requirements associated with practical training.

The proposed rule seeks to ensure that the STEM OPT extension more effectively enables STEM OPT students to obtain valuable practical work experience directly related to their fields of study. To achieve this aim, the proposed rule requires that employers incorporate a formal mentoring and training program for STEM OPT students. Mentoring is a time-tested and widely used strategic approach to developing professional skills. The mentor should be an experienced employee or group of employees who would teach and counsel the student. As part of this mentoring and training program, the employer would agree to take responsibility for the student's training and ensure that skill enhancement is the primary goal. The student would be required to prepare a formalized Mentoring and Training Plan with the employer and to submit the plan to the student's DSO before the DSO could recommend a STEM OPT extension in the student's SEVIS record. This would generally provide review of the Mentoring and Training Plan by the educational institution granting the degree related to the training. In cases where the student intends to use the newly proposed option of requesting an extension based on a previously-obtained degree, the review would come from the institution that provided the student's most recent degree (*i.e.*, the institution whose official is certifying, based on SEVIS or official transcripts, that a prior STEM degree enables the student to continue his or her eligibility for the practical training).<sup>52</sup>

To better ensure that the STEM OPT extension fulfills the specific practical training needs of STEM students, the

employer that intends to provide a STEM OPT opportunity to a student would work with the student to design a customized training plan to enhance the practical skills and methods the student studied while attaining his or her degree. Such training plans would require specific training goals, as well as a description of how those goals will be achieved.

DHS also proposes that the student provide his or her DSO with an evaluation of his or her STEM OPT every six months, as well as a final evaluation at the conclusion of the OPT period. These evaluations would document the student's progress toward the agreed-upon training goals and thus better ensure that such goals are being met. The factors to be evaluated would be included on the Mentoring and Training Plan, which must be signed by both the student and the immediate supervisor at the student's workplace. The student's school of most recent enrollment would be responsible for ensuring ICE has access to records of student evaluations for a period of three years following completion of the student's STEM OPT training.

DHS plans to incorporate the submission of the Mentoring and Training Plan into SEVIS at a later date. Until that time DHS may require the submission of the Plan to ICE or USCIS, including to USCIS when the student seeks certain benefit requests from USCIS, such as an application for employment authorization. Under 8 CFR 103.2(b)(8)(iii), USCIS may issue a Request for Evidence or Notice of Intent to Deny if all required initial evidence has been submitted, but the evidence submitted does not establish eligibility. Accordingly, USCIS may request a copy of the Mentoring and Training Plan, in addition to other documentation, when such documentation is necessary to determine an applicant's eligibility for the benefit, including instances when there is suspected fraud in the application.

#### E. USCIS E-Verify Employment Verification Program

The 2008 IFR provided that the STEM OPT extension would only be available to those students seeking employment or seeking to maintain employment with employers that are enrolled and in good standing in USCIS' E-Verify program. A number of commenters to the 2008 IFR addressed this provision. Some commenters believed that this provision would unduly limit the opportunities available to STEM OPT students; others expressed concern about reported inaccuracies in E-Verify-related databases. Finally, some commenters

stated that the E-Verify provision would not ensure electronic verification of all STEM OPT students, because the E-Verify program only applies to new hires and therefore would not apply to students who are using the STEM OPT extension to extend their employment with the same employer. A number of commenters acknowledged, however, that the program was improving and that participation in the E-Verify program was rapidly growing.

DHS continues to believe that the E-Verify program is an important measure to ensure the integrity of the STEM OPT extension. The E-Verify program is an Internet-based service operated by USCIS, in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. E-Verify electronically compares information contained on the Employment Eligibility Verification Form I-9 (herein Form I-9) with records contained in government databases to help employers verify the identity and employment eligibility of newly-hired employees. This program currently is the best means available for employers to determine employment eligibility of new hires and, in some cases, existing employees.

Before an employer can participate in the E-Verify program, the employer must enter into a Memorandum of Understanding (MOU) with DHS and SSA. This memorandum requires employers to agree to abide by current legal hiring procedures and to follow required procedures in the E-Verify process to ensure that E-Verify maximizes the reliability and ease of use of the system, while preventing unauthorized disclosure of personal information and unlawful discriminatory practices based on national origin or citizenship status. Violation of the terms of this agreement by the employer is grounds for immediate termination of its participation in the program.<sup>53</sup>

Employers participating in E-Verify must still complete a Form I-9 for each newly hired employee, as required under current law. Following completion of the Form I-9, the employer must enter the newly hired worker's information into the E-Verify system, which would then check that information against information

<sup>52</sup> The proposed rule clarifies the student's responsibility to present his or her Mentoring and Training Plan to the DSO of the school of most recent enrollment, so that the DSO who has been involved with the student most recently would be the DSO responsible regarding all ongoing OPT. This change is a necessary result of this rule also proposing changes that could enable a student to engage in a STEM OPT opportunity related to a previously obtained degree.

<sup>53</sup> See U.S. Citizenship and Immigration Services, The E-Verify Memorandum of Understanding for Employers, available at [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/MOU\\_for\\_E-Verify\\_Employer.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/MOU_for_E-Verify_Employer.pdf).

contained in government databases. For example, E-Verify compares employee information against more than 425 million records in the SSA database and more than 60 million records stored in the DHS database. At the start of 2015, over 98 percent of all employer queries were instantly verified as work authorized. Between 2008 (the year the 2008 IFR included the original E-Verify requirement for STEM OPT employers) and the beginning of 2015, E-Verify participation by employers has increased by over 500 percent.<sup>54</sup> E-Verify is now a well-established and important measure that would complement other oversight elements in this proposed rule, and it is the most efficient means available for employers to determine the employment eligibility of new hires, including students who are participating in the STEM OPT extension.

It is important to note that once an employer enrolls in E-Verify, that employer is responsible for verifying all new hires, including newly hired students with STEM OPT extensions, at the hiring site(s) identified in the MOU executed between the employer and DHS. The earliest an employer may use E-Verify with respect to an individual is after the individual accepts an offer of employment and the employee and employer complete the Form I-9. The verification must be made no later than the end of three business days after the new hire's first day of employment. If, however, an employer enrolls in E-Verify to retain a student already employed pursuant to an initial 12-month grant of OPT, the employer would reverify the student's STEM OPT extension on Form I-9 but may not verify the employment eligibility of the employee in E-Verify, as the MOU generally prohibits the use of E-Verify with respect to existing employees.

Additional information on enrollment and responsibilities under E-Verify can be found at <http://www.uscis.gov/E-Verify>. Employers can register for E-Verify on-line at <http://www.uscis.gov/E-Verify>. The site provides instructions for completing the MOU needed to officially register for the program. DHS believes that the E-Verify enrollment requirement would continue to provide an efficient and accurate manner of better ensuring that students participating in the STEM OPT

extension are legally authorized to work. *DHS requests comment on this proposal, including from students and employers that have had experience with this requirement under the 2008 IFR.*

#### F. Previously Obtained STEM Degrees

Commenters to the 2008 IFR inquired about eligibility for a STEM OPT extension in instances where a student earns a bachelor's degree in a STEM field but a master's degree in a non-STEM field, or two degrees at the same education level, one of which is in a STEM field. Since the 2008 IFR, DHS has found that some F-1 students approved for OPT in STEM-related fields remain unable to extend their OPT, even if they have a prior STEM degree. This is because the regulations have effectively required that the OPT be directly related to the student's most recent major area of study and that the DSO certify that the student's degree that is the basis for his or her current period of OPT is a degree contained on the current STEM Designated Degree Program list. *See* 8 CFR 214.2(f)(10)(ii)(A) and (f)(11)(ii)(A). This limitation decreases the number of F-1 students with STEM degrees and STEM-related expertise available to participate in a STEM OPT extension.

Stakeholders, including the academic community and the HSAAC, have requested the elimination of this restriction, such that a STEM OPT extension would be available to a student with a prior qualifying STEM degree, even if the student's most recent degree would not qualify. Stakeholders assert that such a modification would broaden the educational and training benefits of the STEM OPT extension to additional students with STEM backgrounds and would further benefit the U.S. economy by enhancing our nation's ability to compete and innovate in these fields.

DHS agrees and is accordingly proposing to permit students to use a previously obtained and directly related STEM degree from an accredited school as a basis to apply for a STEM OPT extension. This previously obtained degree would make the STEM OPT extension available to students who have a prior background in STEM but who are currently engaging in OPT that has been authorized based on their study towards a different degree. Such an OPT extension, however, would be available only to such students who seek to develop and utilize STEM skills from their prior STEM degree during the extended OPT period.

Under this proposal, students would not be able to use a previously obtained

degree to obtain a STEM OPT extension immediately subsequent to another STEM OPT extension. In other words, the proposed changes would not provide students the ability to obtain two immediately consecutive STEM OPT extensions. Under the proposed rule, the second extension would be available to students only upon completion of a new initial post-completion OPT period.

DHS proposes to permit DSOs at the student's school of most recent enrollment to certify prior STEM degrees, so long as the STEM degree was earned at a school accredited by an accrediting agency recognized by the Department of Education.<sup>55</sup> The degree would also need to be on the STEM Designated Degree Program list at the time of the student's application. For a student who is relying on a previously obtained degree for the STEM OPT extension, his or her most recent degree must also be from an accredited institution and the student's practical training opportunity must be directly related to the previously obtained STEM degree. For a previously obtained degree to qualify as the basis for a STEM OPT extension, the degree must have been conferred within the 10 years preceding the student's application date. This requirement is intended to ensure the degree was conferred recently enough that it would be relevant to a present-day STEM OPT opportunity.

Finally, due to the difficulty in determining the equivalency of a degree obtained at a foreign institution, and because the purpose of OPT is to further one's course of study in the United States, STEM degrees from foreign schools will not be permitted to qualify under the proposed program.

