

SUBCHAPTER G—PUBLIC DIPLOMACY AND EXCHANGES

PART 61—WORLD-WIDE FREE FLOW OF AUDIO-VISUAL MATERIALS

Sec.

- 61.1 Purpose.
- 61.2 Definitions.
- 61.3 Certification and authentication criteria.
- 61.4 Certification procedures—Exports.
- 61.5 Authentication procedures—Imports.
- 61.6 Consultation with subject matter specialists.
- 61.7 Review and appeals procedures.
- 61.8 Coordination with U.S. Customs Service.
- 61.9 General information.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2051, 2052; 22 U.S.C. 1431 *et seq.*; Public Law 101-138; E.O. 11311, 31 FR 13413, 3 CFR 1966-1900 comp., page 593.

SOURCE: 59 FR 18965, Apr. 21, 1994, unless otherwise noted. Redesignated at 64 FR 54539, Oct. 7, 1999.

EDITORIAL NOTE: Nomenclature changes to part 61 appear at 64 FR 54539, Oct. 7, 1999.

§ 61.1 Purpose.

The Department of State administers the "Beirut Agreement of 1948", a multinational treaty formally known as the Agreement for Facilitating the International Circulation of Visual and Auditory Material of an Educational, Scientific and Cultural Character. This Agreement facilitates the free flow of educational, scientific and cultural audio-visual materials between nations by providing favorable import treatment through the elimination or reduction of import duties, licenses, taxes, or restrictions. The United States and other participating governments facilitate this favorable import treatment through the issuance or authentication of a certificate that the audio-visual material for which favorable treatment is sought conforms with criteria set forth in the Agreement.

§ 61.2 Definitions.

Department—means the Department of State.

Applicant— means: (1) The United States holder of the "basic rights" in the material submitted for export certification; or (2) the holder of a foreign

certificate seeking import authentication.

Application form—means the Application for Certificate of International Educational Character (Form IAP-17) which is required for requesting Department certification of United States produced audio-visual materials under the provisions of the Beirut Agreement.

Attestation Officer—means the Chief Attestation Officer of the United States and any member of his or her staff with authority to issue Certificates or Importation Documents.

Audio-visual materials—means: (1) Films, filmstrips and microfilm in exposed and developed negative form, or in positive form, *viz.*, masters or prints, teletranscriptions, kinescopes, videotape; (2) electronic sound recordings and sound/picture recordings of all types and forms or pressings and transfers therefrom; (3) slides and transparencies; moving and static models, wallcharts, globes, maps and posters.

Authentication—means the process through which an applicant obtains a United States Importation Document for Audio-visual Materials (Form IA-862).

Basic rights—means the world-wide non-restrictive ownership rights in audio-visual materials from which the assignment of subsidiary rights (such as language versions, television, limited distribution, reproduction, etc.) are derived.

Beirut Agreement—means the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character."

Certificate—means a document attesting that the named material complies with the standards set forth in Article I of the Beirut Agreement issued by: (1) The appropriate government agency of the State wherein the material to which the certificate relates originated, or (2) by the United Nations Educational, Scientific or Cultural Organization.

Certification—means the process of obtaining a certificate attesting that audio-visual materials of United States

§ 61.3

22 CFR Ch. I (4–1–12 Edition)

origin being exported from the United States comply with the standards set forth in Article I of the Beirut Agreement, as interpreted pursuant to Section 207 of Public Law 101–138.

Collateral instructional material—means a teacher’s manual, study guide, or similar instructional material prepared or reviewed by a bona fide subject matter specialist. Such material must delineate the informational or instructional objectives of the audio-visual material and illustrate or explain how to utilize such material to attain the stated objectives.

Committee on attestation—means the committee which advises the Attestation Officer on matters of policy and the evaluation of specific materials.

Exports—means educational, scientific, and cultural audio-visual material of United States origin, being sent from the United States.

Importation document—means the United States Importation Document for Audio-visual Materials (Form IA–862) issued by the Chief Attestation Officer of the United States which attests that materials of foreign origin entering the United States comply with the standards set forth in Article I of the Beirut Agreement (as interpreted pursuant to section 207 of Public Law 101–138) and is therefore entitled to duty-free entry into the United States pursuant to the provisions of United States Customs Bureau Harmonized Tariff System Item No. 9817.00.4000.

Imports—means educational, scientific, and cultural audio-visual material of foreign origin being brought into the United States.

Instruct or inform—means to teach, train or impart knowledge through the development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The instructional or informational character of audio-visual material may be evidenced by the presence of collateral instructional material.

Knowledge—means a body of facts and principles acquired by instruction, study, research, or experience.

Review Board—means the panel appointed by the Secretary of State to review appeals filed by applicants from decisions rendered by an Attestation Officer.

Secretary of State—means the Secretary of State of the State Department.

Serial certification—means certification by the Department of materials produced in series form and which, for time-sensitive reasons, cannot be reviewed prior to production; but samples are provided on application, and the materials are subject to post-certification review.

Subject matter specialist—means an individual who has acquired special skill in or knowledge of a particular subject through professional training or practical experience.

[59 FR 18965, Apr. 21, 1994, as amended at 60 FR 29989, June 7, 1995. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 61.3 Certification and authentication criteria.

(a) The Department shall certify or authenticate audio-visual materials submitted for review as educational, scientific and cultural in character and in compliance with the standards set forth in Article I of the Beirut Agreement when: (1) Their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(2) The materials are representative, authentic, and accurate; and

(3) The technical quality is such that it does not interfere with the use made of the material.

(b) The Department will not certify or authenticate any audio-visual material submitted for review which:

(1) Does not primarily instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge.

(2) Contains widespread and gross misstatements of fact.

(3) Is not technically sound.

(4) Has as its primary purpose or effect to amuse or entertain.

(5) Has as its primary purpose or effect to inform concerning timely current events (newsreels, newscasts, or other forms of “spot” news).

Department of State

§ 61.6

(6) Stimulates the use of a special process or product, advertises a particular organization or individual, raises funds, or makes unsubstantiated claims of exclusivity.

(c) In its administration of this section, the Department shall not fail to qualify audio-visual material because:

(1) It advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) It might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) It is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) It does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or an aspect of a subject and its content is not such as to maintain, increase, or diffuse knowledge; or

(5) In the opinion of the Department the material is propaganda.

(d) The Department may certify or authenticate materials which have not been produced at the time of application upon an affirmative determination that:

(1) The materials will be issued serially,

(2) Representative samples of the serial material have been provided at the time of application,

(3) Future titles and release dates have been provided to the Department at the time of application,

(4) The applicant has affirmed that:

(i) Future released materials in the series will conform to the substantive criteria for certification delineated at paragraphs (a) through (c) of this section;

(ii) Such materials will be similar to the representative samples provided to the Department on application; and

(iii) The applicant will provide the Department with copies of the items themselves or descriptive materials for post-certification review.

(e) If the Department determines through a post-certification review that the materials do not comply with the substantive criteria for certification delineated at paragraphs (a) through (c) of this section, the applicant will no longer be eligible for serial certifications. Ineligibility for serial certifications will not affect an applicant's eligibility for certification of materials reviewed prior to production.

[59 FR 18965, Apr. 21, 1994, as amended at 60 FR 29989, June 7, 1995. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 61.4 Certification procedures—Exports.

(a) Applicants seeking certification of U.S. produced audio-visual materials shall submit to the Department a completed Application Form for each subject or series for which certification is sought. Collateral instructional material, if any, and a copy or example of the material must accompany the Application Form.

(b) Upon an affirmative determination by the Department that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, a Certificate shall be issued. A copy of such Certificate must accompany each export shipment of the certified material.

§ 61.5 Authentication procedures—Imports.

(a) Applicants seeking Department authentication of foreign produced audio-visual materials shall submit to the Department a *bona fide* foreign certificate, a copy or example of the material for which authentication is sought, and related collateral instructional material, if any.

(b) Upon an affirmative determination by the Department that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, an Importation Document shall be issued. A copy of such Importation Document must be presented to United States Customs at the port of entry.

§ 61.6 Consultation with subject matter specialists.

