

# Rules and Regulations

Federal Register

Vol. 67, No. 166

Tuesday, August 27, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 214

[INS No. 2220-02]

RIN 1115-AG75

#### Reduced Course Load for Certain F and M Nonimmigrant Students in Border Communities

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations governing F and M nonimmigrants. This rule will clarify that Mexican or Canadian nationals who reside outside the United States and regularly commute across a land border to study may do so on a part-time basis within the F or M nonimmigrant category. These changes are being made to facilitate and legitimize certain part-time study along border communities while ensuring that all applicable requirements and safeguards are met.

**DATES:** *Effective date:* This interim rule is effective August 27, 2002.

*Comment date:* Written comments must be submitted on or before October 28, 2002.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2220-02 on your correspondence. Comments may also be submitted electronically to the Service at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically, you must include INS No. 2220-02 in the subject heading so that the comments can be

electronically routed to the appropriate office for review. Comments may be inspected at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Maura Deadrick, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514-3228.

#### SUPPLEMENTARY INFORMATION:

##### Who Are F and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of various classifications of nonimmigrant aliens who are foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States. The purpose of the nonimmigrant alien's intended stay in the United States determines his or her proper nonimmigrant classification.

F-1 nonimmigrant aliens, as defined in section 101(a)(15)(F) of the Act, are foreign students who have been admitted to the United States to pursue a full course of study in a college, university, seminary, conservatory, academic high school, private elementary school, other academic institution, or language training program in the United States that has been approved by the Service to enroll foreign students. For the purposes of this rule, the term "school" refers to all of these types of Service-approved institutions.

An F-2 nonimmigrant alien is a foreign national who has been admitted to the United States as the spouse or qualifying child (under the age of 21) of an F-1 nonimmigrant alien.

M-1 nonimmigrant aliens, as defined in section 101(a)(15)(M) of the Act, are foreign nationals who have been admitted to the United States to pursue a full course of study at a Service-approved vocational school or other recognized nonacademic institution (other than in language training programs) in the United States. The term "school" for the purposes of this interim rule also encompasses all institutions approved for attendance by M-1 students. An M-2 nonimmigrant alien is a foreign national who is the spouse or qualifying child (under the

age of 21) of an M-1 nonimmigrant alien.

#### Why Is the Service Promulgating This Rule?

Recognizing the unique nature of border communities and the need to serve the educational interests of students living on both sides of the U.S./Canada and U.S./Mexico borders, this rule expands the circumstances under which a border commuter student who is a national of Canada or Mexico may be admitted as an F-1 or M-1 nonimmigrant alien to engage in a full course of study, albeit with a reduced course load.

Historically, the Service has not officially sanctioned such part-time study for border commuter students. First, the statutory definition of the B nonimmigrant visitor classification, in section 101(a)(15)(B) of the Act, precludes admission of an individual coming to the United States to study. Moreover, the Service has always interpreted the statutory definitions of the F and M classifications, relating to students pursuing a full course of study, to require enrollment on a full-time basis as defined in the regulations, which did not cover part-time border commuter students.

However, this regulatory scheme has aligned poorly with the realities of the border communities, effectively creating a "Catch-22" situation for bona fide part-time border commuter students. This has resulted in uneven application of this policy on the border. In fact, it has become commonplace for aliens residing in Canada or Mexico to enroll part-time in border institutions and enter the United States as visitors on a daily basis to pursue part-time study.

The response to the terrorist attacks of September 11, 2001, has resulted in increased scrutiny at ports-of-entry and in renewed focus on the integrity of our immigration system. There has been particular attention to the proper use of the B visitor classification. When the principal purpose for entering the United States is to attend school, the immigration laws intend that aliens be classified as nonimmigrant students, not as B visitors for business or pleasure.