DHS requests comment on all aspects of this proposal.

#### G. Safeguarding U.S. Workers Through Measures Consistent With Labor Market Protections

Many commenters to the 2008 IFR agreed with the Department's assessment that the 17-month STEM OPT extension would benefit both students and the U.S. economy. Commenters noted that the STEM labor shortage described in the 2008 IFR was well documented and that the United States faced stiff competition from other countries for high-skilled STEM workers. One commenter stated that the IFR provided "small, but helpful steps" towards addressing a critical need for

<sup>54</sup> U.S. Citizenship and Immigration Services, E-Verify Overview 8, available at [http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/e-verify-presentation.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/e-verify-presentation.pdf) (noting that 87,758 employers were enrolled as of fiscal year 2008 compared to 568,759 employers as of fiscal year 2015).

<sup>55</sup> A qualifying, previously obtained degree would provide eligibility for an extension so long as the educational institution that conferred the degree was accredited at the time the degree was granted.

qualified, highly-trained and well-educated STEM workers. Another commenter stated that the rule partially addressed the severe shortage of U.S. workers in science, engineering, mathematics and technology. Commenters highlighted the importance of the STEM OPT extension not only for research universities that seek to attract high-quality international students, but also for employers seeking to fill empty positions. Some commenters characterized the availability of meaningful practical training as a critical aspect of the educational experience. As noted elsewhere in this preamble, many commenters also stated that the impact of the rule was too limited, and requested that eligibility for the extension be expanded to students in additional degree programs, as well as to students employed by employers that do not use E-Verify.

A number of commenters, however, objected to the 17-month STEM OPT extension on the basis of potential negative impacts on U.S. workers in STEM fields. For instance, a commenter stated that demand for technical workers was very weak in engineering occupations and growing modestly in computing and mathematics occupations. The same commenter stated that, especially when combined with H-1B, L-1, and other skilled workers, the number of students taking advantage of the STEM OPT extension would distort the domestic labor market. Some commenters specifically stated that employers would prefer to hire F-1 students on STEM OPT extensions because these students would work for lower wages. Some commenters noted that some U.S. firms had previously advertised STEM positions as being available only to OPT students. Commenters requested that DHS consider written reports, testimony, and other sources describing the state of the U.S. STEM workforce. Commenters also questioned the veracity of studies and reports cited in the preamble to the 2008 IFR, and some questioned whether DHS had interpreted that information correctly in assessing the then-prevailing STEM labor market. Some commenters stated that the STEM OPT extension was contrary to the academic purpose of the F-1 statute. In general, commenters who made these and similar points requested that DHS eliminate the STEM OPT extension and the Cap Gap provision in their entirety.

DHS's initial assessment, consistent with many of the public comments and following consultation with the U.S. Departments of Education and Labor, is that the direct benefit to the academic

experience resulting from the STEM OPT extension is significant, and that on the whole, positive indirect effects on educational institutions and academic exchange support the availability of a STEM OPT extension at this time. Nevertheless, DHS recognizes the concerns expressed above and proposes to modify the terms and conditions for employer participation in the STEM OPT extension in order to protect U.S. workers from possible employer abuses of these programs.

For instance, any employer wishing to hire a student participating in the STEM OPT extension would, as part of a newly required Mentoring and Training Plan, be required to sign a sworn attestation affirming that, among other things: (1) The employer has sufficient resources and personnel available and is prepared to provide appropriate mentoring and training in connection with the specified opportunity; (2) the employer will not terminate, lay off, or furlough a U.S. worker as a result of providing the STEM OPT to the student; and (3) the student's opportunity assists the student in attaining his or her training objectives. As with all affirmations contained in the Mentoring and Training Plan, the employer would attest that these commitments are true and correct to the best of the employer's knowledge, information and belief.

Additionally, the proposed rule would require that the terms and conditions of an employer's STEM practical training opportunity—including duties, hours and compensation<sup>56</sup>—be commensurate with those provided to the employer's similarly situated U.S. workers. Work duties must be designed to assist the student with continued learning and satisfy the existing ICE guidelines for work hours when participating in post-completion OPT, which are set at a minimum of 20 hours per week, and would be so defined under this proposed rule.<sup>57</sup> If the employer does not employ and has not recently employed more than two similarly situated U.S. workers, the employer would be required to ensure that the

<sup>56</sup> DHS interprets the proposed compensation element to encompass wages and any other non-employee-benefit remuneration, including housing allotments, stipends, or similar provisions that are typically provided to employed students.

<sup>57</sup> See U.S. Immigration and Customs Enforcement, Policy Guidance 1004-03—Update to Optional Practical Training: Policy Guidance For SEVP and DSOs of SEVP-Certified Schools with F-1 Students Eligible for or Pursuing Post-Completion OPT, 17 (April 23, 2010), available at [http://www.ice.gov/doclib/sevis/pdf/opt\\_policy\\_guidance\\_042010.pdf](http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_042010.pdf) (stating that a student, including those participating in the 17-month STEM OPT extension, must work at least 20 hours per week in a qualifying position to be considered employed).

terms and conditions of a STEM practical training opportunity are commensurate with those for similarly situated U.S. workers in other employers of analogous size and industry and in the same geographic area of employment. "Similarly situated U.S. workers" would include U.S. workers performing similar duties and with similar educational backgrounds, employment experience, levels of responsibility, and skill sets as the STEM OPT student. The student's compensation would be reported on the Mentoring and Training Plan and the student would be responsible for reporting any adjustments. *DHS requests public comment, especially from employers and labor organizations, on all aspects of this provision, including the types of business factors employers would use to evaluate whether their workers are similarly situated.*

With regard to the requirement to provide commensurate compensation, DHS anticipates that employers would be able to show compliance through a variety of existing real-world practices. So long as the attestation is made in good faith and to the best of the employer's knowledge, information and belief, employers would be able to continue relying on many of the same resources they already use, such as local associations or national or local wage surveys, to set compensation for their U.S. workers. The rule would also permit employers to rely on other bases for establishing compensation levels. For example, employers hiring high-skilled STEM OPT students would be able to refer to prevailing wages provided by the Department of Labor's Office of Foreign Labor Certification for employees in the same occupation in the same area of employment.

To help gauge compliance, employers would be required to provide DHS with student compensation information, which would better situate the agency to monitor whether STEM OPT students are being compensated fairly. This would both protect such students and ensure the practical training has no appreciable adverse consequences on the U.S. labor market. Additionally, the proposed rule would authorize a recurrent evaluation process that would allow ICE to monitor student progress during the OPT period. These evaluations would ensure continuous focus on the student's development throughout the student's training period, consistent with the Mentoring and Training Plan.

With the added assurances that a student will be enhancing his or her course of study through training-based

learning experiences and mentoring, combined with the employer non-displacement assurance, the requirement that STEM OPT students receive terms and conditions of employment (including compensation) commensurate with those of similarly situated U.S. workers, and other related requirements, DHS is confident that practical training during the STEM OPT extension will be carried out in a manner that safeguards U.S. worker interests.

Some commenters to the 2008 IFR also expressed concern that the STEM OPT extension could be exploited by entities that hope to profit from the program but that may not have an actual STEM opportunity available for a student at the time of the student's application for the extension. To the extent that this comment refers to temporary placement agencies, DHS does not envision that such "temp" agencies will generally be able to provide eligible opportunities under the proposed STEM OPT extension, including by complying with the Mentoring and Training Plan process and requirements.

Moreover, under this rule, DSOs would be prohibited from recommending a student for a STEM OPT extension if the employer has not provided the assurances required by this rule or is otherwise not in compliance with the relevant reporting, evaluation and other requirements described in this rule. Additionally, DHS has the ability to deny STEM OPT extensions with employers that the agency determines have failed to comply with the regulatory requirements, including the requirement to formerly execute the student's Mentoring and Training Plan and the requirement to comply with the assurances contained therein. ICE may investigate an employer's compliance with these assurances, based on a complaint or otherwise, consistent with the proposed employer site visit provision discussed in the following section. These safeguards will more effectively ensure that STEM OPT students achieve the objectives of their courses of study, while benefiting U.S. academic institutions and protecting U.S. workers. *DHS requests comment on the feasibility and effectiveness of each of these provisions, including the obligations to confirm (1) that the terms and conditions of a STEM OPT student's employment are commensurate with those for similarly situated U.S. workers, and (2) that no U.S. worker will be terminated, laid off, or furloughed as a result of a STEM OPT opportunity.*

DHS recognizes that many university personnel submitted comments on the 2008 IFR highlighting the significant administrative burdens faced by DSOs in helping to coordinate participation in the F-1 program, including OPT. DHS acknowledges that the aforementioned proposals may impose additional resource burdens on DSOs, and may require universities to invest further in DSOs in order to take full advantage of the F-1 program.<sup>58</sup> *DHS requests comment from universities, DSOs, and other interested members of the public on how DHS can most effectively ensure an appropriate level of participation in this program by educational institutions.* In light of the passage of time since implementation of the 2008 IFR, DHS particularly welcomes the submission of specific data related to the cost of implementation for that rulemaking.

#### *H. Oversight Through School Accreditation Requirements and Employer Site Visits*

With this rule, DHS proposes that in order for a student to be eligible for a STEM OPT extension, the student's STEM degree must be received from an educational institution accredited by an accrediting agency recognized by the Department of Education.<sup>59</sup> The goal of accreditation is to ensure the quality of educational institutions and programs. Specifically, the accreditation process involves the periodic review of institutions and programs to determine whether they meet established standards in the profession and are achieving their stated educational objectives.<sup>60</sup> Given these safeguards, DHS believes that requiring qualified degrees to be from accredited institutions would strengthen and better ensure the proper use of STEM OPT extensions.