(a) The Department may, in its discretion, solicit the opinion of subject

§ 61.7

matter specialists for the purpose of assisting the Department in its determination of whether materials for which export certification or import authentication is sought contain widespread and gross misstatements of fact.

(b) As necessary, the Department may determine eligibility of material for certification or authentication based in part on the opinions obtained from subject matter specialists and the Committee on Attestation.

§ 61.7 Review and appeal procedures.

(a) An applicant may request a formal review of any adverse ruling rendered by the Attestation Officer. Such request for review must be made in writing and received no more than 30 days from the date of the Attestation Officer's decision.

(b) The request for review must set forth all arguments which the applicant wishes to advance in support of his or her position and any data upon which such argument is based. A copy of the material for which certification or authentication has been denied must accompany the request for review. The request for review should be addressed as follows: Attestation Program Review Board ECA/GCV—Attestation Officer, Department of State, 301 4th Street, SW., Washington, DC 20547.

(c) The Review Board shall render the applicant a written decision, reversing or affirming the ruling of the Attestation Officer, within 30 days from receipt of the request for review. Such decision shall constitute final administrative action.

§ 61.8 Coordination with United States Customs Service.

(a) Nothing in this part shall preclude examination of imported materials pursuant to the Customs laws and regulations of the United States as codified at 19 U.S.C. 1305 and 19 CFR 10.121, or the application of the laws and regulations governing the importation or prohibition against importation of certain materials including seditious or salacious materials as set forth at 19 U.S.C. 1305.

(b) Department authentications of a foreign certificate for entry under HTS Item No. 9817.00.4000 will be reflected by the issuance of an Importation Doc-

22 CFR Ch. I (4–1–12 Edition)

ument. A copy of each Importation Document issued by the Department will be simultaneously furnished the United States Customs Service.

(c) Customs User Fee: Articles delivered by mail, which are eligible for duty-free entry under the regulations in this part are, additionally, not subjected to the standard Customs User Fee normally imposed by the United States Customs Service, provided there has been a timely filing with the appropriate United States Customs Service office of the documentation required by the regulations in this part.

§ 61.9 General information.

General information and application forms may be obtained by writing to the Attestation Office as follows: ECA/GCV—Attestation Officer, Department of State, 301 4th Street, SW., Washington, DC 20547; or calling (202) 475-0221.

[59 FR 18965, Apr. 21, 1994. Redesignated and amended at 64 FR 54539, Oct. 7, 1999]

PART 62—EXCHANGE VISITOR PROGRAM

Subpart A—General Provisions

- Sec.
- 62.1 Purpose.
- 62.2 Definitions.
- 62.3 Sponsor eligibility.
- 62.4 Categories of participant eligibility.
- 62.5 Application procedure.
- 62.6 Designation.
- 62.7 Redesignation.
- 62.8 General program requirements.
- 62.9 General obligations of sponsors.
- 62.10 Program administration.
- 62.11 Duties of responsible officers.
- 62.12 Control of Forms DS-2019.
- 62.13 Notification requirements.
- 62.14 Insurance.
- 62.15 Annual reports.
- 62.16 Employment.
- 62.17 Fees and charges.

Subpart B—Specific Program Provisions

- 62.20 Professors and research scholars.
- 62.21 Short-term scholars.
- 62.22 Trainees and interns.
- 62.23 College and university students.
- 62.24 Teachers.
- 62.25 Secondary school students.
- 62.26 Specialists.
- 62.27 Alien physicians.
- 62.28 International visitors.
- 62.29 Government visitors.

Department of State

§ 62.1

- 62.30 Camp counselors.
- 62.31 Au pairs.
- 62.32 Summer work travel.

Subpart C—Status of Exchange Visitors

- 62.40 Termination of program participation.
- 62.41 Change of category.
- 62.42 Transfer of program.
- 62.43 Extension of program.
- 62.45 Reinstatement to valid program status.

Subpart D—Sanctions

- 62.50 Sanctions.

Subpart E—Termination and Revocation of Programs

- 62.60 Termination of designation.
- 62.61 Revocation.
- 62.62 Termination of, or denial of redesignation for, a class of designated programs.
- 62.63 Responsibilities of the sponsor upon termination or revocation.

Subpart F—Student and Exchange Visitor Information System (SEVIS)

- 62.70 SEVIS reporting requirements.
- 62.71 Control and production of the electronic Form DS-2019.
- 62.72 Staffing and support services.
- 62.73 Academic training.
- 62.74 Student employment.
- 62.75 Extension of program participation.
- 62.76 Transfer procedures.
- 62.77 Reinstatement.
- 62.78 Termination.
- 62.79 Sanctions.

Subpart G [Reserved]

- APPENDIX A TO PART 62—CERTIFICATION OF RESPONSIBLE OFFICERS AND SPONSORS
- APPENDIX B TO PART 62—EXCHANGE VISITOR PROGRAM SERVICES, EXCHANGE VISITOR PROGRAM APPLICATION
- APPENDIX C TO PART 62—UPDATE OF INFORMATION ON EXCHANGE VISITOR PROGRAM SPONSOR
- APPENDIX D TO PART 62—ANNUAL REPORT—EXCHANGE VISITOR PROGRAM SERVICES (GC/V), DEPARTMENT OF STATE, WASHINGTON, DC 20547 (202-401-7964)
- APPENDIX E TO PART 62—UNSKILLED OCCUPATIONS
- APPENDIX F TO PART 62—INFORMATION TO BE COLLECTED ON SECONDARY SCHOOL STUDENT HOST FAMILY APPLICATIONS

AUTHORITY: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431-1442, 2451 *et seq.*; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, Div. G, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March

27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IRIRA) of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107-56, section 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543.

SOURCE: 58 FR 15196, Mar. 19, 1993, unless otherwise noted. Redesignated at 64 FR 54539, Oct. 7, 1999.

EDITORIAL NOTE: Nomenclature changes to part 62 appear at 64 FR 54539, Oct. 7, 1999, and 67 FR 17612, 17613, Apr. 11, 2002.

Subpart A—General Provisions

§ 62.1 Purpose.

(a) The regulations set forth in this part implement the Mutual Educational and Cultural Exchange Act of 1961 (the “Act”), as amended, Public Law 87-256, 22 U.S.C. 2451, *et seq.* (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Department of State in furthering the foreign policy objectives of the United States. These exchanges are defined by section 102 of the Act, 22 U.S.C. 2452, and section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(J).

(b) The Secretary of State of the Department of State facilitates activities specified in the Act, in part, by designating public and private entities to act as sponsors of the Exchange Visitor Program. Sponsors may act independently or with the assistance of third parties. The purpose of the Program is to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experiences, and to encourage Americans to participate in educational and cultural programs in other countries. Exchange visitors enter the United States on a J visa. The regulations set forth in this subpart are applicable to all sponsors.

§ 62.2 Definitions.

Accompanying spouse and dependents means the alien spouse and minor unmarried children of an exchange visitor who are accompanying or following to join the exchange visitor and who are seeking to enter or have entered the United States temporarily on a J-2 visa or are seeking to acquire or have acquired such status after admission. For the purpose of these regulations, a minor is a person under the age of 21 years old.

Accredited educational institution means any publicly or privately operated primary, secondary, or post-secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which such institution is located; provided, however, that in addition to any state recognition, all post-secondary institutions shall also be accredited by a nationally recognized accrediting agency or association as recognized by the United States Secretary of Education but shall not include any institution whose offered programs are primarily vocational in nature.

Act means the Mutual Educational and Cultural Exchange Act of 1961, as amended.

Citizen of the United States means:

(1) An individual who is a citizen of the United States or one of its territories or possessions, or who has been lawfully admitted for permanent residence, within the meaning of section 101(a)(20) of the Immigration and Nationality Act; or

(2) A general or limited partnership created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or possession of the United States, of which a majority of the partners are citizens of the United States; or

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or possession of the United States, which:

(i) Has its principal place of business in the United States, and

(ii) Has its shares or voting interests publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S.

stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders or holders of voting interests are citizens of the United States; or

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any state, the District of Columbia, or territory or possession of the United States; and

(i) Which is qualified with the Internal Revenue Service as a tax-exempt organization pursuant to §501(c) of the Internal Revenue Code; and

(ii) Which has its principal place of business in the United States; and

(iii) In which a majority of its officers and a majority of its Board of Directors or other like body vested with its management are citizens of the United States; or

(5) An accredited college, university, or other post-secondary educational institution created or organized under the laws of the United States, or of any state, including a county, municipality, or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or

(6) An agency of the United States, or of any state or local government, the District of Columbia, or a territory or possession of the United States.