Therefore, the purpose of this rule is to recognize the special relationship between the United States and its neighbors and to legitimize such study by border commuter students, while placing it within a regulated, controlled

process. As nonimmigrant students, they will be authorized to attend only schools approved by the Service to accept foreign students. A border commuter student is subject to all requirements applicable to the F or M nonimmigrant classification and will be processed through the existing framework for these classifications. This includes, among other things, obtaining the appropriate Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, and obtaining the appropriate visa, unless exempt. The schools will be required to comply with the same reporting and recordkeeping requirements for these part-time border commuter students as for full-time F-1 or M-1 students.

This rule will prevent the significant disruption of part-time study that has become an accepted fact of life along the border and a settled expectation. For example, it is reported that the El Paso Community College has an enrollment of some 2,400 part-time border commuter students, who generate approximately \$700,000 in tuition. The loss of these students would cause the school, and other similarly-situated schools, to lose state funding based on enrollment levels, thus affecting all of the remaining students. In Detroit, it is reported that Wayne State University stands to lose approximately 500 students and \$1 million in fees and tuition. Media reports show that enrollment in the University of Texas at Brownsville's English language program dropped 50% over the summer, costing the institution \$150,000. In Washington State, media reports state that Bellingham Technical College stands to lose \$100,000 in tuition this year. Niagara University in Lewiston, New York, reportedly stands to lose \$250,000 in tuition revenue, and D'Youville College in Buffalo could lose up to \$900,000 in the next year. These are only a few examples of the extent to which the practice of part-time study by commuter students is woven into life on the border.

#### **How Does the Service Define a "Full Course of Study" for Border Commuter Students?**

As noted, the statutory definitions of the F-1 and M-1 classifications relate to foreign students coming to the United States temporarily and solely for the purpose of pursuing a full course of study at an approved school. The Service's current regulations at 8 CFR 214.2(f)(6) and (m)(9) set forth specific requirements for defining a "full course of study" in various contexts.

However, the regulations at 8 CFR 214.2(f)(6)(iii) also permit a school to

authorize a student to engage in a reduced course load under certain circumstances while still maintaining status as a student enrolled in a "full course of study". The school's designated school official (DSO) may approve a reduced course load due to initial difficulties with the English language or reading requirements, unfamiliarity with American teaching methods, or improper course level placement, or because of illness or medical reasons.

Moreover, there is another context in which the Service has authorized DSOs to approve a reduced course load in special circumstances for students who still wish to pursue a full course of study. In 1998, several Asian countries experienced a severe devaluation of their currencies, which caused a hardship upon nonimmigrant students in the United States dependent on currency from those countries for support. In response, the Service amended its regulations, 8 CFR 214.2(f)(6)(i)(F), allowing the Commissioner to publish a **Federal Register** notice authorizing affected F-1 aliens to accept employment in excess of the ordinary 20-hour per week maximum, in cases of severe economic hardship, and to drop below the usual course load in order to pursue the additional employment.

This rule adds an additional provision permitting certain border commuter students to enroll in an approved school with a lesser course load than is otherwise required for F and M students, on account of their unique educational circumstances. Specifically, for a nonimmigrant alien who meets all other requirements applicable to the F or M classification and who is commuting to a school in the United States within 75 miles of the border, the school's DSO may approve the student's attendance with a course load below that otherwise required under the general rules. However, the student must still be enrolled in a "full course of study" at the school, that is, a course of study that leads to the attainment of a specific educational, professional, or vocational objective, as prescribed in the introductory language in § 214.2(f)(6)(i) and (m)(9)(i), although at a reduced course load for each semester or term.

#### **Why Is This Change Only Applicable to Border Commuters?**

This reflects the special and unique relationship the United States shares with its bordering neighbors and is consistent with the numerous statutory and regulatory provisions that accommodate the special demands in

regulating the flow of Canadian and Mexican nationals across our borders. For example, under section 101(a)(6) of the Act, provision is made for border crossing cards to be issued to aliens resident in foreign contiguous territory in order to facilitate the lawful crossing of our borders.