ICE's SEVP currently performs an examination and assessment of all schools applying for certification and re-certification to accept F-1 students. 8 CFR 214.3(b). Although SEVP has

<sup>58</sup> DHS notes, however, that it has implemented the Mentoring and Training Plan requirement in part to ensure that students and employers are fully aware of the requirements associated with this program.

<sup>59</sup> An accrediting agency is a private educational association of regional or national scope that develops evaluation criteria and conducts peer evaluations of educational institutions and academic programs. U.S. Department of Education Office of Postsecondary Education, "The Database of Accredited Postsecondary Schools and Programs," available at <http://ope.ed.gov/accreditation>.

<sup>60</sup> U.S. Department of Education Office of Postsecondary Accreditation, "FAQs about Accreditation", available at <http://ope.ed.gov/accreditation/FAQAccr.aspx>.

procedures "in lieu of accreditation" to establish the validity and quality of schools in certain cases, accreditation is preferred and given significant weight in the overall certification assessment. Increasingly, schools are choosing to obtain accreditation. In the past five years, less than one percent of students participating in a STEM OPT extension had graduated from non-accredited schools.<sup>61</sup> Thus, while accreditation may impose certain burdens, DHS does not expect the accreditation requirement to have broad impact on STEM OPT students.

DHS also proposes to clarify that ICE, at its discretion, may conduct "on-site reviews" to ensure that employers meet program requirements, including that they are complying with assurances and that they possess the ability and resources to provide structured and guided work-based learning experiences according to the individualized Mentoring and Training Plans. The combination of requiring school accreditation and conducting discretionary ICE inspections of employers will reduce the potential for any fraudulent use of F-1 nonimmigrant status during the period of STEM OPT training.

*DHS requests comment from the public on all aspects of this proposal, including the feasibility and effectiveness of imposing a firm accreditation requirement as a condition of participation in the STEM OPT extension.* DHS requests input specifically from non-accredited institutions that currently have or previously had F-1 students participating in a STEM OPT extension. DHS requests comment from such institutions and other members of the public on the availability and cost of accreditation, the practical significance of accreditation, and the potential that some student populations may lose eligibility for the STEM OPT extension.

#### *I. Additional Compliance Requirements*

This proposed rule includes additional requirements to track STEM OPT students, mitigate the potential for fraud, and ensure that students are truly furthering their course of study. As discussed in the 2008 IFR, DHS' ability to track nonimmigrant students in the United States relies on reporting by the students' DSOs, who obtain required information from the school's recordkeeping systems and through contact with the students. Students on OPT, however, are often away from the

<sup>61</sup> Based on data from 2010 to 2014, 0.56 percent of STEM OPT extensions were granted to students who graduated from non-accredited schools.

academic environment, making it difficult for DSOs to ensure proper and prompt reporting on student status to ICE. While DHS regulations currently require DSOs to update SEVIS, the current reporting requirements depend entirely on the student's timely compliance. And DSOs are not currently required to review and verify information reported by students on a recurring basis. This combination of factors hinders systematic reporting and ICE's ability to track F-1 students during OPT.

Accordingly, this proposed rule includes a number of compliance requirements established in the 2008 IFR for the current 17-month STEM OPT extension and adds additional measures that would supplement the goal of ensuring that the STEM OPT extension is directly related to a student's field of study. Requirements from the 2008 IFR that are proposed to be included in the STEM OPT extension under this rule include the following:

- The employer must report to the relevant DSO when an F-1 student on a STEM OPT extension terminates or otherwise leaves his or her employment prior to the end of the authorized period of OPT and must do so no later than 48 hours after the student leaves employment. Employers must report this information to the DSO unless DHS announces, through a **Federal Register** notice, another means to report such information. The contact information for the DSO is on the student's Form I-20. DHS will only extend OPT for STEM students employed by employers that agree in the Mentoring and Training Plan to report this information.

- Students who are granted the STEM OPT extension are required to report to their DSO every six months, confirming the validity of their SEVIS information, including legal name, residential or mailing address, employer name and address, and/or loss of employment.

These six-month requirements ensure adequate DHS oversight of the STEM OPT program by enhancing DHS's knowledge of the student's activities and whereabouts.

The proposed rule also includes several other requirements to provide additional oversight over the STEM OPT extension, consistent with the proposed change to the duration of the extension. The proposed rule would require any employer providing a STEM practical training opportunity to have an employer identification number (EIN) used for tax purposes. Access to this EIN will help DHS better ensure program compliance. The proposed rule would also require students who are granted the STEM OPT extension to

provide, at six-month intervals, an evaluation on their training progress and an update on the extent that their training goals are being met.

The proposed rule would also limit the maximum period in which a student may be unemployed to 90 days during his or her initial period of post-completion OPT, and permit an additional 60 days, for an aggregate of 150 days, for students whose OPT includes a 24-month STEM OPT extension. The 90-day aggregate period during initial post-completion OPT would remain at the level proposed in the 2008 IFR. Such a safeguard prevents OPT students from taking improper advantage of the program by, for instance, remaining in the United States without attempting to complement their learning through training. DHS proposes to revise the aggregate maximum allowed period of unemployment to 150 days for an F-1 student having an approved STEM OPT extension consistent with the lengthened 24-month period for such an extension.

In comments received on the 2008 IFR, many commenters opposed, or requested revising, the limits on unemployment during OPT. Some commenters suggested that unemployment limits pose significant burdens and that students should be able to maintain their status by simply seeking employment. Other commenters offered suggestions for revising the unemployment limits by allowing 120, 150, or 180 days of unemployment during initial post-completion OPT and a longer period during any STEM OPT extension. DHS believes that removing unemployment limits would be inconsistent with the agency's role of overseeing and ensuring OPT program integrity. DHS also believes that the proposed 150 days for students granted a STEM OPT extension would provide additional flexibility when compared to the 120 days permitted under the current program's 17-month extension. With this change, DHS acknowledges the concerns of commenters who described the challenges that international students face in locating and obtaining training experiences in the United States. *DHS welcomes comments on this issue.*

An additional newly proposed aspect of the STEM OPT extension is that a student seeking an extension would be required to properly file his or her Application for Employment Authorization with USCIS within 60 days of the date the DSO enters the recommendation for the STEM OPT extension into the SEVIS record. Under the 2008 IFR, students were required to file their Application for Employment

Authorization with USCIS within 30 days of the DSO recommendation. By expanding the application filing period, applicants would be afforded additional flexibility. Among other things, a longer application filing window would reduce: (1) The number of USCIS denials on Forms I-765 that result from expired Forms I-20, (2) the number of associated data corrections needed in SEVIS, and (3) the number of students who would otherwise need to ask DSOs for updated Forms I-20 to replace those that have expired.

Additionally, ICE is working toward technology that would allow students to update their basic information in SEVIS without gaining access to restricted areas of the system where student access would be inappropriate. Once this technology is implemented, students would have increased ability to maintain their own records. This would also decrease the workload on DSOs, who would no longer be required to update student information while students are participating in practical training.

#### *J. Cap-Gap Extension for F-1 Students With Timely Filed H-1B Petitions and Change of Status Requests*

As noted elsewhere in this preamble, the 2008 IFR included provisions, such as 8 CFR 214.2(f)(5)(vi) and 8 CFR 274a.12(b)(6)(v), that allowed for automatic extension of status and employment authorization for any F-1 student with a timely filed H-1B petition and request for change of status, if the student's petition has an employment start date of October 1 of the following fiscal year. The 2008 IFR made these extensions available only until the beginning of the succeeding fiscal year. The extensions were intended to avoid situations where F-1 students who are affected by the H-1B cap are required to leave the country or terminate employment at the end of their authorized period of stay, even though they have an approved H-1B petition that would again provide status to the student in a few months' time.

Many comments on the 2008 IFR were supportive of the "Cap-Gap" extension provided in that rule. Some commenters, however, objected to the Cap-Gap provision for reasons related to its potential impact on U.S. workers.

The "Cap-Gap" provision is intended to avoid the inconvenience of temporary gaps in status, which would normally require individuals to leave the country and thereby suffer significant disruption to their careers and family. With respect to comments requesting elimination of the provision, DHS continues to believe that the Cap-Gap provision is a

commonsense administrative measure fully consistent with the underlying purpose of the practical training program. The so-called “Cap-Gap” is a result of the misalignment of the academic year with the start of the fiscal year. The Cap-Gap relief measure avoids inconvenience to some F–1 students and U.S. employers through a straightforward administrative mechanism to bridge two periods of authorized legal status. DHS therefore proposes to include the 2008 IFR’s Cap-Gap relief measure in this rule.

**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 Orders 12866 and 13563: Regulatory Planning and Review*

Executive Orders 12866 and 13563 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 (including potential economic, environmental, public health, and safety effects, as well as distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a “significant regulatory action,” and has been determined to be an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation.

**1. Summary of Proposed Rule**

This proposed rule, if made final, would permit eligible STEM graduates to receive a maximum STEM OPT extension of 24 months; permit eligible STEM graduates who have obtained a second qualifying STEM degree to obtain a second STEM OPT extension of 24 months; permit eligibility for the extension based on a STEM degree that is not the student’s most recently obtained degree; limit eligibility for STEM OPT extensions to students that graduate from accredited institutions; require that students on STEM OPT extensions receive conditions of employment, including compensation, commensurate with similarly situated U.S. workers; require the disclosure of additional information, such as the student’s compensation, to ICE; implement a formal process to update the STEM Designated Degree Program list; implement a formal mentoring requirement for students on STEM OPT extensions; and require employers of students applying for STEM OPT extensions to enroll in and use E-Verify on all new hires.