Clerical means routine administrative work generally performed in an office or office-like setting, such as data entry, filing, typing, mail sorting and distribution, and other general office tasks.

Consortium means a not-for-profit corporation or association formed by two or more accredited educational institutions for the purpose of sharing educational resources, conducting research, and/or developing new programs to enrich or expand the opportunities offered by its members. Entities that participate in a consortium are not barred from having a separate exchange visitor program designation of their own.

Country of nationality or last legal residence means either the country of which the exchange visitor was a national at the time status as an exchange visitor was acquired or the last

Department of State

§ 62.2

foreign country in which the visitor had a legal permanent residence before acquiring status as an exchange visitor.

Cross-cultural activity is an activity designed to promote exposure and interchange between exchange visitors and Americans so as to increase their understanding of each other's society, culture, and institutions.

Department means the Department of State.

Designation means the written authorization given by the Department of State to an exchange visitor program applicant to conduct an exchange visitor program as a sponsor.

Employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors, as defined in 8 CFR 274a.1(j).

Exchange visitor means a foreign national who has been selected by a sponsor to participate in an exchange visitor program and who is seeking to enter or has entered the United States temporarily on a J-1 visa. The term does not include the visitor's immediate family.

Exchange Visitor Program means the international exchange program administered by the Department of State to implement the Act by means of educational and cultural programs. When "exchange visitor program" is set forth in lower case, it refers to the individual program of a sponsor which has been designated by the Department of State.

Exchange Visitor Program Services means the Department of State staff delegated authority by the Secretary of State to administer the Exchange Visitor Program in compliance with the regulations set forth in this part.

Exchange visitor's government means the government of the country of the exchange visitor's nationality or the country where the exchange visitor has a legal permanent residence.

Financed directly means financed in whole or in part by the United States Government or the exchange visitor's government with funds contributed directly to the exchange visitor in connection with his or her participation in an exchange visitor program.

Financed indirectly means:

(1) Financed by an international organization with funds contributed by either the United States or the exchange visitor's government for use in financing international educational and cultural exchanges, or

(2) Financed by an organization or institution with funds made available by either the United States or the exchange visitor's government for the purpose of furthering international educational and cultural exchange.

Form DS-2019 means a Certificate of Eligibility, a controlled document of the Department of State.

Full course of study means enrollment in an academic program of classroom participation and study, and/or doctoral thesis research at an accredited educational institution as follows:

(1) Secondary school students shall satisfy the attendance and course requirements of the state in which the school is located;

(2) College and university students shall register for and complete a full course of study, as defined by the accredited educational institution in which the student is registered, unless exempted in accordance with § 62.23(e).

Graduate medical education or training means participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include programs involving observation, consultation, teaching or research in which there is no or only incidental patient care. This program may consist of a medical specialty, a directly related medical subspecialty, or both.

Home-country physical presence requirement means the requirement that an exchange visitor who is within the purview of section 212(e) of the Immigration and Nationality Act (substantially quoted in § 62.44) must reside and be physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years following departure from the United States before the exchange visitor is eligible to apply for an immigrant visa or permanent residence, a nonimmigrant H visa as a temporary worker or trainee, or a nonimmigrant

L visa as an intracompany transferee, or a nonimmigrant H or L visa as the spouse or minor child of a person who is a temporary worker or trainee or an intracompany transferee.

Host organization means a in the United States that conducts training or internship programs on behalf of designated program sponsors pursuant to an executed written agreement between the two parties.

Intern means a foreign national who either

(1) Is currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or

(2) Graduated from such an institution no more than 12 months prior to his/her exchange visitor program begin date, and who enters the United States to participate in a structured and guided work-based internship program in his/her specific academic field.

Internship program means a structured and guided work-based learning program as set forth in an individualized Training/Internship Placement Plan (T/IPP) that reinforces a student's or recent graduate's academic study, recognizes the need for work-based experience, provides on-the-job exposure to American techniques, methodologies, and expertise, and enhances the Intern's knowledge of American culture and society.

J visa means a non-immigrant visa issued pursuant to 8 U.S.C. 1101(a)(15)(J). A J-1 visa is issued to the exchange visitor. J-2 visas are issued to the exchange visitor's immediate family.

On-the-job training means an individual's observation of and participation in given tasks demonstrated by experienced workers for the purpose of acquiring competency in such tasks.

Prescribed course of study means a non-degree academic program with a specific educational objective. Such course of study may include intensive English language training, classroom instruction, research projects, and/or academic training to the extent permitted in § 62.23.

Reciprocity means the participation of a United States citizen in an educational and cultural program in a for-

foreign country in exchange for the participation of a foreign national in the Exchange Visitor Program. Where used herein, "reciprocity" shall be interpreted broadly; unless otherwise specified, reciprocity does not require a one-for-one exchange or that exchange visitors be engaged in the same activity. For example, exchange visitors coming to the United States for training in American banking practices and Americans going abroad to teach foreign nationals public administration would be considered a reciprocal exchange, when arranged or facilitated by the same sponsor.

Responsible officer means the employee or officer of a designated sponsor who has been listed with the Department of State as assuming the responsibilities outlined in § 62.11. The designation of alternate responsible officers is permitted and encouraged. The responsible officer and alternate responsible officers must be citizens of the United States or persons who have been lawfully admitted for permanent residence.

Secretary of State means the Secretary of State of the Department of State or an employee of the Department of State acting under a delegation of authority from the Secretary of State.

Sponsor means a legal entity designated by the Secretary of State of the State Department to conduct an exchange visitor program.

Staffing/Employment agency means a U.S. business that hires individuals for the express purpose of supplying workers to other businesses. Typically, the other businesses with which workers are placed pay an hourly fee per employee to the Staffing/Employment Agency, of which the worker receives a percentage.

Third party means an entity cooperating with or assisting the sponsor in the conduct of the sponsor's program. Sponsors are required to take all reasonable steps to ensure that third parties know and comply with all applicable provisions of these regulations. Third party actions in the course of providing such assistance or cooperation shall be imputed to the sponsor in evaluating the sponsor's compliance with these regulations.

Department of State

§ 62.4

Trainee means a foreign national who has either:

(1) A degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in his/her occupational field acquired outside the United States, or

(2) Five years of work experience outside the United States in his/her occupational field, and who enters the United States to participate in a structured and guided work-based training program in his/her specific occupational field.

Training program means a structured and guided work-based learning program set forth in an individualized Trainee/Internship Placement Plan (T/IPP) that enhances both a trainee's understanding of American culture and society and his/her skills in his/her occupational field through exposure to American techniques, methodologies, and expertise.

[58 FR 15196, Mar. 19, 1993. Redesignated at 64 FR 54539, Oct. 7, 1999, as amended at 72 FR 33673, June 19, 2007]

§ 62.3 Sponsor eligibility.

(a) Entities eligible to apply for designation as a sponsor of an exchange visitor program are:

(1) United States local, state and federal government agencies;

(2) International agencies or organizations of which the United States is a member and which have an office in the United States; or

(3) Reputable organizations which are "citizens of the United States," as that term is defined in § 62.2.

(b) To be eligible for designation as a sponsor, an entity is required to:

(1) Demonstrate, to the Department of State's satisfaction, its ability to comply and remain in continual compliance with all provisions of part 62; and

(2) Meet at all times its financial obligations and responsibilities attendant to successful sponsorship of its exchange program.

§ 62.4 Categories of participant eligibility.