Although there is no border crossing card currently issued to Canadian nationals, the Service, together with the Department of State, has implemented procedures to issue border crossing cards to Mexican nationals consistent with the Act as amended by section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C (Sept. 30, 1996) and section 601 of the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107-173 (May 14, 2002). Mexican nationals presenting a valid, unexpired Border Crossing Card may be admitted to the United States without other documentation for a period not to exceed 72 hours to visit within 25 miles of the border, or in the case of visits to certain areas in the State of Arizona, within 75 miles of the border. See 8 CFR 235.1(f)(1)(iii) and (f)(1)(v).

Another example, section 212(d)(4)(B) of the Act authorizes the Attorney General and the Secretary of State, on the basis of reciprocity, to waive the passport and visa requirements of nationals of foreign contiguous territory and adjacent islands.

The special relationship between the United States and its border neighbors is also reflected in the special procedures contained in the North American Free Trade Agreement (NAFTA) and codified under section 214(e) of the Act.

Administratively, the Service has regulated the special circumstances of frequent border crossers and made allowance for the peculiarities of daily life in border communities. In addition to regulatory provisions controlling the unique documentary requirements for admission of Canadian and Mexican nationals found at 8 CFR 212.1 and 212.6, the Service has established automated inspection services to provide access to the United States for a group of identified, low-risk border crossers. See 8 CFR 235.7. Other examples address circumstances surrounding temporary workers to the United States such as the regulatory provision found at 8 CFR 214.2(j)(12)(ii). This provision, commonly known as the "commuter L-1," recognizes the exception to statutory limits on the period of stay for intracompany transferees who reside outside the United States and regularly

commute to engage in part-time employment in this country. Another special provision in the regulations for L nonimmigrants (intracompany transferees), 8 CFR 214.2(f)(17), allows Canadian citizens to file the employer's petition for L classification at the time of applying for admission at the port-of-entry, rather than having to obtain approval of the petition in advance from a Service Center. Also, for nearly 20 years, the Service and the Department of Labor have authorized exceptions for Canadian musicians entering under the H-2B temporary worker program. These musicians, if entering the United States to perform within 50 miles of the U.S. Canada border, are pre-certified by the Secretary of Labor.

This rule is necessary to take account of the unique educational situation of bona fide commuter students seeking to attend United States schools along the U.S./Canada and U.S./Mexico borders. The Service understands that certain border states have undertaken measures to facilitate attendance by Mexican and Canadian nationals.

The Service will restrict application of this provision to schools located within 75 miles of the U.S. border. The Service believes this 75-mile zone is consistent with the general commuter travel provisions and will accommodate the needs of students and institutions. Since 1953, Mexico and the United States have agreed to make special accommodations for Mexican nationals who cross the border into the immediate border area to promote the economic stability of the region, and the United States and Canada have a longstanding accommodation for citizens to cross the common border without requiring passports or visas. The Service therefore believes this 75-mile zone, which is the maximum distance currently allowed for Mexican nationals entering the immediate border area, pursuant to 8 CFR 235.1(f)(1)(v), is consistent with the many border accommodations established over time and will meet the needs of students and institutions. The Service does not believe a larger zone is warranted to address the problem.

Canadian or Mexican nationals enrolling at a school outside this 75-mile zone, or who maintain a residence in the United States in connection with their attendance at any approved school, will remain subject to the established rules for F or M nonimmigrants student status.

#### What Changes Does This Rule Make?

This rule adds new provisions in the Service's regulations at 8 CFR 214.2(f)(18) and (m)(19) to include special provisions defining a full course

of study for border commuter students. To be eligible to be authorized by a school's DSO based on the border commuter student provision, the alien must be:

- A national of Canada or Mexico who maintains an actual residence and place of abode in the alien's country of nationality;
- Attending a school located within 75 miles of the border;
- Registered as a border commuter student; and
- Matriculating in a full course of study, albeit on a part-time basis.