The cost estimates set forth in this analysis represent the costs of compliance with, and implementation of, the proposed standards within the scope of the proposed rulemaking. The following quantified costs include time burdens for initial implementation of the student training and mentoring plan, six-month evaluations, reporting student information updates in SEVIS, eligibility verifications for new hires for employers of STEM OPT students using the E-Verify program, and filing Form I–675 applications. Additional quantified costs for students include fees for filing Form I–765, and some employers may incur implementation costs for the E-Verify program. Compared to the 2008 IFR criteria for STEM OPT, qualitative

costs for the proposed rule include reduced opportunities for students due to proposed restrictions on unaccredited school programs and not allowing volunteer work to be eligible for the extension. Additionally, compared to the 2008 IFR requirements for employers, there would be employer costs for paying STEM OPT students commensurate compensation, if the employer previously did not pay such compensation. DHS does not have data to support a cost estimate for this proposed requirement.

**2. Summary of Affected Population**

The proposed rule would affect four categories of STEM OPT students: (1) Students who would have previously been eligible for participation in the 17-month STEM OPT extension under the 2008 IFR and would be, based on this NPRM, eligible for a 24-month extension; (2) students who would be eligible based upon a STEM degree earned prior to their most recent degree; (3) students who would be eligible based upon a second, and more advanced, qualifying STEM degree; and (4) students who would be eligible with a potential change to the current STEM-Designated Degree Program List. Additionally, students currently on 17-month extensions would be able to apply for the balance of the 24-month extension, depending on how much time remained in their current 17-month extension and the effective date of a final regulation. DHS estimates that the population of current 17-month STEM OPT students who could apply for the expanded extension is 18,210. DHS provided an explanation on the methodology and data for the population estimates in the accompanying RIA published on the NPRM docket folder.

TABLE 1—SUMMARY OF NEW STEM OPT STUDENT EXTENSION REQUEST

Year	Transitional population from 17 month to 24 month extension	New STEM OPT extension students from accredited schools	Increased CIP list eligibility	Prior STEM degrees	Second STEM degree	Total STEM OPT population impacted
1	18,210	29,100	2,910	459	285	50,964
2		33,465	3,347	528	316	37,656
3		38,485	3,848	607	351	43,291
4		44,257	4,426	698	390	49,771
5		50,896	5,090	803	433	57,221
6		56,495	5,649	891	480	63,515
7		62,709	6,271	989	533	70,502
8		69,607	6,961	1,098	592	78,257
9		77,264	7,726	1,219	657	86,866
10		85,763	8,576	1,353	729	96,421

Estimates may not total due to rounding.

The proposed rule would also affect schools and employers of the students seeking STEM OPT extensions. A description of the impacts to schools and employers is included in the following section on the estimated costs

of the proposed rule. The Regulatory Flexibility Analysis also provides a detailed description of the estimated number of schools and employers affected by the proposed rule.

Table 2 displays the estimated number of affected employers that could be impacted by the proposed E-verify enrollment and ongoing implementation requirements.

TABLE 2—SUMMARY OF STEM OPT NPRM EMPLOYERS E-VERIFY POPULATION

New STEM OPT employers	Previously enrolled STEM OPT employers impacted by proposed rule	Total STEM OPT employers with burden resulting from proposed rule
2,244	2,834	5,078
2,670	3,513	6,183
3,177	4,181	7,358
3,781	4,975	8,756
4,499	5,920	10,419
5,354	7,045	12,399
6,371	8,383	14,754
7,582	9,976	17,558
9,022	11,872	20,894
10,737	14,127	24,864

3. Estimated Costs of Proposed Rule

The cost estimates set forth in this analysis represent the costs of compliance with the proposed rule. This analysis concludes that compliance with the proposed requirements would

be approximately \$503.3 million, discounted at 7 percent, over the period 2016–2025, or \$71.7 million per year when annualized at a 7 percent discount rate. The total cost, discounted at 7 percent, consists of \$455.7 million for

compliance with the STEM OPT program, and \$47.6 million for compliance with E-Verify requirements. Table 3 below presents a 10-year summary of the estimated benefits and costs of the NPRM.

TABLE 3—TOTAL COST OF NPRM  
[\$millions]

Year	STEM OPT extensions	E-Verify requirement for STEM OPT employer	Total
1	\$53.3	\$3.0	\$56.3
2	40.7	3.6	44.3
3	46.8	4.3	51.1
4	53.9	5.1	58.9
5	61.9	6.0	68.0
6	68.7	7.2	75.9
7	76.3	8.6	84.9
8	84.7	10.2	94.9
9	94.0	12.1	106.1
10	104.3	14.4	118.8
Total	684.8	74.5	759.3
Total (7%)	455.7	47.6	503.3
Total (3%)	570.4	61.0	631.5
Annual (7%)	64.9	6.8	71.7
Annual (3%)	66.9	7.2	74.0

4. Estimated Benefits of the Rule

Continuing the STEM OPT extension, making it available to additional students, and lengthening the current 17-month extension will enhance students' ability to achieve the objectives of their courses of study by gaining valuable knowledge and skills through on-the-job training that is often unavailable in their home countries. The proposed changes will also benefit

the U.S. educational system, U.S. employers, and the United States. The rule will benefit the U.S. educational system by helping ensure that the nation's colleges and universities remain globally competitive in attracting international students in STEM fields. U.S. employers will benefit from the increased ability to rely on the skills acquired by STEM OPT students while studying in the United

States, as well as their knowledge of markets in their home countries. Moreover, the nation will benefit from the increased retention of such students in the United States, including through increased research, innovation, and other forms of productivity that enhance the nation's economic, scientific, and technological competitiveness.

New safeguards for the STEM OPT program, including accreditation,

reporting, and tracking requirements, would decrease the opportunity for abuse and reduce any potential negative impact on U.S. workers. These improvements will increase program oversight and strengthen the requirements for program participation.

5. Alternatives

In preparing the preferred regulatory approach proposed in the NPRM, DHS examined three options:

1. Under the first option, DHS would take no regulatory action. The STEM OPT extension would no longer be available to F-1 STEM students after February 2016.

2. The second, and proposed, option would strengthen the 2008 IFR by establishing a program requiring employers and students to prepare Mentoring and Training Plans and to present those plans to the relevant DSOs. The program would require that

the proposed practical training be directly related to the student’s course of study. Employers would be required to provide certain information, including: Learning objectives for the employment, how those objectives will be achieved and measured, and place of employment. DSOs would be required to review submissions for the STEM OPT extension in SEVIS. DHS may require the submission of the Mentoring and Training Plan to ICE and/or USCIS. As noted elsewhere in this preamble, a STEM OPT extension would be available to a student with a prior qualifying STEM degree, even if the student’s most recent degree would not qualify. And a second STEM OPT extension would be available to students who earn an additional advanced STEM degree.

3. The third option is similar to option two in all respects except for the

duration of the STEM OPT extension, which would be limited to a one-time extension of 17 months, as in the 2008 IFR.

DHS provides an analysis of these alternatives in the accompanying RIA provided in the NPRM docket folder.

The following table summarizes the total monetized costs of each alternative regulatory option. Although the proposed rule option does have higher monetized costs than the third option, DHS has not quantified the benefits of the increased extension period under the proposed option because DHS does not have specific data to quantify the month-to-month economic benefits of the STEM OPT extension. DHS believes that the proposed option would have higher benefits to students and employers and increase attractiveness for U.S. academic programs.

TABLE 4—REGULATORY ALTERNATIVE COSTS COMPARISON

Year	Regulatory alternatives		
	1 No action	2 Proposed rule alternative	3 Maintain 17 Ext. STEM OPT length & 12 Ext. for second degree
1 .....	\$0.0	\$56.3	\$35.7
2 .....	0.0	44.3	41.1
3 .....	0.0	51.1	47.5
4 .....	0.0	58.9	54.4
5 .....	0.0	68.0	62.9
6 .....	0.0	75.9	69.9
7 .....	0.0	84.9	78.2
8 .....	0.0	94.9	87
9 .....	0.0	106.1	97.9
10 .....	0.0	118.8	109.7
Total .....	0.0	759.3	684.8
Total (7%) .....	0.0	503.3	449.6
Total (3%) .....	0.0	631.5	567.3

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises 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 has published an IRFA, in the accompanying RIA, to aid the public in commenting on the small entity impact

of the proposed requirements. The following discussion is a summary of the IRFA and a more detailed description of these findings is available in the RIA. DHS presents the number of estimated entities which would be impacted by the proposed rule, the number of small entities from a sample of the estimated impacted population, the estimated annual average cost impact per entity, and the estimated ratio of annual costs to revenue for sampled small entities.

During the period from 2010 through 2014, a total of 1,109 approved and accredited <sup>62</sup> schools recommended

students for STEM OPT extensions.<sup>63</sup> Of this population, DHS sampled 293 schools, to estimate the proportion of governmental jurisdictions, not-for-profit organizations, and for-profit firms for the total population. DHS then determined whether the sampled entities were small entities based on size standards set by the Small Business Administration. DHS assumed not-for-profit organizations and entities with insufficient data were small entities in the IRFA. Table 5 below summarizes the number of schools by category.

<sup>62</sup> Accredited by a Department of Education-approved accrediting agency.

<sup>63</sup> ICE SEVIS data.

TABLE 5—ESTIMATED NUMBER OF SCHOOLS BY CATEGORY

Parameter	Quantity	Small entities (sample segment)	Comments
Population—Schools .....	1,109	N/A .....	Total number of accredited schools endorsing STEM—OPT Students between 2010–2014.
Sample: .....	293	N/A .....	
Non-matched Sample Segment .....	2	Yes .....	Entities not found in online databases, assumed to be small entities.
Matched Sample Segment Non-Profit Schools .....	138	Yes .....	Entities determined to be private not-for-profit, assumed to be small entities.
Matched Sample Segment For-Profit Schools .....	1	Yes .....	Private for-profit, matched in online database with revenue lower than SBA size standard, assumed to be small entity.
Matched Sample Segment For-Profit Schools .....	3	No .....	Entities determined to be private for-profit, matched in online databases with revenue exceeding SBA size standard, assumed not small entities.
Matched Sample Segment Government Jurisdictions ..	149	No .....	Entities among the 293 sampled confirmed as large governmental jurisdictions.