Sponsors may select foreign nationals to participate in their exchange visitor programs. Participation by foreign

nationals in an exchange visitor program is limited to individuals who shall be engaged in the following activities in the United States:

(a) *Student*. An individual who is:

(1) Studying in the United States:

(i) Pursuing a full course of study at a secondary accredited educational institution;

(ii) Pursuing a full course of study leading to or culminating in the award of a U.S. degree from a post-secondary accredited educational institution; or

(iii) Engaged full-time in a prescribed course of study of up to 24 months duration conducted by:

(A) A post-secondary accredited educational institution; or

(B) An institute approved by or acceptable to the post-secondary accredited educational institution where the student is to be enrolled upon completion of the non-degree program;

(2) Engaged in academic training as permitted in § 62.23(f); or

(3) Engaged in English language training at:

(i) A post-secondary accredited educational institution, or

(ii) An institute approved by or acceptable to the post-secondary accredited educational institution where the college or university student is to be enrolled upon completion of the language training.

(b) *Short-term scholar*. A professor, research scholar, or person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar type of institutions.

(c) *Trainee*. An individual participating in a structured training program conducted by the selecting sponsor.

(d) *Teacher*. An individual teaching full-time in a primary or secondary accredited educational institution.

(e) *Professor*. An individual primarily teaching, lecturing, observing, or consulting a post-secondary accredited

§ 62.5

22 CFR Ch. I (4–1–12 Edition)

educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor.

(f) *Research scholar.* An individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholar may also teach or lecture, unless disallowed by the sponsor.

(g) *Specialist.* An individual who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills.

(h) *Other person of similar description.* An individual of description similar to those set forth in paragraphs (a) through (g) coming to the United States, in a program designated by the Department of State under this category, for the purpose of teaching, instructing or lecturing, study, observing, conducting research, consulting, demonstrating special skills, or receiving training. The programs designated by the Department of State in this category consist of:

(1) *International visitor.* An individual who is a recognized or potential leader, selected by the Department of State for consultation, observation, research, training, or demonstration of special skills in the United States.

(2) *Government visitor.* An individual who is an influential or distinguished person, selected by a U.S. federal, state, or local government agency for consultation, observation, training, or demonstration of special skills in the United States.

(3) *Camp counselor.* An individual selected to be a counselor in a summer camp in the United States who imparts skills to American campers and information about his or her country or culture.

§ 62.5 Application procedure.

(a) Any entity meeting the eligibility requirements set forth in § 62.3 may apply to the Department of State for designation as a sponsor. Such application shall be made on Form DS-3036

(“Exchange Visitor Program Application”) and filed with the Department of State’s Exchange Visitor Program Services.

(b) The application shall set forth, in detail, the applicant’s proposed exchange program activity and shall demonstrate its prospective ability to comply with Exchange Visitor Program regulations.

(c) The application shall be signed by the chief executive officer of the applicant and must also provide:

(1) Evidence of legal status as a corporation, partnership, or other legal entity (e.g., charter, proof of incorporation, partnership agreement, as applicable) and current certificate of good standing;

(2) Evidence of financial responsibility as set forth at § 62.9(e);

(3) Evidence of accreditation if the applicant is a post-secondary educational institution;

(4) Evidence of licensure, if required by local, state, or federal law, to carry out the activity for which it is designated;

(5) Certification by the applicant (using the language set forth in appendix A) that it and its responsible officer and alternate responsible officers are citizens of the United States as defined at § 62.2; and

(6) Certification signed by the chief executive officer of the applicant that the responsible officer will be provided sufficient staff and resources to fulfill his/her duties and obligations on behalf of the sponsor.

(d) The Department of State may request any additional information and documentation which it deems necessary to evaluate the application.

§ 62.6 Designation.

(a) Upon a favorable determination that the proposed exchange program meets all statutory and regulatory requirements, the Department of State may, in its sole discretion, designate an entity meeting the eligibility requirements set forth in § 62.3 as an exchange visitor program sponsor.

(b) Designation shall confer upon the sponsor authority to engage in one or more activities specified in § 62.4. A sponsor shall not engage in activities

Department of State

§ 62.9

not specifically authorized in its written designation.

(c) Designations are effective for a period of five years. In its discretion, the Department of State may designate programs, including experimental programs, for less than five years.

(d) Designations are not transferable or assignable.

§ 62.7 Redesignation.

(a) Upon expiration of a given designation term, a sponsor may seek redesignation for another five-year term.

(b) To apply for redesignation, a sponsor shall advise the Exchange Visitor Program Services by letter or by so indicating on the annual report.

(c) Request for redesignation shall be evaluated according to the criteria set forth at § 62.6(a) taking into account the sponsor's annual reports and other documents reflecting its record as an exchange visitor program sponsor.

(d) A sponsor seeking redesignation should notify the Department of State, as set forth in (b) of this section, no less than four months prior to the expiration date of its designation. A sponsor seeking redesignation may continue to operate its program(s) until such time as the Department of State notifies it of a decision to amend or terminate its designation.

§ 62.8 General program requirements.

(a) *Size of program.* Sponsors, other than Federal government agencies, shall have no less than five exchange visitors per calendar year. The Department of State may in its discretion and for good cause shown reduce this requirement.

(b) *Minimum duration of program.* Sponsors, other than federal government agencies, shall provide each exchange visitor, except short-term scholars, with a minimum period of participation in the United States of three weeks.

(c) *Reciprocity.* In the conduct of their exchange programs, sponsors shall make a good faith effort to achieve the fullest possible reciprocity in the exchange of persons.

(d) *Cross-cultural activities.* Sponsors shall:

(1) Offer or make available to exchange visitors a variety or appro-

priate cross-cultural activities. The extent and types of the cross-cultural activities shall be determined by the needs and interests of the particular category of exchange visitor. Sponsors will be responsible to determine the appropriate type and number of cross-cultural programs for their exchange visitors. The Department of State encourages sponsors to give their exchange visitors the broadest exposure to American society, culture and institutions; and

(2) Encourage exchange visitors to voluntarily participate in activities which are for the purpose of sharing the language, culture, or history of their home country with Americans, provided such activities do not delay the completion of the exchange visitors' programs.

§ 62.9 General obligations of sponsors.

(a) *Adherence to Department of State regulations.* Sponsors are required to adhere to all regulations set forth in this part.

(b) *Legal status.* Sponsors shall maintain legal status. A change in a sponsor's legal status (e.g. partnership to corporation) shall require application for designation of the new legal entity.

(c) *Accreditation and licensure.* Sponsors shall remain in compliance with all local, state, federal, and professional requirements necessary to carry out the activity for which they are designated, including accreditation and licensure, if applicable.

(d) *Representations and disclosures.* Sponsors shall:

(1) Provide accurate and complete information, to the extent lawfully permitted, to the Department of State regarding their exchange visitor programs and exchange visitors;

(2) Provide only accurate information to the public when advertising their exchange visitor programs or responding to public inquiries;

(3) Provide informational materials to prospective exchange visitors which clearly explain the activities, costs, conditions, and restrictions of the program;

(4) Not use program numbers on any advertising materials or publications intended for general circulation; and

§ 62.10

22 CFR Ch. I (4-1-12 Edition)

(5) Not represent that any program is endorsed, sponsored, or supported by the Department of State or the United States Government, except for United States Government sponsors or exchange visitor programs financed directly by the United States Government to promote international educational exchanges. However, sponsors may represent that they are designated by the Department of State as a sponsor of an exchange visitor program.

(e) *Financial responsibility.* (1) Sponsors shall maintain the financial capability to meet at all times their financial obligations and responsibilities attendant to successful sponsorship of their exchange visitor programs.

(2) The Department of State may require non-government sponsors to provide evidence satisfactory to the Department of State that funds necessary to fulfill all obligations and responsibilities attendant to sponsorship of exchange visitors are readily available and in the sponsor's control, including such supplementary or explanatory financial information as the Department of State may deem appropriate such as, for example, audited financial statements.

(3) The Department of State may require any non-government sponsor to secure a payment bond in favor of the Department of State guaranteeing all financial obligations arising from the sponsorship of exchange visitors.

(f) *Staffing and support services.* Sponsors shall ensure:

(1) Adequate staffing and sufficient support services to administer their exchange visitor programs; and

(2) That their employees, officers, agents, and third parties involved in the administration of their exchange visitor programs are adequately qualified, appropriately trained, and comply with the Exchange Visitor Program regulations.

(g) *Appointment of responsible officer.*

(1) The sponsor shall appoint a responsible officer and such alternate responsible officers as may be necessary to perform the duties set forth at §62.11.