This interim rule also adds a new provision, 8 CFR 214.2(f)(18)(iii), to place in effect the reasonable limitation that border commuter students attending an approved school on a part-time basis as F-1 students will be admitted for a fixed admission period for each semester, quarter, or term. Under current regulations, only M-1 students are admitted for a fixed period of admission, while full-time F-1 student are admitted for "duration of status", as provided in 8 CFR 214.2(f)(5) and (f)(7), while the student pursues a full course of study or authorized practical training. By setting a fixed period of admission for F-1 border commuter students that reflects the current semester or quarter of the school's academic calendar, the Service will be able to maintain greater control and oversight to ensure that the student does in fact remain a border commuter student. The school's DSO will be required to specify on the Form I-20 the term-by-term completion date, and a new Form I-20 will be required for each new quarter or semester that the commuter student attends at the school. Conforming amendments to paragraphs (f)(1)(i), (f)(5)(i), and (f)(7)(i) of § 214.2 further clarify that border commuter students will be admitted for a fixed period rather than for duration of status.

This rule also clarifies in § 214.2(m)(19)(iii) that the provision in § 214.2(m)(5), allowing an additional 30-day period in which to depart the United States following the completion of an M-1 student's course of study (in order to make final arrangements before departure), does not apply to border commuter students.

The Service notes that, in a separate rulemaking, 67 FR 34862 (May 16, 2002) (proposed rule), the Service is implementing section 641 of IIRIRA to establish an information collection system for nonimmigrant alien students. This system, the Student and Exchange Visitor Information System (SEVIS), will require the DSO to report when a reduced course load has been

authorized for a particular student. SEVIS will enable the Service to provide more efficient oversight of this special authority for border commuter students to enroll at an approved school with a reduced course load.

#### Will Border Commuter Students Be Authorized for On-Campus Employment or Practical Training?

Under this rule, Canadian or Mexican nationals approved as F-1 border commuter students for a part-time course load may only be authorized to accept employment in a curricular practical training program or a post-completion optional practical training program, using existing authorization procedures. The regulatory provisions governing curricular and post-completion optional practical training are contained at 8 CFR 214.2(f)(10)(i) and (f)(10)(ii)(A)(3), respectively. In the case of an M-1 border commuter student, employment will only be authorized as provided for practical training as provided in existing 8 CFR 214.2(m)(14). Border commuter students admitted to pursue a course of study on a part-time basis under this rule will not be approved for any other employment in the United States (whether on-campus or off-campus) in connection with their F or M student status.

The Service believes this position is appropriate for several reasons. First, student employment (unrelated to training) often serves to help students meet living expenses while they are away from their home country and living in the United States, and that rationale does not apply to border commuter students. Also, although on-campus employment pursuant to a fellowship or scholarship would normally be available to an F-1 student, a part-time border commuter student is, by definition, not in the same situation as other F-1 students. The purpose of the F-1 and M-1 classification is completion of an educational objective, and the categories of work authorization allowed by this rule are closely related to that objective. For this reason, this rule retains the eligibility for non-resident border commuter students to engage in curricular practical training programs and post-completion optional practical training programs, but not in other types of employment in connection with their student status.

Finally, because a border commuter student admitted under this rule is maintaining his or her actual place of abode in Canada or Mexico and, by definition, would not be residing in the United States, the Service does not believe that employment in the United States is economically necessary. The

alien would be able, of course, to find employment in his or her own country where the student continues to reside.

A border commuter student who wishes to engage in employment in the United States that is not authorized by this rule must obtain the appropriate visa, or enroll as a full-time F-1 or M-1 student, in which case the student will not be governed by the limitations of this rule.

#### **Does This Rule Affect Canadian or Mexican Nationals Who Are Authorized To Enter and Work in the U.S. Under the Provisions of NAFTA?**

This rule simply provides a means for certain Canadian and Mexican nationals who commute into the U.S. to attend school on a part-time basis to be able to obtain proper status as an F-1 or M-1 nonimmigrant.

The United States Government's obligations under NAFTA do not address students and this rule in no way affects the rights of Canadian or Mexican nationals to temporary entry and employment in the U.S. under NAFTA. Canadian or Mexican nationals are admitted as TN nonimmigrants, or in some cases in a different work-related nonimmigrant classification under NAFTA depending on their circumstances. If a Canadian or Mexican national has been already admitted to the United States in a work-related nonimmigrant classification pursuant to NAFTA, it is permissible for them to attend school incidental to their NAFTA-based classification, and that is not affected by this interim rule.