During the period from 2010 through 2014, a total of 26,260 employers employed STEM OPT students.<sup>64</sup> Of this population, DHS sampled 659 employers, to estimate the proportion of governmental jurisdictions, not-for-profit organizations, and for-profit firms for the total population. DHS then

determined whether the sampled entities were small entities based on size standards set by the Small Business Administration. DHS also found that three of the sampled entities were temporary placement agencies (temporary agencies) and removed these three from the analysis, as DHS assumed

most temporary agencies would not be able to comply with the requirements of the Mentoring and Training Plan. DHS again assumed not-for-profit organizations and entities with insufficient data were small entities in the IRFA. Table 6 below summarizes the number of employers by category.

TABLE 6—ESTIMATED NUMBER OF EMPLOYERS BY CATEGORY

Parameter	Quantity	Small entities (sample segment)	Comments
Population—Employers .....	26,260	N/A .....	Total number of STEM—OPT employers between 2010–2014.
Sample: .....	659	N/A .....	Estimated sample needed to match 379 entities.
Non-matched Sample Segment .....	279	Yes .....	Entities not found in online databases, assumed to be small entities.
Matched Sample Segment For-Profit .....	214	Yes .....	For-profit entities matched in online databases that did not exceed SBA size standard.
Matched Sample Segment Not-For-Profit .....	7	Yes .....	Entities confirmed as private not-for-profit.
Matched Sample Segment For-Profit .....	140	No .....	For-profit entities matched in online databases that did exceed SBA size standard.
Temporary Agencies .....	3	No .....	Quantitative impact not analyzed.
Matched Sample Segment Government Jurisdictions ..	16	No .....	Entities that are large governmental jurisdictions.

Schools Costs

Schools would incur costs for providing oversight and reporting STEM OPT students' information as well as reviewing required documentation. DSOs would be required to ensure the form has been completed and signed prior to making a recommendation in SEVIS. Schools would be required to ensure that SEVP has access to student evaluations (electronic or hard copy) for a period of at least three years following the completion of each STEM practical training opportunity. The 2008 IFR previously required six-month student validation check-ins with DSOs, and this proposed rule would maintain the

validation requirement. While the DSO would be in communication with the student during a six-month validation check-in, DHS proposes to add an additional requirement that DSOs would also check to ensure the six-month evaluation has been properly completed and retain a copy. The NPRM proposes to maintain the 2008 IFR requirements for periodic information reporting requirements on students, which would result in a burden for DSOs.

Unaccredited Schools

Schools not accredited by a Department of Education-recognized accrediting agency may incur

unquantified costs from the proposed prohibition on participation in STEM OPT extensions by students attending unaccredited schools. A few schools may choose to seek accreditation, or may potentially lose future foreign students and associated revenue. DHS requests comment from unaccredited institutions on this provision, including the potential effect of the requirement on your school and any data associated with the impact, such as the cost of accreditation or potential revenue loss.

DHS summarizes the estimated annual first and second year costs for schools in the following table. DHS requests comments on burdens described below if additional data or

<sup>64</sup>ICE SEVIS data.

information is available. DHS acknowledges there may be additional regulatory costs<sup>65</sup> to the following

quantified costs, and requests comments specifically addressing concerns on

costs for entities of all sizes, including small entities.

TABLE 7—SCHOOLS—COST OF COMPLIANCE PER STEM OPT OPPORTUNITY

Proposed provision	Calculation of school cost per student	Cost in year 1 per student	Cost in year 2 per student
Initial Completion of Mentor & Train Plan .....	((0.25 hrs + 0.083 hrs) × \$39.33) .....	\$13.09	\$0.00
6 Month Evaluations & Validation Check-Ins <sup>1</sup> .....	(0.333 hrs × 2 Evals × \$39.33) .....	26.20	26.20
Additional Implementation Cost <sup>2</sup> .....	0.1 × Mentor & Train Plan Initial + Evals & Check-Ins Costs.	3.93	2.62
Student Info. Reporting Requirements .....	0.167 hrs × 2 rpts × \$39.33 .....	13.14	13.14
<b>Total</b> .....	<b>Total</b> .....	<b>56.35</b>	<b>41.95</b>

<sup>1</sup> Estimated based on 12 month period costs per extension, for students on a 12-month second extension such as those with prior degrees and second degrees, only Year 1 costs were applied.  
<sup>2</sup> Mentoring and Training Plan initial costs are only in Year 1 per STEM OPT.

DHS estimates the annual impact to the schools based on the school cost of compliance as a percentage of annual revenue. Second year costs account for new additional STEM OPT extension students. For not-for-profit schools, DHS multiplied the tuition per full-time first-year student with total enrollment numbers to estimate their revenue.<sup>66</sup>

While tuition revenue may underestimate the actual school revenue, this is the best information available to DHS. It is the most significant source of income for most schools, and DHS believes it is a reasonable approach to measuring the impact of this proposed rule. Based on the results of the sampled small-entity

schools with sufficient data, all had first year annual impacts less than 1 percent, with the average annual impact being 0.006 percent. All sampled small-entity schools with sufficient data had second year annual impacts of less than 1 percent, with the average annual impact being 0.005 percent.

TABLE 8—SCHOOLS—ANNUAL IMPACT IN YEAR 1

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entity schools
0% < Impact ≤ 1% .....	4	137	100
1 < Impact ≤ 3 .....	0	0	0
3 < Impact ≤ 5 .....	0	0	0
5 < Impact ≤ 10 .....	0	0	0
Above 10 .....	0	0	0
<b>Total</b> .....	<b>141</b>	<b>137</b>	<b>100</b>

TABLE 9—SCHOOLS—ANNUAL IMPACT IN YEAR 2

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entity schools
0% < Impact ≤ 1% .....	4	137	100
1 < Impact ≤ 3 .....	0	0	0
3 < Impact ≤ 5 .....	0	0	0
5 < Impact ≤ 10 .....	0	0	0
Above 10 .....	0	0	0
<b>Total</b> .....	<b>141</b>	<b>137</b>	<b>100</b>

Employer Costs

Employers would be required to provide information for certain fields, review the completed form, and attest to

the certifications on the form. The proposed rule also ensures that students would be unable to complete their STEM OPT extensions as volunteers by

requiring commensurate compensation, and additionally requires that students work at least 20 hours per week while on their STEM OPT extension. DHS

<sup>65</sup> Such costs could be related to train DSOs on how to comply with the requirements, program changes within the school, and time to generally review and comprehend the requirements of the regulation and make determinations on how to best

implement the requirements with the least negative impact to their ongoing operations.

<sup>66</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education

Statistics, “Academic year prices for full-time, first-time undergraduate students”, (Total enrollment, including Undergraduate and Graduate) 2014–2015, available at <http://nces.ed.gov/globallocator/>.

does not have data on the number of STEM OPT students who may not currently receive compensation. In addition, DHS does not have data on the number of STEM OPT students who do not currently receive wages or other qualifying compensation that would be considered commensurate under the proposed rule. To the extent that employers are not currently compensating STEM OPT participants in accordance with the proposed rule, this proposal would create additional costs to these employers. However, DHS notes that employer participation in the STEM OPT program is entirely voluntary, and each employer would determine if the benefits of hiring the STEM OPT student exceed the costs of doing so when considering all of the costs and burdens of the proposed rule, including the requirement to pay commensurate compensation. DHS requests comments from employers on the effect of these proposed requirements. In the quantified costs, DHS does account for the possible additional burden of reviewing the

employment terms of similarly situated U.S. workers in order to compare the terms and conditions of their employment to those of the STEM OPT student's practical training opportunity.

The proposed rule indicates that ICE, at its discretion, may conduct a site visit of an employer. The employer on-site review is intended to ensure that each employer meets program requirements, including that they are complying with assurances and that they possess the ability and resources to provide structured and guided work-based learning experiences outlined in students' Mentoring and Training Plans. Site visits would not be a requirement for each STEM OPT student employer or a regularly scheduled occurrence, but would rather be performed at the discretion of DHS either randomly or when DHS determines that such an action is needed. The length and depth of such a visit would be determined on a case-by-case basis. For law enforcement reasons, DHS does not include an estimate of the basis for initiating a site visit and is unable to

estimate of the number of site visits that may be conducted, and thus is unable to provide a total annual estimated cost for such potential occurrences. However, based on on-site-reviews of schools, DHS estimates that an employer site visit may include review of records and questions for the supervisor, and would take two hours per employer. Therefore, DHS estimates that if an employer were to receive such an on-site review, it may cost the employer approximately \$394.80 (5 hours × \$78.96).

DHS summarizes the estimated annual first and second year costs for potential employers of STEM OPT students in the following table. DHS requests comments on burdens described below if additional data or information is available. DHS acknowledges there may be additional regulatory compliance implementation costs<sup>67</sup> to the following quantified costs, and requests comments specifically addressing concerns on implementation costs for entities of all sizes, including small entities.