(2) The responsible officer and alternate responsible officers shall be employees or officers of the sponsor. The Department of State may, however, in its discretion, authorize the appoint-

ment of an individual who is not an employee or officer to serve as an alternate responsible officer, when approved by the sponsor.

(3) The Department of State may limit the number of alternate responsible officers appointed by the sponsor.

§ 62.10 Program administration.

Sponsors are responsible for the effective administration of their exchange visitor programs. These responsibilities include:

(a) *Selection of exchange visitors.* Sponsors shall provide a system to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that:

(1) The program is suitable to the exchange visitor's background, needs, and experience; and

(2) The exchange visitor possesses sufficient proficiency in the English language to participate in his or her program.

(b) *Pre-arrival information.* Sponsors shall provide exchange visitors with pre-arrival materials including, but not limited to, information on:

(1) The purpose of the Exchange Visitor Program;

(2) Home-country physical presence requirement;

(3) Travel and entry into the United States;

(4) Housing;

(5) Fees payable to the sponsor;

(6) Other costs that the exchange visitor will likely incur (e.g., living expenses) while in the United States;

(7) Health care and insurance; and

(8) Other information which will assist exchange visitors to prepare for their stay in the United States.

(c) *Orientation.* Sponsors shall offer appropriate orientation for all exchange visitors. Sponsors are encouraged to provide orientation for the exchange visitor's immediate family, especially those who are expected to be in the United States for more than one year. Orientation shall include, but not be limited to, information concerning:

(1) Life and customs in the United States;

(2) Local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks), to the extent possible;

Department of State

§ 62.12

(3) Available health care, emergency assistance, and insurance coverage;

(4) A description of the program in which the exchange visitor is participating;

(5) Rules that the exchange visitors are required to follow under the sponsor's program;

(6) Address of the sponsor and the name and telephone number of the responsible officer; and

(7) Address and telephone number of the Exchange Visitor Program Services of the Department of State and a copy of the Exchange Visitor Program brochure outlining the regulations relevant to the exchange visitors.

(d) *Form DS-2019*. Sponsors shall ensure that only the responsible officer or alternate responsible officers issue Forms DS-2019;

(e) *Monitoring of exchange visitors*. Sponsors shall monitor, through employees, officers, agents, or third parties, the exchange visitors participating in their programs. Sponsors shall:

(1) Ensure that the activity in which the exchange visitor is engaged is consistent with the category and activity listed on the exchange visitor's Form DS-2019;

(2) Monitor the progress and welfare of the exchange visitor to the extent appropriate for the category; and

(3) Require the exchange visitor to keep the sponsor apprised of his or her address and telephone number, and maintain such information.

(f) *Requests by the Department of State*. Sponsors shall, to the extent lawfully permitted, furnish to the Department of State within a reasonable time all information, reports, documents, books, files, and other records requested by the Department of State on all matters related to their exchange visitor programs.

(g) *Inquiries and investigations*. Sponsors shall cooperate with any inquiry or investigation that may be undertaken by the Department of State.

(h) *Retention of records*. Sponsors shall retain all records related to their exchange visitor program and exchange visitors for a minimum of three years.

§ 62.11 Duties of responsible officers.

Responsible officers shall train and supervise alternate responsible officers. Responsible officers and alternate responsible officers shall:

(a) *Knowledge of regulations and codebook*. Be thoroughly familiar with the Exchange Visitor Program regulations and the Department of State's current Codebook and Instructions for Responsible Officers.

(b) *Advisement and assistance*. Ensure that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of the exchange visitor's program.

(c) *Communications*. Conduct the official communications relating to the exchange visitor program with the Department of State, the United States Immigration and Naturalization Service, or the United States Department of State. Reference to the sponsor's program number shall be made on any correspondence with the Department of State.

(d) *Custody of the Form DS-2019*. Act as custodian for the control, issuance, and distribution of Forms DS-2019 as set forth in § 62.12.

§ 62.12 Control of Forms DS-2019.

Forms DS-2019 shall be used only for authorized purposes. To maintain adequate control of Forms DS-2019, responsible officers or alternate responsible officers shall:

(a) *Requests*. Submit written requests to the Department of State for a one-year supply of Forms DS-2019, and allow four to six weeks for the distribution of these forms. The Department of State has the discretion to determine the number of Forms DS-2019 to be sent to a sponsor. The Department of State will take into consideration the current size of the program and the projected expansion of the program in the coming 12 months. If requested, the Department of State will consult with the responsible officer prior to determining the number of Forms DS-2019 to be sent to the sponsor. Additional forms may be requested later in the year if needed by the sponsor.

(b) *Verification*. Prior to issuing Form DS-2019, verify that the exchange visitor:

§ 62.13

22 CFR Ch. I (4–1–12 Edition)

(1) Is eligible, qualified, and accepted for the program in which he or she will be participating;

(2) Possesses adequate financial resources to complete his or her program; and

(3) Possesses adequate financial resources to support any accompanying dependents.

(c) *Issuance of Form DS–2019.* Issue the Form DS–2019 only so as to:

(1) Facilitate the entry of a new participant of the exchange visitor program;

(2) Extend the stay of an exchange visitor;

(3) Facilitate program transfer;

(4) Replace a lost or stolen Form DS–2019;

(5) Facilitate entry of an exchange visitor’s alien spouse or minor unmarried children into the United States separately;

(6) Facilitate re-entry of an exchange visitor who is traveling outside the United States during the program;

(7) Facilitate a change of category when permitted by the Department of State; and

(8) Update information when significant changes take place in regard to the exchange visitor’s program, such as a substantial change in funding or in the location where the program will take place.

(d) *Safeguards.* (1) Store Forms DS–2019 securely to prevent unauthorized use;

(2) Prohibit transfer of any blank Form DS–2019 to another sponsor or other person unless authorized in writing (by letter or facsimile) by the Department of State to do so;

(3) Notify the Department of State promptly by telephone (confirmed promptly in writing) or facsimile of the document number of any completed Form DS–2019 that is presumed lost or stolen or any blank Form DS–2019 lost or stolen; and

(4) Forward the completed Form DS–2019 only to an exchange visitor, either directly or via an employee, officer, or agent of the sponsor, or to an individual designated by the exchange visitor.

(e) *Accounting.* (1) Maintain a record of all Forms DS–2019 received and/or issued by the sponsor;

(2) Destroy damaged and unusable Form DS–2019 on the sponsor’s premises after making a record of such forms (e.g. forms with errors or forms damaged by a printer); and

(3) Request exchange visitors and prospective exchange visitors to return any unused Form DS–2019 sent to them and make a record of Forms DS–2019 which are returned to the sponsor and destroy them on the sponsor’s premises.

§ 62.13 Notification requirements.

(a) *Change of circumstances.* Sponsors shall notify the Department of State promptly in writing of any of the following circumstances:

(1) Change of its address, telephone, or facsimile number;

(2) Change in the composition of the sponsoring organization which affects its citizenship as defined by § 62.2;

(3) Change of the responsible officer or alternate responsible officers;

(4) A major change of ownership or control of the sponsor’s organization;

(5) Change in financial circumstances which may render the sponsor unable to comply with its obligations as set forth in § 512.9(e);

(6) Loss of licensure or accreditation;

(7) Loss or theft of Forms DS–2019 as specified at § 62.12(d)(3);

(8) Litigation related to the sponsor’s exchange visitor program, when the sponsor is a party; and

(9) Termination of its exchange visitor program.

(b) *Serious problem or controversy.* Sponsors shall inform the Department of State promptly by telephone (confirmed promptly in writing) or facsimile of any serious problem or controversy which could be expected to bring the Department of State or the sponsor’s exchange visitor program into notoriety or disrepute.

(c) *Program status of exchange visitor.* Sponsors shall notify the Department of State in writing when:

(1) The exchange visitor has withdrawn from or completed a program thirty (30) or more days prior to the ending date on his or her Form DS–2019; or

(2) The exchange visitor has been terminated from his or her program.

§ 62.14 Insurance.

(a) Sponsors shall require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program. Minimum coverage shall provide:

- (1) Medical benefits of at least \$50,000 per accident or illness;
- (2) Repatriation of remains in the amount of \$7,500;
- (3) Expenses associated with the medical evacuation of the exchange visitor to his or her home country in the amount of \$10,000; and
- (4) A deductible not to exceed \$500 per accident or illness.