#### **Does This Rule Affect Canadian or Mexican Nationals Attending School on a Full-Time Basis?**

No. Canadian or Mexican nationals attending school in the United States on a full-time basis continue to be governed by the rules that apply to their respective classifications. A Canadian or Mexican national admitted to attend school in the United States on a full-time basis as an F-1 or M-1 student may seek authorization from a DSO for a reduced course load, but must comply with the aspects of this rule requiring residence in Canada or Mexico, or otherwise qualify for reduced course load under 8 CFR 214.2(f)(6)(iii).

#### **Will Canadian or Mexican Nationals Be Eligible for Nonimmigrant Student Status To Attend Public Elementary or Secondary Schools or Publicly-Funded Adult Education Programs?**

Section 214(m) of the Act prohibits an F-1 student from attending a public high school for more than 12 months in the aggregate. Because of the statutory

limitation, an F-1 student at a public high school can only be admitted for an aggregate of 12 months of study. Section 214(m) also requires that the alien, prior to being issued the F-1 visa, demonstrate that he or she has reimbursed the local school district for the full, unsubsidized per capita cost of providing the high school education for the period of the alien's attendance.

Also, under section 214(m) of the Act, as amended by sections 625 and 107(e)(2) of IIRIRA, a nonimmigrant may not be accorded status as an F-1 student to pursue a course of study at a public elementary school or a publicly funded adult education program.

#### **Does This Rule Affect Any Other Processes and Procedures Applicable to the F and M Classifications?**

No. Except for the change this rule makes regarding enrollment in a full course of study for border commuter students, all other requirements, processes, and procedures remain in effect. For example, a border commuter student may transfer between qualifying institutions within the 75-mile limit under the same rules as any other F-1 student. Such a student would also be able to transfer to a school outside the 75-mile limit, under the established procedures, but the student would not be eligible, at the new school, for the special part-time provision created by this rule. Similarly, a Canadian or Mexican national who is currently a full-time student may transfer to a qualifying school as a border commuter student provided that he or she meets the requirements of this rule.

#### **Good Cause Exception**

The Service's implementation of this rule as an interim rule is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule are as follows:

Adherence to the notice and comment period normally required under 5 U.S.C. 553(b) by promulgation of a proposed rule prior to an interim rule would cause a disruption in studies. As noted in the supplementary information to this rule, the emphasis on the proper classification for the activity affected by this rule has led to increased enforcement and has had the effect of ceasing studies by affected students. In order to allow those students to recommence studies in a proper and regulated format in time for the upcoming fall academic term, an interim rule is necessary.

Furthermore, this rule enhances security and reduces risk because it places the activity it governs in a

regulated context. As noted in this rule, the activity sanctioned by this rule has taken place on the border for some time, but has taken place in a classification, such as the B nonimmigrant classification, that is not appropriate. Thus, to avoid disruption it is necessary that this rule be designated an interim rule.

Therefore, the Service finds that it would be impractical and contrary to the public interest to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

This rule is also made effective upon publication in the **Federal Register**. This action is necessary in order to avoid the disruption in the enrollment of border community students in the upcoming academic term, as discussed above. It will also facilitate the use of this provision by the affected communities as soon as possible after publication. Because this rule removes a restriction and imposes no new burdens or requirements on the public, the Service is not required to delay the effective date of this rule for 30 days under 5 U.S.C. 553(d), and concludes that it would be contrary to the public interest to do so.

#### **Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows border community students to enroll part-time in United States schools who accept them for admission. Although some of these border-area schools may be considered as small entities as that term is defined in 5 U.S.C. 601(6), the effect of this rule would be to benefit those schools by allowing them to continue to enroll certain part-time students who commute into the United States to attend school.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

**Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988 Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 214**

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

**PART 214—NONIMMIGRANT CLASSES**

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

**Authority:** 8 U.S.C. 1101, 1101 note, 1103, 1182, 1184, 1187, 1221, 1281, 1282; 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; 8 CFR part 2.