TABLE 10—INDIVIDUAL EMPLOYER—COST OF COMPLIANCE

Proposed provision	Calculation of costs	Cost in Year 1	Cost in Year 2
Initial Completion of Mentor & Train Plan .....	(0.5 hrs × \$80.12) + (0.5 hrs × \$78.96)+ (1 hrs × \$43.93).	\$123.47	\$0.00
6 Month Evaluations & Validation Check-Ins <sup>1</sup> .....	(0.25 hrs × 2 Evals × 78.96) .....	39.48	39.48
Additional Implementation Cost <sup>2</sup> .....	0.1 × Mentor & Train Plan Initial + Evals & Check-Ins Costs.	11.90	3.95
Employer STEM OPT Costs per Student = .....	Total .....	179.25	43.43
Cost per E-Verify per New Hire Case = .....	(0.16 hrs × 43.93) .....	7.03	7.03
E-Verify Enrollment .....	(80.12 × 2.26) + 100 .....	281.07	0.00
E-Verify Annual Training & Maintenance Costs .....	(1 hrs × 43.93) + 398) .....	441.93	441.93
Compliance Site Visits .....	(5 hrs × 78.96) .....	0.00	394.80
E-Verify and Site Visit Employer Costs = .....	Total .....	723.00	836.73

DHS estimates the annual impact to employers based on the employer cost of compliance as a percentage of annual revenue. Second year costs include initial submission of Mentoring and Training Plans and evaluations for new STEM OPT students who would be hired in the second year. For not-for-profit school employers without revenue data, DHS multiplied the tuition per full-time first-year student

with total enrollment numbers to estimate their revenue. Based on the results of the sampled small entities with sufficient data, almost all had first and second year annual impacts less than 1 percent, with the first-year average annual revenue impact being 0.13 percent and second-year annual revenue impact being 0.15 percent. Additionally, the cost impact per employer included a compliance site

visit in year two; therefore, costs could be less for employers that do not receive a site visit. Employers of STEM OPT students would determine if the benefits of hiring such students exceed program requirements costs. To the extent that the benefits do not exceed costs, employers may choose not to hire STEM OPT students.

<sup>67</sup> Such costs could be related to train supervisors on how to comply with the requirements, program changes within the school, and time to generally

review and comprehend the requirements of the regulation and make determinations on how to best

implement the requirements with the least negative impact to their ongoing operations.

TABLE 11—EMPLOYERS—ANNUAL IMPACT IN YEAR 1

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entities employers
0% < Impact ≤ 1% .....	211	7	99%
1 < Impact ≤ 3 .....	2	0	1
3 < Impact ≤ 5 .....	0	0	0
5 < Impact ≤ 10 .....	0	0	0
Above 10 .....	0	0	0
<b>Total .....</b>	<b>220</b>		<b>100.0</b>

TABLE 12—EMPLOYERS—ANNUAL IMPACT IN YEAR 2

Revenue impact range	Number of small entities for-profit with data	Number of non-profit entities with data	Percent of small entities employers
0% < Impact ≤ 1% .....	210	7	99%
1 < Impact ≤ 3 .....	3	0	1
3 < Impact ≤ 5 .....	0	0	0
5 < Impact ≤ 10 .....	0	0	0
Above 10 .....	0	0	0
<b>Total .....</b>	<b>220</b>		<b>100.0</b>

**Current Employers That Do Not Continue To Participate**

Due to additional employer requirements that must be met in order to receive the benefit of training STEM OPT extension opportunity, it may be possible that some employers (such as temporary employment agencies) would no longer participate in STEM OPT extensions. DHS does not present the quantitative burden or cost associated with this possible impact on employers due to lack of available information on employers that would fall under this category and the associated economic impacts. DHS will consider data or information provided by commenters to assess such an impact upon employers.

In particular, DHS requests information and data that would assist with better understanding the impact of this rule on small entities. DHS also seeks any alternatives that will accomplish the objectives of this rulemaking and minimize the proposed rule’s economic impact on small entities. After receiving comments on small entity concerns, data and information on impacts, and suggestions that could reduce negative or cost impacts to small entities, DHS would consider possible alternatives in a final rule. After publication of a final rule, DHS would engage in outreach and provide small entity stakeholders assistance or clarification regarding how to implement the new proposed requirements. At this time, DHS is unable to certify that the proposed rule

will not have a significant economic impact on a substantial number of small entities.

*C. Small Business Regulatory Enforcement Fairness Act of 1996*

Pursuant to 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 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** 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. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

*E. The Congressional Review Act*

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules to be

submitted to Congress before taking effect. If implemented as proposed, we may submit to Congress and the Comptroller General of the United States a report regarding the issuance of the Final Rule prior to its effective date, as required by 5 U.S.C. 801(a)(1).

*F. Collection of Information*

Federal agencies are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, as amended (PRA), Public Law 104–13, 109 Stat. 163 (1995), 44 U.S.C. 3501–3520. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DHS has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the review procedures of the PRA. The proposed information collection requirements are outlined in this proposed rule to obtain comments from the public and affected entities. The proposed rule would maintain the 2008 IFR revisions to previously approved information collections. The 2008 IFR impacted information collections for Form I–765, Application for Employment Authorization (OMB Control No. 1615–0040); Student and Exchange Visitor Information System (SEVIS) and Form I–20, Certificate of

Eligibility for Nonimmigrant Student Status (OMB Control No. 1653–0038); and the E-Verify Program (OMB Control No. 1615–0092). These four approved information collections corresponding to the 2008 IFR have included the number of respondents, responses and burden hours resulting from the 2008 IFR requirements, which are also burdens DHS is proposing to maintain. Therefore DHS is not revising the burden estimates for these four information collections. Additional responses tied to new changes to STEM OPT eligibility will minimally increase the number of responses and burden for Form I–765 and E-Verify information collections, as the two collections cover a significantly broader population of respondents and responses than those impacted by the proposed rule and already account for growth in the number of responses in their respective published information collection notices burden estimates.

As part of this NPRM, DHS is creating a new information collection instrument for the Mentoring and Training Plan. This information collection is necessary to enable reporting of and attesting to specified information relating to STEM OPT extensions, to be executed by STEM OPT students and their employers. Such reporting would include goals and objectives, progress, hours, and compensation. Assurances would ensure proper training opportunities for students and safeguard interests of U.S. workers in related fields.

Additionally, DHS will require some minor changes to the Application for Employment Authorization, Form I–765, instructions to reflect proposed changes to the F–1 regulations allowing for: (a) a longer period of F–1 OPT STEM extension, and (b) an applicant to file an Application for Employment Authorization, Form I–765, with USCIS within 60 days (rather than 30 days) from the date the DSO endorses his/her F–1 OPT STEM extension. Accordingly, USCIS will be submitting an OMB 83–C, Correction Worksheet, to OMB for review and approval of the minor edits to the Application for Employment Authorization, Form I–765, instructions during the final rule stage. USCIS seeks comments on whether Form I–765 should be modified as a direct result of the changes in the proposed rule. See the **ADDRESSES** section above for instructions on how to submit comments to DHS and OMB on the information collection provisions of this rulemaking. Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your

comments on the information collection-related aspects of this rule 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;

(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). In particular, DHS requests comments on the recordkeeping cost burden imposed by this rule and will use the information gained through such comments to assist in calculating the cost burden.

Overview of This Information Collection—Mentoring and Training Plan

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* STEM OPT Extension Mentoring and Training Plan.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Immigration and Customs Enforcement Form I–910;

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

- *Primary:* State governments, local governments, and businesses, or other for-profit and not-for-profit organizations.

- *Other:* None.

- *Abstract:* DHS is publishing a notice of proposed rulemaking (NPRM) that would make certain changes to the STEM OPT extension first introduced by the 2008 IFR. The NPRM would lengthen the duration of the STEM OPT extension to 24 months; require a Mentoring and Training Plan executed by STEM OPT students and their employers; and require that the plan include assurances to safeguard students and the interests of U.S. workers in related fields; require that the plan include objective-tracking and reporting requirements. The proposed rule would require students and employers (through an appropriate

signatory official) to report on the Mentoring and Training Plan certain specified information relating to STEM OPT extensions. For instance, the Mentoring and Training Plan would explain how the employment will provide a work-based learning opportunity for the student by stating the specific goals of the practical training and describe how those goals will be achieved; detail the knowledge, skills, or techniques to be imparted to the student; explain how the mentorship and training is directly related to the student's qualifying STEM degree; and describe the methods of performance evaluation and the frequency of supervision. The Mentoring and Training Plan would also include a number of employer attestations intended to ensure the academic benefit of the practical training experience, protect STEM OPT students, and protect against appreciable adverse consequences on U.S. workers. The proposed rule would also require schools to collect and retain this information for a period of three years following the completion of each STEM practical training opportunity.

(5) An estimate of the total annual average number of respondents, annual average number of responses, and the total amount of time estimated for respondents in an average year to collect, provide information, and keep the required records is:

- 43,970 STEM OPT student respondents; 1,109 accredited schools endorsing STEM OPT students; and 16,891 employers of STEM OPT students.

- 43,970 average responses annually at 4.00 hours per initial Mentoring and Training Plan response.

- 87,941 average responses annually at 1.75 hours per 6-month evaluation response by STEM OPT students.

(6) An estimate of the total public burden (in hours) associated with the collection: 330,174 hours.

The recordkeeping requirements set forth by this rule are new requirements that will require a new OMB Control Number. DHS is seeking comment on these new requirements as part of this NPRM.

#### G. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that

Order and have determined that it does not have implications for federalism.

#### H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have 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 of the supply, distribution, or use of energy.

#### J. Environment

The U.S. Department of Homeland Security Management Directive (MD) 023–01 Rev. 01 establishes procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. CEQ regulations allow federal agencies to establish categories of actions, which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023–01 Rev. 01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023–01 Rev. 01 Appendix A Table 1.

For an action to be categorically excluded, MD 023–01 Rev. 01 requires the action to 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.
- (3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023–01 Rev. 01 section V.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023–01 Rev. 01 requires the administrative record to reflect consideration of these conditions. MD 023–01 Rev. 01 section V.B.

