

**INS Regulations Update  
December 2002  
Advisory on F-1 Transfers, Reinstatement, and the 5-month Rule**

**Transfers:** The new rule maintains the ability of an F-1 student to transfer from one approved INS school to another without leaving the US by a specific notification procedure. However, the notification procedure in SEVIS is very different, and it is more rigid, than the previous paper-based transfer procedure. Additionally, the final rule adds a new "5-month limit" to the transfer eligibility requirement. A student must be able to begin classes within 5 months of transferring out of the current school, or within 5 months of the program completion date on his or her I-20, whichever is *earlier*. For students on OPT, a transfer can be done only if the student can begin studying at the new school within 5 months of transferring out of the school that recommended OPT or the date OPT authorization ends, whichever is *earlier*. Students who are ineligible for transfer within the US because of the 5-month rule should travel abroad and re-enter the US with a new F-1 entry and the I-20 from the new school.

The new rule adds a requirement that the DSO determine validity of status of the transferring student *before* issuing a transfer I-20. The rule also requires the student to present the transfer I-20 to the receiving school's DSO "within 15 days of the program start date listed on the Form I-20." The I-20 start date for spring 2003 is January 13, 2003. Thus, the last date to receive requests for transfers for spring semester is January 28, 2003, which is 15 days after the start date.

SEVIS introduces to the transfer process the concept of "release date." The current school must enter a release date in SEVIS. Until that time the student remains under the control of the current school. On the release date, the transfer school gains access to the students' SEVIS record and becomes responsible for that student's visa issues. A SEVIS I-20 can be issued by the transfer school only on, or after, the release date. Additionally, the student can indicate only one school to whom he or she should be released for transfer. The SEVIS system will require that students make more prompt decisions as to which school they will attend, if they have applied to more than one institution.

Note: students transferring schools and changing level of study (i.e. associates to bachelor's degree, bachelors to masters degree program, or masters to doctoral degree program) will have both the school transfer procedure and the change of level handled by the transfer process (whether it is a paper or SEVIS process).

**Reinstatement:** Under the new rules, an INS Director may consider reinstating an F-1 student who is out of status, who makes a request for reinstatement on form I-539, the Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed SEVIS Form-I-20 indicating the

Designated School Officer's (DSO's) recommendation for reinstatement. Prior to August 1, 2003, it may be possible to request reinstatement with a NON-SEVIS I-20 issued prior to January 30, 2003 with an attached DSO recommendation. Reinstatement may be granted by the INS when the following conditions are met:

- A. The student has not been out of status for more than 5 months at the time of filing the request for reinstatement. Alternatively if the student has been out of status for more than 5 months, s/he must demonstrate that the failure to file in a timely manner was the result of "exceptional circumstances and that the student filed....for reinstatement as promptly as possible under these....circumstances."
- B. The student does not have a record of repeated or willful violations of INS regulations.
- C. The student is currently pursuing or intending to pursue, a full course of study in the immediate future (i.e. next term) at the school which issued the Form I-20.
- D. The student has not engaged in unauthorized employment (note: any employment carried out while out of status is unauthorized employment).
- E. The student is not deportable
- F. The student establishes to the satisfaction of the INS that the violation of status resulted from circumstances "beyond the student's control." The new rule tightens the criteria for what is beyond the student's control and mentions such causes as serious injury or illness, closure of an institution, a natural disaster, and oversight or neglect on the part of the DSO. The only ground for reinstatement that does NOT depend on circumstances beyond a student's control are situations in which 1) the student reduced his/her course load (RCL) without prior DSO approval, and 2) the RCL would have been in the DSO's power to authorize. To qualify for reinstatement on this ground, students will need to show that NOT being reinstated would result in "extreme hardship to the student."

**5-Month Rule:** The INS has traditionally defined a "temporary absence from the United States" as no more than 5 months. ISS advises students who will be abroad for 5 months or longer to request a new I-20 prior to returning to the US. Apparently this will continue to be the practice under SEVIS. However, INS has adopted a 5-month period for various other purposes relating to students who stay within the US, covering periods when they are not attending school, as noted above.

Note: travel while authorized for employment remains unchanged in the new rule. A student returning from a temporary trip abroad (defined as less than 5 months) with an unexpired off-campus employment authorization on his/her I-20 may resume employment only if the student is re-admitted to attend the same school which granted the employment authorization. An F-1 student who has an unexpired EAD issued for post-completion practical training and who is otherwise admissible may return to the US to resume employment after a period of temporary absence (not to exceed 5 months), assuming the proper documents are presented to the INS admissions inspector.

This advisory was prepared by ISS for use by international students at Kap10lqni Community College. It is general in nature and does not constitute legal advice for individual F-1 students. ISS gratefully acknowledges NAFSA: Association of International Educators publishing of a compiled and annotated rule on December 23, 2002 in the preparation of this document.

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