- 2. Section 214.2 is amended by:
  - a. Removing the term "for duration of status" in paragraph (f)(1)(i) introductory text;
  - b. Adding a new sentence at the beginning of paragraph (f)(5)(i);
  - c. Removing the first sentence and revising the current second sentence in paragraph (f)(7)(i);
  - d. Adding and reserving a new paragraph (f)(17);
  - e. Adding a new paragraph (f)(18);
  - f. Adding and reserving new paragraph (m)(18); and by
  - g. Adding a new paragraph (m)(19).
 The revision and additions read as follows:

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

\* \* \* \* \*

(f) \* \* \*

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \* Except for border commuter students who are covered by the provisions of paragraph (f)(18) of this section, an F-1 student is admitted for duration of status. \* \* \*

\* \* \* \* \*

- (7) \* \* \*
- (i) \* \* \* An F-1 student who is admitted for duration of status is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completion of his or her educational objective. \* \* \*
- \* \* \* \* \*
- (17) Reserved.
- (18) *Special rules for certain border commuter students.*
- (i) *Applicability.* For purposes of the special rules in this paragraph (f)(18), the term "border commuter student" means a national of Canada or Mexico who is admitted to the United States as an F-1 nonimmigrant student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. A border commuter student must maintain actual residence and place of abode in the student's

country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

- (A) Residing in the United States while attending an approved school as an F-1 student, or
- (B) Enrolled in a full course of study as defined in paragraph (f)(6) of this section.
  - (ii) *Full course of study.* The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or professional objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (f)(6) of this section, provided that the reduced course load is consistent with the border commuter student's approved course of study.

(iii) *Period of admission.* An F-1 nonimmigrant student who is admitted as a border commuter student under this paragraph (f)(18) will be admitted until a date certain. The DSO is required to specify a completion date on the Form I-20 that reflects the actual semester or term dates for the commuter student's current term of study. A new Form I-20 will be required for each new semester or term that the border commuter student attends at the school. The provisions of paragraphs (f)(5) and (f)(7) of this section, relating to duration of status and extension of stay, are not applicable to a border commuter student.

(iv) *Employment.* A border commuter student may not be authorized to accept any employment in connection with his or her F-1 student status, except for curricular practical training as provided in paragraph (f)(10)(i) of this section or post-completion optional practical training as provided in paragraph (f)(10)(ii)(A)(3) of this section.

- \* \* \* \* \*
- (m) \* \* \*
- (18) Reserved.
- (19) *Special rules for certain border commuter students.*
- (i) *Applicability.* For purposes of the special rules in this paragraph (m)(19), the term "border commuter student" means a national of Canada or Mexico who is admitted to the United States as an M-1 student to enroll in a full course of study, albeit on a part-time basis, in an approved school located within 75 miles of a United States land border. The border commuter student must maintain actual residence and place of

abode in the student's country of nationality, and seek admission to the United States at a land border port-of-entry. These special rules do not apply to a national of Canada or Mexico who is:

(A) Residing in the United States while attending an approved school as an M-1 student, or

(B) Enrolled in a full course of study as defined in paragraph (m)(9) of this section.

(ii) *Full course of study.* The border commuter student must be enrolled in a full course of study at the school that leads to the attainment of a specific educational or vocational objective, albeit on a part-time basis. A designated school official at the school may authorize an eligible border commuter student to enroll in a course load below that otherwise required for a full course of study under paragraph (m)(9) of this section, provided that the reduced course load is consistent with the border commuter student's approved course of study.

(iii) *Period of stay.* An M-1 border commuter student is not entitled to an additional 30-day period of stay otherwise available under paragraph (m)(5) of this section.

(iv) *Employment.* A border commuter student may not be authorized to accept any employment in connection with his or her M-1 student status, except for practical training as provided in paragraph (m)(14) of this section.