DHS has analyzed this proposed rule under MD 023–01 Rev. 01. DHS has

made a preliminary determination that this 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 clearly fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(a):

“Promulgation of rules . . . of a strictly administrative or procedural nature;” and 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.

#### K. 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.

#### L. Taking of Private Property

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

#### M. Protection of Children

DHS has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### N. Technical Standards

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.

#### List of Subjects

##### 8 CFR Part 214

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

##### 8 CFR Part 274a

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

#### The Proposed Amendments

For the reasons set forth in the preamble, the Department of Homeland Security proposes to amend parts 214 and 274a of Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

#### Subchapter B—Immigration Regulations

#### PART 214—NONIMMIGRANT CLASSES

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

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; 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.

- 2. Amend § 214.2 by:
  - a. Republishing paragraph (f)(5)(vi); and
  - b. Revising paragraphs (f)(10)(ii)(A)(3), (f)(10)(ii)(C), (D), and (E), and (f)(11) and (12).

The revisions read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(5) \* \* \*

(vi) *Extension of duration of status and grant of employment authorization.* (A) The duration of status, and any employment authorization granted under 8 CFR 274a.12(c)(3)(i)(B) or (C), of an F–1 student who is the beneficiary of an H–1B petition and request for change of status shall be automatically

extended until October 1 of the fiscal year for which such H-1B visa is being requested where such petition:

(1) Has been timely filed; and

(2) States that the employment start date for the F-1 student is October 1 of the following fiscal year.

(B) The automatic extension of an F-1 student's duration of status and employment authorization under paragraph (f)(5)(vi)(A) of this section shall immediately terminate upon the rejection, denial, or revocation of the H-1B petition filed on such F-1 student's behalf.

(C) In order to obtain the automatic extension of stay and employment authorization under paragraph (f)(5)(vi)(A) of this section, the F-1 student, according to 8 CFR part 248, must not have violated the terms or conditions of his or her nonimmigrant status.

(D) An automatic extension of an F-1 student's duration of status under paragraph (f)(5)(vi)(A) of this section also applies to the duration of status of any F-2 dependent aliens.

\* \* \* \* \*

(10) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(3) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. A student must complete all practical training within a 14-month period following the completion of study, except that a 24-month extension pursuant to paragraph (f)(10)(ii)(C) of this section does not need to be completed within such 14-month period.

\* \* \* \* \*

(C) *24-month extension of post-completion OPT for a science, technology, engineering, or mathematics (STEM) degree.* Consistent with paragraph (f)(11)(i)(C) of this section, a qualified student may apply for an extension of OPT while in a valid period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B). An extension will be for 24 months for the first qualifying degree completed by the student, including any previously obtained degree that qualifies. If a student completes another qualifying degree at a higher degree level than the first, a second extension will be for an

additional 24 months. In no event may a student be authorized for more than two lifetime STEM OPT extensions. Any subsequent application for an additional 24-month OPT extension under this paragraph (f)(10)(ii)(C) must be based on a degree at a higher degree level than the degree that was the basis for the student's first 24-month OPT extension. In order to qualify for an extension of post-completion OPT based upon a STEM degree, all of the following requirements must be met.

(1) *Accreditation.* The degree that is the basis for the 24-month OPT extension is from an educational institution accredited by an accrediting agency recognized by the Department of Education.

(2) *DHS-approved degree.* The degree that is the basis for the 24-month OPT extension is a bachelor's, master's, or doctoral degree in one of the degree programs determined by the Secretary, or his or her designee, to qualify within a science, technology, engineering, or mathematics field.

(i) The term "science, technology, engineering or mathematics field" means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups containing mathematics, natural sciences (including physical sciences and biological/agricultural sciences), engineering/engineering technologies, and computer/information sciences, and related fields.

(ii) The Secretary, or his or her designee, will maintain the STEM Designated Degree Program List, which will be a complete list of qualifying degree program categories, published on the Student and Exchange Visitor Program Web site at <http://www.ice.gov/sevis>. Changes that are made to the Designated Degree Program list may also be published in a notice in the **Federal Register**. All program categories included on the list must be consistent with the definition set forth in paragraph (f)(10)(ii)(C)(2)(i) of this section.

(iii) At the time the DSO recommends an OPT extension under paragraph (f)(10)(ii)(C) of this section in SEVIS, the degree that is the basis for the application for a 24-month OPT extension must be contained within a category on the STEM Designated Degree Program List.

(3) *Previously obtained STEM degree(s).* The degree that is the basis for the 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section may be, but is not required to be, the degree that is the basis for the post-completion OPT period authorized

under 8 CFR 274a.12(c)(3)(i)(B). In either case, the degree that is the basis of the 24-month OPT extension must have been conferred by an accredited U.S. educational institution and must be contained within a category on the current STEM Designated Degree Program List at the time of the DSO recommendation. If an application for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section is based upon a degree obtained previous to the degree that provided the basis for the period of post-completion OPT authorized under 8 CFR 274a.12(c)(3)(i)(B), that previously obtained degree must have been conferred within the 10 years preceding the student's application date, and the student's most recent degree must also be from an institution accredited by an accrediting agency recognized by the Department of Education.

(4) *Eligible practical training opportunity.* The STEM practical training opportunity that is the basis for the 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section must be directly related to the degree that qualifies the student for such extension, which may be the previously obtained degree described in paragraph (f)(10)(ii)(C)(3) of this section.

(5) *Employer qualification.* The student's employer is enrolled in the E-Verify program, as evidenced by either a valid E-Verify company identification number or, if the employer is using an employer agent to create its E-Verify cases, a valid E-Verify client company identification number, and the employer is a participant in good standing in the E-Verify program, as determined by USCIS. An employer must also have an employer identification number (EIN) used for tax purposes.

(6) *Employer reporting.* A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(2) of this section unless the employer agrees, by signing the Mentoring and Training Plan, to report the termination or departure of an OPT student to the DSO at the student's school, if the termination or departure is prior to the end of the authorized period of OPT. Such reporting must be made within 48 hours of the termination or departure. An employer shall consider a student to have departed when the employer knows the student has left the practical training opportunity, or if the student has not reported for his or her practical training for a period of five consecutive business days without the consent of the employer, whichever occurs earlier.

(7) *Mentoring and Training Plan (Form I-910).* (i) A student must fully

complete an individualized Mentoring and Training Plan and obtain requisite signatures from his or her employer or an appropriate individual in the employer's organization on the Mentoring and Training Plan, or any successor form, consistent with form instructions, before the DSO may recommend a 24-month OPT extension under paragraph (f)(10)(ii)(C)(2) of this section in SEVIS. A student must submit the Mentoring and Training Plan, which includes a certification of adherence to the plan completed by an appropriate individual in the employer's organization who has signatory authority for the employer, to the student's DSO, prior to the new DSO recommendation. A student must present his or her signed and completed Mentoring and Training Plan to a DSO at the educational institution of his or her most recent enrollment. A student, while in F-1 nonimmigrant status, may also be required to submit the Mentoring and Training Plan to ICE and/or USCIS upon request or in accordance with form instructions.

(ii) The Mentoring and Training Plan must explain how the employment will provide a work-based learning opportunity for the student by stating the specific goals of the STEM practical training opportunity and describing how those goals will be achieved; detailing the knowledge, skills, or techniques to be imparted to the student; explaining how the mentorship and training is directly related to the student's qualifying STEM degree; and describing the methods of performance evaluation and the frequency of supervision.

(iii) If a student initiates a new practical training opportunity with a new employer during his or her 24-month OPT extension, the student must submit, within 10 days of beginning the new practical training opportunity, a new Mentoring and Training Plan to the student's DSO, and subsequently obtain a new DSO recommendation.

(8) *Duties, hours, and compensation for training.* The terms and conditions of a STEM practical training opportunity during the period of the 24-month OPT extension, including duties, hours, and compensation, must be commensurate with terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment, except in no event may the student engage in compensated practical training for less than 20 hours per week. If the employer does not employ and has not recently employed more than two similarly situated U.S. workers in the area of employment, the employer nevertheless remains obligated to attest

that the terms and conditions of a STEM practical training opportunity are commensurate with the terms and conditions of employment for other similarly situated U.S. workers in the area of employment. "Similarly situated U.S. workers" includes U.S. workers performing similar duties subject to similar supervision and with similar educational backgrounds, industry expertise, employment experience, levels of responsibility, and skill sets as the STEM OPT student. The duties, hours, and compensation of STEM OPT students are "commensurate" with those offered to U.S. workers employed by the employer in the same area of employment when the employer can show that the duties, hours, and compensation are consistent with the range of such terms and conditions the employer has offered or would offer to similarly situated U.S. employees. The student must disclose his or her compensation, including any adjustments, as agreed to with the employer, on the Mentoring and Training Plan.

(9) *Evaluation requirements.* A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(2) of this section unless the employer develops procedures for evaluating the student, which shall include documentation of the student's progress toward the training goals described in the Mentoring and Training Plan. All required evaluations must be completed prior to the conclusion of a STEM practical training opportunity, and the student and his or her immediate supervisor must sign the evaluations. At a minimum, all STEM practical training opportunities require a concluding evaluation and a recurrent evaluation at every six-month interval of each OPT extension period under paragraph (f)(10)(ii)(C)(2) of this section. The educational institution whose DSO is responsible for duties associated with the student's latest OPT extension under paragraph (f)(10)(ii)(C)(2) of this section is responsible for ensuring the Student and Exchange Visitor Program has access to each individualized Mentoring and Training Plan and associated student evaluations (electronic or hard copy), including through SEVIS if technologically available, beginning within 30 days after the document is submitted to the DSO and continuing for a period of three years following the completion of each STEM practical training opportunity.