(b) An insurance policy secured to fulfill the requirements of this section:

- (1) May require a waiting period for pre-existing conditions which is reasonable as determined by current industry standards;
- (2) May include provision for co-insurance under the terms of which the exchange visitor may be required to pay up to 25% of the covered benefits per accident or illness; and
- (3) Shall not unreasonably exclude coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.

(c) Any policy, plan, or contract secured to fill the above requirements must, at a minimum, be:

- (1) Underwritten by an insurance corporation having an A.M. Best rating of "A-" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A-i" or above, a Standard & Poor's Claims-paying Ability rating of "A-" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as the Department of State may from time to time specify; or
- (2) Backed by the full faith and credit of the government of the exchange visitor's home country; or
- (3) Part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or
- (4) Offered through or underwritten by a federally qualified Health Maintenance Organization (HMO) or eligible Competitive Medical Plan (CMP) as de-

termined by the Health Care Financing Administration of the U.S. Department of Health and Human Services.

(d) Federal, state or local government agencies, state colleges and universities, and public community colleges may, if permitted by law, self-insure any or all of the above-required insurance coverage.

(e) At the request of a non-governmental sponsor of an exchange visitor program, and upon a showing that such sponsor has funds readily available and under its control sufficient to meet the requirements of this section, the Department of State may permit the sponsor to self-insure or to accept full financial responsibility for such requirements.

(f) The Department of State, in its sole discretion, may condition its approval of self-insurance or the acceptance of full financial responsibility by the non-governmental sponsor by requiring such sponsor to secure a payment bond in favor of the Department of State guaranteeing the sponsor's obligations hereunder.

(g) An accompanying spouse or dependent of an exchange visitor is required to be covered by insurance in the amounts set forth in paragraph (a) of this section. Sponsors shall inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States.

(h) An exchange visitor who willfully fails to maintain the insurance coverage set forth above while a participant in an exchange visitor program or who makes a material misrepresentation to the sponsor concerning such coverage shall be deemed to be in violation of these regulations and shall be subject to termination as a participant.

(i) A sponsor shall terminate an exchange visitor's participation in its program if the sponsor determines that the exchange visitor or any accompanying spouse or dependent willfully fails to remain in compliance with this section.

[58 FR 15196, Mar. 19, 1993, as amended at 59 FR 34761, July 7, 1994. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 62.15

22 CFR Ch. I (4–1–12 Edition)

§ 62.15 Annual reports.

Sponsors shall submit an annual report to the Department of State. An illustrative form of such report may be found at Appendix D to this part. Such report shall be filed on an academic or calendar year basis, as directed by the Department of State, and shall contain the following:

(a) *Program report and evaluation.* A brief summary of the activities in which exchange visitors were engaged, including an evaluation of program effectiveness;

(b) *Reciprocity.* A description of the nature and extent of reciprocity occurring in the sponsor's exchange visitor program during the reporting year;

(c) *Cross-cultural activities.* A summary of the cross-cultural activities provided for its exchange visitors during the reporting year;

(d) *Proof of insurance.* Certification of compliance with insurance coverage requirements set forth in § 62.14.

(e) *Form DS-2019 usage.* A report of Form DS-2019 usage during the reporting year setting forth the following information:

(1) The total number of blank Forms DS-2019 received from the Department of State during the reporting year;

(2) The total number of Forms DS-2019 voided or destroyed by the sponsor during the reporting year and the document numbers of such forms;

(3) The total number of Forms DS-2019 issued to potential exchange visitors that were returned to the sponsor or not used for entry into the United States; and

(4) The total number and document identification number sequence of all blank Forms DS-2019 in the possession of the sponsor on the date of the report.

(f) *Program participation.* A numerical count, by category, of all exchange visitors participating in the sponsor's program for the reporting year.

(g) *Redesignation.* Sponsors may indicate their desire for redesignation, pursuant to § 62.7, by marking the appropriate box on their annual report.

§ 62.16 Employment.

(a) An exchange visitor may receive compensation from the sponsor or the sponsor's appropriate designee for em-

ployment when such activities are part of the exchange visitor's program.

(b) An exchange visitor who engages in unauthorized employment shall be deemed to be in violation of his or her program status and is subject to termination as a participant in an exchange visitor program.

(c) The acceptance of employment by an accompanying spouse or minor child of an exchange visitor is governed by Immigration and Naturalization Service regulations.

§ 62.17 Fees and charges.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) *Amounts of fees.* The following fees are prescribed.

(1) For filing an application for program designation and/or redesignation (Form DS-3036)—\$2,700.00.

(2) For filing an application for exchange visitor status changes (*i.e.*, extension beyond the maximum duration, change of category, reinstatement, reinstatement-update SEVIS status, ECFMG sponsorship authorization, and permission to issue)—\$233.00.

[76 FR 10500, Feb. 25, 2011]

Subpart B—Specific Program Provisions

§ 62.20 Professors and research scholars.

(a) *Introduction.* These regulations govern Exchange Visitor Program participants in the categories of professor and research scholar, except:

(1) Alien physicians in graduate medical education or training, who are governed by regulations set forth at § 62.27; and

(2) Short-term scholars, who are governed by regulations set forth at § 62.21.

(b) *Purpose.* The purpose of the Exchange Visitor Program, in part, is to foster the exchange of ideas between Americans and foreign nationals and to stimulate international collaborative teaching, lecturing and research efforts. The exchange of professors and

research scholars promotes the exchange of ideas, research, mutual enrichment, and linkages between research and educational institutions in the United States and foreign countries. It does so by providing foreign professors and research scholars the opportunity to engage in research, teaching and lecturing with their American colleagues, to participate actively in cross-cultural activities with Americans, and ultimately to share with their countrymen their experiences and increased knowledge of the United States and their substantive fields.

(c) *Designation.* The Department of State may, in its sole discretion, designate *bona fide* exchange visitor programs, which offer foreign nationals the opportunity to engage in research, teaching, lecturing, observing, or consulting at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions in the United States.

(d) *Visitor eligibility.* An individual may be selected for participation in the Exchange Visitor Program as a professor or research scholar subject to the following conditions:

(1) The participant must not be a candidate for a tenure track position;

(2) The participant has not been physically present in the United States as a nonimmigrant pursuant to the provisions of 8 U.S.C. 1101(a)(15)(J) for all or part of the twelve-month period immediately preceding the date of program commencement set forth on his or her Form DS-2019, unless:

(i) The participant is transferring to the sponsor's program pursuant to provisions set forth in § 62.42;

(ii) The participant's presence in the United States was of less than six months duration; or

(iii) The participant's presence in the United States was pursuant to a short-term scholar exchange activity as authorized by § 62.21; and

(3) The participant is not subject to the prohibition against repeat participation set forth at § 62.20(i)(2).

(e) *Issuance of Form DS-2019.* The Form DS-2019 must be issued only after the professor or research scholar has been accepted by the institution where

he or she will participate in an exchange visitor program.

(f) *Location of the exchange.* Professors or research scholars must conduct their exchange activity at the site(s) of activity identified in SEVIS, which may be either the location of the exchange visitor program sponsor or the site of a third party facilitating the exchange with permission of the Responsible Officer. An exchange visitor may also engage in activities at other locations if such activities constitute occasional lectures or consultations permitted by paragraph (g) of this section. All such sites of activity must be entered into SEVIS while the exchange visitor's SEVIS record is in Initial or Active status.

(g) *Occasional lectures or consultations.* Professors and research scholars may participate in occasional lectures and short-term consultations, if authorized to do so by his or her sponsor. Such lectures and consultations must be incidental to the exchange visitor's primary program activities. If wages or other remuneration are received by the exchange visitor for such activities, the exchange visitor must act as an independent contractor, as such term is defined in 8 CFR 274a.1(j), and the following criteria and procedures must be satisfied:

(1) *Criteria.* The occasional lectures or short-term consultations must:

(i) Be directly related to the objectives of the exchange visitor's program;

(ii) Be incidental to the exchange visitor's primary program activities;

(iii) Not delay the completion date of the exchange visitor's program; and

(iv) Be documented in SEVIS.