\* \* \* \* \*

Dated: August 22, 2002.

**James W. Ziglar,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 02-21823 Filed 8-26-02; 8:45 am]

BILLING CODE 4410-10-P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 121, 125, and 135

[Docket Nos. 26930 & 27459]

RIN 2120-AE70 & 2120-AF09

#### Aircraft Ground Deicing and Anti-Icing Program & Training and Checking in Ground Icing Conditions

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, confirmation of effective date, and disposition of comments.

**SUMMARY:** On September 29, 1992, and December 30, 1993, the FAA published

interim final rules requiring deicing operations in ground icing conditions. The interim final rules require part 121 certificate holders to develop and comply with an FAA approved ground deicing/anti-icing program; part 125 certificate holders to provide pilot testing on conducting operations in ground icing conditions; part 135 certificate holders to provide pilot training on conducting operations in ground icing conditions; and part 125 and 135 certificate holders to check airplanes for contamination (*i.e.*, frost, ice, or snow) prior to takeoff when ground icing conditions exist. These rules were necessary to provide an added level of safety to flight operations during adverse weather conditions. The FAA invited comments on the interim final rules. This document responds to public comments and confirms the interim final rules as final rules. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council by reducing the number of aged items in the Regulatory Agenda.

**EFFECTIVE DATE:** This action makes final the interim final rules and confirms the original effective dates. The interim final rule on Aircraft Ground Deicing and Anti-Icing Program published at 57 FR 44924 is effective November 1, 1992. The interim final rule on Training and Checking in Ground Icing Conditions published at 58 FR 69620 is effective January 31, 1994.

**ADDRESSES:** The complete docket for the interim final rules on deicing may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Room 915-G, Docket Nos. 26930 & 27459, 800 Independence Ave., SW., Washington, DC 20591, weekdays (except federal holidays) between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Daniel Meier, Air Carrier Operations Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202-267-3749.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 23, 1992, the FAA published a Notice of Proposed Rulemaking (57 FR 32846) that would establish requirements for part 121 certificate holders to develop and comply with an FAA approved ground deicing/anti-icing program. The proposed rule was developed in response to a number of airplane accidents caused in part by icing and to recommendations from an

international conference on aircraft deicing/anti-icing. Because of the urgency of the rulemaking, the FAA allowed for only a 15-day comment period.

On September 21, 1993, the FAA published proposed requirements for ground deicing procedures for parts 125 and 135 certificate holders (58 FR 49164). Under the proposal when ground icing conditions exist, parts 125 and 135 certificate holders would be required to check their airplanes for contamination prior to beginning takeoff. In addition, under the proposed changes to part 125, certificate holders would be required to provide pilot testing on ground deicing/anti-icing procedures, and under proposed changes to part 135, certificate holders would be required to provide pilot training on ground deicing/anti-icing procedures. The FAA proposed the requirements in response to part 135 accidents that were caused by pilots beginning takeoff with contamination adhering to critical airplane surfaces.

On September 29, 1992, the FAA published the part 121 interim rule (57 FR 44924) and on December 30, 1993, the FAA published the part 135 interim rule (58 FR 69620). The FAA requested comments on the interim final rules because the comment periods on the NPRMs were unusually short, and because the FAA anticipated that the first winter of implementation of the rules might provide additional information supporting either the continuation or modification of the rules. This action is in response to those comments and confirms the interim final rules as final rules.

#### Discussion of Comments

##### *General*

The FAA received 22 comments on the part 121 interim rule. Generally, most commenters favor the FAA's action. Several commenters address specific requirements in the part 121 interim rule and some recommend changes in the rule language.

The most significant issues addressed by commenters on the part 121 interim rule involve holdover times, pretakeoff checks, hard-wing aircraft, and the role of aircraft dispatchers. Additional issues addressed by commenters involve applicability, training, research, type of fluid, alternate procedures, need for an approved program, and air traffic control.

The FAA received only one comment on the part 135 interim rule. This commenter made specific recommendations to delete paragraphs from parts 125 and 135 that the