

# New OPT Regulations

On April 8, 2008, the U.S. Department of Homeland Security (DHS) published the interim final rule that changed several key aspects of F-1 optional practical training (OPT). This is an interim final rule with request for public comment. **The rule is effective April 8, 2008.** Written comments must be submitted to DHS on or before June 9, 2008.

## Summary of Key Provisions

- **OPT extension to 29 months for STEM students.** The 12-month limit on F-1 Optional Practical Training (OPT) will be extended by 17 months, for a total of 29 months, for certain STEM degreeholders (Science, Technology, Engineering, Mathematics) in the following fields:
  - Actuarial Science. CIP Code 52.1304.
  - Computer Science Applications:
    - CIP Codes 11.xxxx (except Data Entry/Microcomputer Applications, which are CIP Codes 11.06xx)
  - Engineering. CIP Codes 14.xxxx.
  - Engineering Technologies. CIP Codes 15.xxxx.
  - Biological and Biomedical Sciences. CIP Codes 26.xxxx.
  - Mathematics and Statistics. CIP Codes 27.xxxx.
  - Military Technologies. CIP Codes 29.xxxx.
  - Physical Sciences. CIP Codes 40.xxxx.
  - Science Technologies. CIP Codes 41.xxxx.
  - Medical Scientist (MS, PhD). CIP Code 51.1401

Specifically *excluded* from the above codes, however, are all CIP codes ending in xx99, which are "catch-all" categories usually designated by "Other" in the CIP lists. Degrees associated with CIP codes ending in xx99 are *not* eligible for the 17-month extension.

A full list of Classification of Instructional Programs codes (CIP 2000) is available online at:  
<http://nces.ed.gov/pubs2002/cip2000/>.

Based on their CIP code classification, the following undergraduate majors and graduate programs at USF meet the DHS definition of a STEM degree:

Major Code	Description	CIP Code	CIP Code Description (Major as listed on Form I-20)
CS	Computer Science	11.0101	Computer and Information Sciences, General
CSBR	Computer Science (Bridge Program)	11.0101	Computer and Information Sciences, General
CSE	Computer Science - Entrepreneurship	11.0101	Computer and Information Sciences, General
CSF	Computer Science (4+1)	11.0101	Computer and Information Sciences, General
IEBR	Internet Engineering (Bridge Program)	11.0801	Web Page, Digital/Multimedia and Information Resources Design
IEE	Internet Engineering - Entrepreneurship	11.0801	Web Page, Digital/Multimedia and Information Resources Design
IENF	Internet Engineering (4+1)	11.0801	Web Page, Digital/Multimedia and Information Resources Design
IENG	Internet Engineering	11.0801	Web Page, Digital/Multimedia and Information Resources Design
IS	Information Systems	11.1003	Computer and Information Systems Security
ISA	Information Security and Assurance	11.1003	Computer and Information Systems Security
MSIS	Information Systems	11.1003	Computer and Information Systems Security
BIOL	Biology	26.0101	Biology/Biological Sciences, General
BIC	Biochemistry	26.0202	Biochemistry
BIOC	Biochemistry	26.0202	Biochemistry
MATH	Mathematics	27.0101	Mathematics, General
CHEM	Chemistry	40.0501	Chemistry, General
CHMN	Chemistry – ACS Certified	40.0501	Chemistry, General
PHYS	Physics	40.0801	Physics, General

- **Other requirements for 17-month extension.** Additional requirements for the 17-month extension include:
  - The student must be currently participating in a period of standard OPT, working for a U.S. employer in a job directly related to the student's major area of study.
  - The student must have successfully completed a bachelor's, master's, or doctoral degree in a field on the DHS STEM Designated Degree Program List, from a SEVIS-certified college or university.
  - The student must have a job offer from an employer registered with the E-Verify employment verification system. For more information about the E-Verify system, please visit:  
[http://www.dhs.gov/ximgtn/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/ximgtn/programs/gc_1185221678150.shtm)
  - The student has not previously received a 17-month OPT extension after earning a STEM degree.

- **Additional requirements for the 17-month extension (continued)**
  - The Designated School Official (DSO) must recommend the 17-month OPT extension in the Student and Exchange Visitor Information System (SEVIS), after verifying the student's eligibility, certifying that the student's degree is on the STEM Designated Degree Program List, and ensuring that the student is aware of his or her responsibilities for maintaining status while on OPT.
  - The student will have to apply for the 17-month extension on Form I-765 with fee.
  - Students who timely file an application for the 17-month OPT extension will be able to continue employment while the extension application is pending, until a final decision on the I-765 or for 180 days, whichever comes first.
  - The employer must agree to report the termination or departure of the student to the DSO or through "any other means or process identified by DHS." An employer must consider a worker to have departed when the employer knows the student has left employment, or if the student has not reported for work for a period of five consecutive business days without the employer's consent.
  
- **H-1B cap-gap extension of D/S and work authorization until October 1.** Duration of status and work authorization will be extended for a student on OPT, who is the beneficiary of a timely filed H-1B petition requesting an employment start date of October 1 of the following fiscal year. This would apply to all students on OPT, not just STEM students. The extension of duration of status and work authorization would automatically terminate upon the rejection, denial, or revocation of the H-1B petition filed on the student's behalf.
  
- **I-765 filing window.** The rule sets new deadlines for filing Form I-765 for post-completion OPT. An I-765 for standard post-completion OPT can be filed up to **90 days before** the program end-date and **up to 60 days after** the program end-date, provided that it is filed within 30 days of the date the DSO enters the OPT recommendation into SEVIS. Applications for the 17-month STEM extension must be filed before the current EAD expires.
  
- **Duration of employment authorization**
  - Employment authorization will begin on the date requested or the date the employment authorization is adjudicated, whichever is later.
  - Exception: The employment authorization period for the 17-month OPT extension begins on the day after the expiration of the initial post-completion OPT employment authorization, and ends 17 months later, regardless of the date the actual extension is approved.
  
- **Reporting Requirements while on OPT**
  - All students on OPT are required to report to the DSO:
    - any change of name or address, or
    - any interruption of such employment
  - In addition, students with an approved 17-month OPT extension:
    - Must report to the student's DSO within 10 days of any change of:
      - legal name
      - residential or mailing address
      - employer name
      - employer address, and/or
      - loss of employment.
    - Must make a validation report 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, the student transfers to another school, or the 17-month OPT extension ends, whichever is first. The validation is a confirmation that the student's name and address, employer name and address, and/or loss of employment is current and accurate. The report is due to the DSO within 10 business days of each reporting date.
  
- **Limited Periods of Unemployment to Maintain Status**
  - 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 carried out under the initial post-completion OPT authorization. The Student and Exchange Visitor Program (SEVP) office has verbally confirmed that the unemployment provisions of the new regulation do not apply to any periods of unemployment before the rule's effective date of April 8, 2008. The 90 day "clock" starts on April 8, 2008.
  - More than 90 days of unemployment after April 8, 2008 may affect your eligibility for future immigration benefits. If you apply for an immigration benefit and you have more than 90 days of unemployment AFTER April 8, 2008, the benefit may be denied because of that unemployment. You may provide documentation to the U.S. Citizenship and Immigration Services (USCIS) adjudicator to consider any extenuating circumstances regarding your unemployment.
  - Students granted a 17-month OPT extension may not accrue an aggregate of more than 120 days of unemployment during the total 29-month OPT period.
  
- **F-1 students currently in the United States** are able to take advantage of the rule's new provisions.