(2) *Procedures.* (i) To obtain authorization to engage in occasional lectures or short-term consultations involving wages or other remuneration, the exchange visitor must present to the responsible officer:

(A) A letter from the offeror setting forth the terms and conditions of the offer to lecture or consult, including the duration, number of hours, field or subject, amount of compensation, and description of such activity; and

(B) A letter from the exchange visitor's department head or supervisor

recommending such activity and explaining how the activity would enhance the exchange visitor's program.

(ii) The responsible officer must review the letters required in paragraph (g)(2)(i) of this section and make a written determination whether such activity is warranted, will not interrupt the exchange visitor's original objective, and satisfies the criteria set forth in paragraph (g)(1) of this section.

(h) *Change of activity.* At the discretion and approval of the responsible officer, professors may freely engage in research and research scholars may freely engage in teaching and lecturing. Because these activities are intertwined, such a change of activity is not considered a change of category necessitating formal approval by the Department of State and does not require the issuance of a new Form DS-2019 to reflect a change in category. Such change in activity does not extend the exchange visitor's maximum duration of program participation.

(i) *Duration of participation.* The permitted duration of program participation for a professor or research scholar is as follows:

(1) *General limitation.* A professor or research scholar may be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete his or her program, provided such time does not exceed five years. The five-year period of permitted program participation is continuous and begins with the initial program begin date documented in SEVIS or the date such status was acquired via a petition submitted and approved by the Department of Homeland Security (DHS) as documented in SEVIS and ends five years from such date.

(2) *Repeat participation.* Exchange participants who have entered the United States under the Exchange Visitor Program as a professor or research scholar, or who have acquired such status while in the United States, and who have completed his or her program are not eligible for participation as a professor or research scholar for a period of two years following the end date of such program participation as identified in SEVIS.

(3) *Extensions.* A responsible officer may not extend the period of program

duration beyond the five-year period of maximum program duration authorized for professor and research scholar participants. The Department may, in its sole discretion, authorize an extension beyond the permitted five-year period, as submitted by a "G-7" program sponsor, upon successful demonstration of the following:

(i) The participant for whom an extension is requested is engaged in a research project under the direct sponsorship of a Federally Funded National Research and Development Center ("FFNRDC") or a U.S. Federal Laboratory;

(ii) The FFNRDC or U.S. Federal Laboratory requesting the extension on behalf of the participant has determined, through peer review, that the participant's continued involvement in the project is beneficial to its successful conclusion; and

(iii) The Secretary of the Department of Homeland Security has determined in his/her discretion that the extension may be approved;

(iv) The extension request is for not more than five years.

[70 FR 28817, May 19, 2005; 70 FR 36344, June 23, 2005]

§ 62.21 Short-term scholars.

(a) *Introduction.* These regulations govern scholars coming to the United States for a period of up to four months to lecture, observe, consult, and to participate in seminars, workshops, conferences, study tours, professional meetings, or similar types of educational and professional activities.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign and American scholars. It does so by providing foreign scholars the opportunity to exchange ideas with their American colleagues, participate in educational and professional programs, confer on common problems and projects, and promote professional relationships and communications.

(c) *Designation.* The Department of State may, in its sole discretion, designate *bona fide* programs which offer foreign nationals the opportunity to engage in short-term visits for the purpose of lecturing, observing, consulting, training, or demonstrating

special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.

(d) *Visitor eligibility.* A person participating in the Exchange Visitor Program under this section shall satisfy the definition of a short-term scholar as set forth in § 62.4.

(e) *Cross-cultural activities and orientation.* Due to the nature of such exchanges, sponsors of programs for short-term scholars shall be exempted from the requirements of providing cross-cultural activities and orientation as set forth in § 62.8(d) and § 62.10(c). However, sponsors are encouraged to provide such programs for short-term scholars whenever appropriate.

(f) *Location of exchange.* The short-term scholar shall participate in the Exchange Visitor Program at the conferences, workshops, seminars, or other events or activities stated on his or her Form DS-2019. A participant may also lecture or consult at institutions not listed on the Form DS-2019 if his or her Responsible Officer issues a written authorization of such activity. Such written authorization must be attached to the participant's Form DS-2019.

(g) *Duration of participation.* The short-term scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which time shall not exceed six months. Programs under this section are exempted from § 62.8(b) governing the minimum duration of a program. Extensions beyond the duration of participation are not permitted under this category.

[58 FR 15196, Mar. 19, 1993; 58 FR 48448, Sept. 16, 1993, as amended at 61 FR 39585, July 30, 1996; 64 FR 17975, Apr. 13, 1999. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 62.22 Trainees and interns.

(a) *Introduction.* These regulations govern Exchange Visitor Programs under which foreign nationals with significant experience in their occupational field have the opportunity to receive training in the United States in such field. These regulations also establish a new internship program under which foreign national students and recent graduates of foreign post-sec-

ondary academic institutions have the opportunity to receive training in the United States in their field of academic study. These regulations include specific requirements to ensure that both trainees and interns receive hands-on experience in their specific fields of study/expertise and that they do not merely participate in work programs. Regulations dealing with training opportunities for certain foreign students who are studying at post-secondary accredited educational institutions in the United States are located at § 62.23 (“College and University Students”). Regulations governing alien physicians in graduate medical education or training are located at § 62.27 (“Alien Physicians”).

(b) *Purpose.* (1)(i) The primary objectives of the programs offered under these regulations are to enhance the skills and expertise of exchange visitors in their academic or occupational fields through participation in structured and guided work-based training and internship programs and to improve participants' knowledge of American techniques, methodologies, and technology. Such training and internship programs are also intended to increase participants' understanding of American culture and society and to enhance Americans' knowledge of foreign cultures and skills through an open interchange of ideas between participants and their American associates. A key goal of the Fulbright-Hays Act, which authorizes these programs, is that participants will return to their home countries and share their experiences with their countrymen.

(ii) Exchange Visitor Program training and internship programs must not be used as substitutes for ordinary employment or work purposes; nor may they be used under any circumstances to displace American workers. The requirements in these regulations for trainees are designed to distinguish between *bona fide* training, which is permitted, and merely gaining additional work experience, which is not permitted. The requirements in these regulations for interns are designed to distinguish between a period of work-based learning in the intern's academic

field, which is permitted (and which requires a substantial academic framework in the participant’s field), and unskilled labor, which is not.

(2) In addition, a specific objective of the new internship program is to provide foreign nationals who are currently enrolled full-time and pursuing studies at a degree- or certificate-granting post-secondary academic institution or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date a period of work-based learning to allow them to develop practical skills that will enhance their future careers. Bridging the gap between formal education and practical work experience and gaining substantive cross-cultural experience are major goals in educational institutions around the world. By providing training opportunities for current foreign students and recent foreign graduates at formative stages of their development, the U.S. Government will build partnerships, promote mutual understanding, and develop networks for relationships that will last through generations as these foreign nationals move into leadership roles in a broad range of occupational fields in their own societies. These results are closely tied to the goals, themes, and spirit of the Fulbright-Hays Act.

(c) *Designation.* (1) The Department may, in its sole discretion, designate as sponsors those entities it deems to meet the eligibility requirements set forth in Subpart A of 22 CFR part 62 and to have the organizational capacity successfully to administer and facilitate training and internship programs.

(2) Sponsors must provide training and internship programs only in the occupational category or categories for which the Department has designated them as sponsors. The Department may designate training and internship programs in any of the following occupational categories:

- (i) Agriculture, Forestry, and Fishing;
- (ii) Arts and Culture;
- (iii) Construction and Building Trades;

(iv) Education, Social Sciences, Library Science, Counseling and Social Services;

(v) Health Related Occupations;

(vi) Hospitality and Tourism;

(vii) Information Media and Communications;

(viii) Management, Business, Commerce and Finance;

(ix) Public Administration and Law; and

(x) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations.

(d) *Selection criteria.* (1) In addition to satisfying the general requirements set forth in § 62.10(a), sponsors must ensure that trainees and interns have verifiable English language skills sufficient to function on a day-to-day basis in their training environment. Sponsors must verify an applicant’s English language proficiency through a recognized English language test, by signed documentation from an academic institution or English language school, or through a documented interview conducted by the sponsor either in-person or by videoconferencing, or by telephone if videoconferencing is not a viable option.

