

## DHS Set to Publish Final Rule Allowing Further STEM OPT Extensions for Foreign Students

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Today **DHS** released an advanced copy of its final rule allowing foreign students with degrees in *Science, Technology, Engineering, and Mathematics (STEM)* to extend their *Optional Practical Training (OPT)* for an additional 24 months. DHS will publish the final rule in the Federal Register this Friday. The rule will go into effect on May 10. Beginning May 10, students who are currently in the U.S. under their 17-month STEM OPT extension will be able to file to extend their OPT for an additional 7 months.

This rule gives foreign students with STEM degrees the opportunity to work in the United States for up to 36 months. The extended time period offers a number of benefits to foreign students and U.S. employers that wish to hire them. By defining fields of study that qualify for STEM in accordance with the Department of Education's Classification of Instructional Program (CIP) categories, the new rule expands on the permissible fields of study that were authorized under the old STEM rule. Notably, increasing OPT work authorization from 29 months to 36 months will give F-1 STEM OPT holders more chances at being selected for an H-1B visa number in the annual H-1B lottery. The rule also redresses the U.S. District Court for the District of Columbia's vacatur of the 2008, 17-month Optional Practical Training (OPT) STEM Extension rule, and part of the contentious legal battle surrounding the overall validity of the STEM extension program, which is expected to be decided by a Federal court in May.

In addition to offering significant benefits, the rule imposes additional compliance requirements on STEM OPT workers and the U.S. employers who hire them:

- STEM OPT students, with the cooperation of their employers, will be required to prepare and execute a formal training plan that identifies learning objectives and plans for achieving those objectives. This information will be collected on Form I-983, Training Plan for STEM OPT students. Employers will also need to evaluate student progress by signing an evaluation on an annual basis – the first one during the initial 12-month period and the final one at the conclusion of the STEM OPT extension.
- STEM OPT students must inform their designated school official (DSO) about any name or

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address changes, and any changes to their employers' names or addresses.

- Employers hiring STEM OPT workers will be required to guard against adverse action to full- or part-time U.S. workers by ensuring the STEM OPT employee's duties, hours, and compensation are commensurate with similarly situated U.S. workers; the company has sufficient resources and trained personnel available to provide training in the specified opportunity; and the opportunity will help the student attain his or her training objectives.
- Employers will be required to attest that they are not replacing full- or part-time, temporary or permanent U.S. workers with STEM OPT students.
- STEM extensions will only be available to students with degrees from schools accredited by an accrediting agency recognized by the U.S. Department of Education.
- Employers must notify the foreign student's DSO within five business days of when a foreign student terminates or leaves his or her employment before the end of the authorized OPT period.

Under the new rule, DHS will conduct announced and unannounced employer-site visits to ensure that employers and foreign students are following the formal training programs that were provided earlier to DHS to obtain STEM OPT extensions. These site visits are designed to reduce fraudulent use of the F-1 status. DHS will provide a notice of inspection at least 48 hours prior, unless the site visit is the result of a complaint or potential noncompliance with the STEM OPT extension regulations.

As welcome news to employers and foreign students, the rule extends cap-gap protection for those H-1B petition beneficiaries that are selected in the H-1B cap. Under the rule, an F-1 student's duration of status and employment authorization are automatically extended until September 30 if an H-1B petition is timely filed on behalf of the student, and approved by U.S. Citizenship and Immigration Services (USCIS).

In light of this new rule, employers should review their OPT population to determine which workers will be eligible for further STEM extensions. U.S. employers should also verify whether these employees need to change to H-1B status to ensure there is no interruption in their U.S. work authorization beyond the expiration of their OPT. U.S. employers should plan to file all H-1B cap petitions for FY 2017 by March 31, 2016, keeping in mind some new factors affecting this year's H-1B cap season.

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