(10) *Additional STEM opportunity obligations.* A student may only participate in a STEM practical training opportunity in which the employer

attests, including by signing the Mentoring and Training Plan, that:

(i) The employer has sufficient resources and personnel available and is prepared to provide appropriate mentoring and training in connection with the specified opportunity;

(ii) The employer will not terminate, lay off, or furlough any full- or part-time, temporary or permanent U.S. worker as a result of the practical training opportunity; and

(iii) The student's opportunity assists the student in reaching his or her training goals.

(11) *Site visits.* DHS, at its discretion, may conduct a site visit of any employer. The purpose of the site visit is for DHS to ensure that each employer possesses and maintains the ability and resources to provide structured and guided work-based learning experiences consistent with any Mentoring and Training Plan completed and signed by the employer.

(D) *Duration of status while on post-completion OPT.* For a student with approved post-completion OPT, the duration of status is defined as the period beginning when the student's application for OPT was properly filed and pending approval, including the authorized period of post-completion OPT, and ending 60 days after the OPT employment authorization expires.

(E) *Periods of unemployment during post-completion OPT.* During post-completion OPT, F-1 status is dependent upon employment. Students may not accrue an aggregate of more than 90 days of unemployment during any post-completion OPT described in 8 CFR 274a.12(c)(3)(i)(B). Students granted one or more 24-month OPT extensions under paragraph (f)(10)(ii)(C)(2) of this section may not accrue an aggregate of more than 150 days of unemployment during a total OPT period, including any post-completion OPT period described in 8 CFR 274a.12(c)(3)(i)(B) and any subsequent 24-month extension period.

(11) *OPT application and approval process—(i) Student responsibilities.* A student must initiate the OPT application process by requesting a recommendation for OPT from his or her DSO. Upon making the recommendation, the DSO will provide the student a signed Form I-20 indicating that recommendation.

(A) *Application for employment authorization.* The student must properly file an Application for Employment Authorization (Form I-765, or successor form), with USCIS, accompanied by the required fee, and the supporting documents, as described in the form's instructions.

(B) *Filing deadlines for pre-completion OPT and post-completion OPT.* (1) Students may file an Application for Employment Authorization, or successor form, for pre-completion OPT up to 90 days before being enrolled for one full academic year, provided that the period of employment will not start prior to the completion of the full academic year.

(2) For post-completion OPT, the student must properly file his or her Application for Employment Authorization, or successor form, up to 90 days prior to his or her program end-date and no later than 60 days after his or her program end date. For all post-completion OPT, except in the case of an application for employment associated with a 24-month OPT extension under paragraph (f)(10)(ii)(C)(2) of this section, the student must also file the Application for Employment Authorization with USCIS within 30 days of the date the DSO enters the recommendation for OPT into his or her SEVIS record.

(C) *Applications for 24-month OPT extension.* A student meeting the eligibility requirement for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section may file for an extension of employment authorization by filing an Application for Employment Authorization, or successor form, with the required fee, and the supporting documents, prior to the expiration date of the student's current OPT employment authorization. The student seeking such 24-month OPT extension must properly file his or her Application for Employment Authorization, or successor form, with USCIS within 60 days of the date the DSO enters the recommendation for the OPT extension into his or her SEVIS record. If a student timely and properly files an application for such 24-month OPT extension and timely and properly requests a DSO recommendation, including by submitting the fully-executed Mentoring and Training Plan to his or her DSO, but the Employment Authorization Document (Form I-766, or successor form) currently in the student's possession expires prior to the decision on the student's application for the OPT extension, the student's Form I-766, or successor form, is extended automatically pursuant to the terms and conditions specified in 8 CFR 274a.12(b)(6)(iv).

(D) *Start of OPT employment.* A student may not begin OPT employment prior to the approved start date on his or her employment authorization document except as described in paragraph (f)(11)(i)(C) of this section. A student may not request a start date that

is more than 60 days after the student's program end date. Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.

(ii) *Additional DSO responsibilities.* A student needs a recommendation from his or her DSO in order to apply for OPT. When a DSO recommends a student for OPT, the school assumes the added responsibility for maintaining the SEVIS record of that student for the entire period of authorized OPT, consistent with paragraph (f)(12) of this section.

(A) Prior to making a recommendation, the DSO at the educational institution of the student's most recent enrollment must ensure that the student is eligible for the given type and period of OPT and that the student is aware of the student's responsibilities for maintaining status while on OPT. Prior to recommending a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section, the DSO at the educational institution of the student's most recent enrollment must certify that the student's degree being used to qualify that student for the 24-month OPT extension, as shown in SEVIS or official transcripts, is a bachelor's, master's, or doctorate degree with a degree code that is contained within a category on the current STEM Designated Degree Program List at the time the recommendation is made. A DSO may only recommend a student for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section if the Mentoring and Training Plan described in paragraph (f)(10)(ii)(C)(7) of this section has been properly completed and executed by the student and prospective employer. A DSO may not recommend a student for an OPT extension under paragraph (f)(10)(ii)(C) of this section if the practical training would be conducted by an employer who has failed to meet the requirements under paragraphs (f)(10)(ii)(C)(5) through (9) of this section or has failed to provide the required assurances of paragraph (f)(10)(ii)(C)(10) of this section.

(B) The DSO must update the student's SEVIS record with the DSO's recommendation for OPT before the student can apply to USCIS for employment authorization. The DSO will indicate in SEVIS whether the OPT employment is to be full-time or part-time, or for a student seeking a recommendation for a 24-month OPT extension under paragraph (f)(10)(ii)(C) whether the OPT employment meets the minimum hours requirements described

in paragraph (f)(10)(ii)(C)(8), and note in SEVIS the OPT start and end dates.

(C) The DSO must provide the student with a signed, dated Form I-20, or successor form, indicating that OPT has been recommended.

(iii) *Decision on application for OPT employment authorization.* USCIS will make a decision on the Application for Employment Authorization, or successor form, on the basis of the DSO's recommendation and other eligibility considerations.

(A) If granted, the employment authorization period for post-completion OPT begins on the requested date of commencement or the date the employment authorization application is approved, whichever is later, and ends at the conclusion of the remaining time period of post-completion OPT eligibility. The employment authorization period for a 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section begins on the day after the expiration of the initial post-completion OPT employment authorization and ends 24 months thereafter, regardless of the date the actual extension is approved.

(B) USCIS will notify the applicant of the decision on the application for employment authorization in writing, and, if the application is denied, of the reason or reasons for the denial.

(C) The applicant may not appeal the decision.

(12) *Reporting while on optional practical training*—(i) *General.* An F-1 student who is granted employment authorization by USCIS to engage in optional practical training is required to report any change of name or address, or interruption of such employment to the DSO for the duration of the optional practical training. A DSO who recommends a student for OPT is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

(ii) *Additional reporting obligations for students with an approved 24-month OPT extension.* Students with an approved 24-month OPT extension under paragraph (f)(10)(ii)(C) of this section have additional reporting obligations. Compliance with these reporting requirements is required to maintain F-1 status. The reporting obligations are:

(A) Within 10 days of the change, the student must report to the student's DSO a change of legal name, residential or mailing address, employer name, employer address, and/or loss of employment.

(B) The student must make a validation report and submit his or her

supervisor-approved recurrent evaluation to the DSO every six months starting from the date the extension begins and ending when the student's F-1 status ends, the student changes educational levels at the same school, or the student transfers to another school or program, or the 24-month OPT extension ends, whichever is first. The validation is a confirmation that the student's information in SEVIS for the items listed in paragraph (f)(12)(ii)(A) of this section is current and accurate. This report is due to the student's DSO within 10 business days of each reporting date.

Note to paragraph (f)(12)(ii)(B): The supervisor-approved recurrent evaluation, described in paragraph (f)(10)(ii)(C)(9) of this section, is noted here for ease of reference; this evaluation is an update to the fully executed Mentoring and Training Plan that the student submits to his or her DSO.

■ 3. Revise § 214.3(g)(2)(ii)(F) to read as follows:

**§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.**

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(F) For F-1 students authorized by USCIS to engage in a 24-month

extension of OPT under § 214.2(f)(10)(ii)(C):

(1) Any change that the student reports to the school concerning legal name, residential or mailing address, employer name, or employer address; and

(2) The end date of the student's employment reported by a former employer in accordance with § 214.2(f)(10)(ii)(C)(6).

\* \* \* \* \*

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

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

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

**Subpart B—Employment Authorization**

■ 5. Revise § 274a.12(b)(6)(iv) and (v) and (c)(3)(i) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) An employment authorization document under paragraph (c)(3)(i)(C) of this section based on a 24-month STEM Optional Practical Training extension, and whose timely filed employment authorization request is pending and

employment authorization issued under paragraph (c)(3)(i)(B) of this section has expired. Employment is authorized beginning on the expiration date of the authorization issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current employment authorization request, but not to exceed 180 days; or

(v) Pursuant to 8 CFR 214.2(h) is seeking H-1B nonimmigrant status and whose duration of status and employment authorization have been extended pursuant to 8 CFR 214.2(f)(5)(vi).

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i)(A) Is seeking pre-completion practical training pursuant to 8 CFR 214.2(f)(10)(ii)(A)(1) and (2);

(B) Is seeking authorization to engage in post-completion Optional Practical Training (OPT) pursuant to 8 CFR 214.2(f)(10)(ii)(A)(3); or

(C) Is seeking a 24-month STEM OPT extension pursuant to 8 CFR 214.2(f)(10)(ii)(C);

\* \* \* \* \*

**Jeh Charles Johnson,**

*Secretary of Homeland Security.*

[FR Doc. 2015-26395 Filed 10-16-15; 8:45 am]

**BILLING CODE 9111-28-P**