(2) Sponsors of training programs must verify that all potential trainees are foreign nationals who have either a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or five years of work experience in their occupational field acquired outside the United States.

(3) Sponsors of internship programs must verify that all potential interns are foreign nationals who are currently enrolled full-time and pursuing studies in their advanced chosen career field at a degree- or certificate-granting post-secondary academic institution outside the United States or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date.

(e) *Issuance of Forms DS-2019.* In addition to the requirements set forth in Subpart A, sponsors must ensure that:

- (1) They do not issue Forms DS-2019 to potential participants in training

Department of State

§ 62.22

and internship programs until they secure placements for trainees or interns and complete and secure requisite signatures on Form DS-7002, Training/Internship Placement Plan (T/IPP);

(2) Trainees and interns have sufficient finances to support themselves for their entire stay in the United States, including housing and living expenses; and

(3) The training and internship programs expose participants to American techniques, methodologies, and technology and expand upon the participants' existing knowledge and skills. Programs must not duplicate the participants' prior work experience or training received elsewhere.

(f) *Obligations of training and internship program sponsors.* (1) Sponsors designated by the Department to administer training and internship programs must:

(i) Ensure that trainees and interns are appropriately selected, placed, oriented, supervised, and evaluated;

(ii) Be available to trainees and interns (and host organizations, as appropriate) to assist as facilitators, counselors, and information resources;

(iii) Ensure that training and internship programs provide a balance between the trainees' and interns' learning opportunities and their contributions to the organizations in which they are placed;

(iv) Ensure that the training and internship programs are full-time (minimum of 32 hours a week); and

(v) Ensure that any host organizations and third parties involved in the recruitment, selection, screening, placement, orientation, evaluation for, or the provision of training and internship programs are sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adhere to all regulations set forth in this Part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(2) Sponsors must certify that they or any host organization acting on the sponsor's behalf:

(i) Have sufficient resources, plant, equipment, and trained personnel

available to provide the specified training and internship program;

(ii) Provide continuous on-site supervision and mentoring of trainees and interns by experienced and knowledgeable staff;

(iii) Ensure that trainees and interns obtain skills, knowledge, and competencies through structured and guided activities such as classroom training, seminars, rotation through several departments, on-the-job training, attendance at conferences, and similar learning activities, as appropriate in specific circumstances;

(iv) Conduct periodic evaluations of trainees and interns, as set forth in § 62.22(1);

(v) Do not displace full- or part-time or temporary or permanent American workers or serve to fill a labor need and ensure that the positions that trainees and interns fill exist primarily to assist trainees and interns in achieving the objectives of their participation in training and internship programs; and

(vi) Certify that training and internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(3) Sponsors or any third parties acting on their behalf must complete thorough screening of potential trainees or interns, including a documented interview conducted by the sponsor either in-person or by videoconferencing, or by telephone if videoconferencing is not a viable option.

(4) Sponsors must retain all documents referred to in § 62.22(f) for at least three years following the completion of all training and internship programs. Documents and any requisite signatures may be retained in either hard copy or electronic format.

(g) *Use of third parties*—(1) *Sponsors use of third parties.* Sponsors may engage third parties (including, but not limited to host organizations, partners, local businesses, governmental entities, academic institutions, and other foreign or domestic agents) to assist them in the conduct of their designated training and internship programs. Such

third parties must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the obligations and full relationship between the sponsor and third party on all matters involving the administration of their exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this Part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsors engaging such third party.

(2) *Screening and vetting third parties operating outside the United States.* Sponsors must ascertain that third parties operating outside the United States are legitimate entities within the context of their home country environment. For third parties that operate as businesses, sponsors must obtain relevant home country documentation, such as a business registration or certification. Such home country documentation must include an English Language translation for any business registration or certification documents submitted in a foreign language. Written agreements between sponsors and third parties operating outside the United States must include annually updated price lists for training and internship programs offered by each third party, and must indicate that such overseas third parties are sufficiently trained in all aspects of the programs they represent, including the regulations set forth in this Part.

(3) *Screening and vetting host organizations.* Sponsors must adequately screen all potential host organizations at which a trainee or intern will be placed by obtaining the following information:

- (i) Employer Identification Number (EIN) used for tax purposes;
- (ii) Third party verification of telephone number, address, and professional activities, e.g., via advertising, brochures, Web site, and/or feedback from prior participants; and

(iii) Verification of Worker's Compensation Insurance Policy or equivalent in each state or, if applicable, evidence of state exemption from requirement of coverage.

(4) *Site visits of host organizations.* Sponsors must conduct site visits of host organizations that have not previously participated successfully in the sponsor's training and internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue. Placements at academic institutions or at federal, state, or local government offices are specifically excluded from this requirement. The purpose of the site visits is for the sponsors to ensure that host organizations possess and maintain the ability and resources to provide structured and guided work-based learning experiences according to individualized T/IPPs and that host organizations understand and meet their obligations set forth in this Part.

(h) *Host organization obligations.* Sponsors must ensure that:

(1) Host organizations sign a completed Form DS-7002 to verify that all placements are appropriate and consistent with the objectives of the trainees or interns as outlined in their program applications and as set forth in their T/IPPs. All parties involved in internship programs should recognize that interns are seeking entry-level training and experience. Accordingly, all placements must be tailored to the skills and experience level of the individual intern;

(2) Host organizations notify sponsors promptly of any concerns about, changes in, or deviations from T/IPPs during training and internship programs and contact sponsors immediately in the event of any emergency involving trainees or interns;

(3) Host organizations abide by all federal, state, and local occupational health and safety laws; and

(4) Host organizations abide by all program rules and regulations set forth by the sponsors, including the completion of all mandatory program evaluations.

(i) *Training/internship placement plan (Form DS-7002).* (1) Sponsors must fully complete and obtain all requisite signatures on a Form DS-7002 for each

trainee or intern before issuing a Form DS-2019. Sponsors must provide each signatory an executed copy of the Form DS-7002. Upon request, trainees and interns must present their fully executed Form DS-7002 to Consular Officials during their visa interview.

(2) To further distinguish between *bona fide* training for trainees or work-based learning for interns, which are permitted, and unskilled or casual labor positions which are not, all T/IPP's must:

(i) State the specific goals and objectives of the training and internship program (for each phase or component, if applicable);

(ii) Detail the knowledge, skills, or techniques to be imparted to the trainee or intern (for each phase or component, if applicable); and

(iii) Describe the methods of performance evaluation and the supervision for each phase or component, if applicable.

(3) A T/IPP for trainees must be divided into specific and various phases or components, and for each phase or component must:

(i) Describe the methodology of training and

(ii) Provide a chronology or syllabus.

(4) A T/IPP for interns must:

(i) Describe the role of the intern in the organization and, if applicable, identify various departments or functional areas in which the intern will work; and

(ii) Identify the specific tasks and activities the intern will complete.

(j) *Program exclusions.* Sponsors designated by the Department to administer training and internship programs must not:

(1) Place trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care; or in clinical or any other kind of work that involves patient care or patient contact, including any work that would require trainees or interns to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, early childhood education);

(2) Place trainees or interns in positions, occupations, or businesses that

could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(3) Engage or otherwise cooperate or contract with a Staffing/Employment Agency to recruit, screen, orient, place, evaluate, or train trainees or interns, or in any other way involve such agencies in an Exchange Visitor Program training and internship program.

(4) Issue a T/IPP for any trainee or intern for which the duties involve more than 20 per cent clerical work.

(5) Have less than three departmental or functional rotations for "Hospitality and Tourism" training and internship programs of six months or longer.

(k) *Duration.* The duration of participation in a training and internship program must be established before a sponsor issues a Form DS-2019 and must not exceed the sponsor's authorized designation as set forth in the sponsor's letter of designation or most recent letter of redesignation. Except as noted below, the maximum duration of a training program is 18 months, and the maximum duration of an internship program is 12 months. For training programs in the field of agriculture and in the occupational category of Hospitality and Tourism, the maximum duration of program participation is 12 months. If an original T/IPP specifies that at least six months of a program includes related classroom participation and studies, training programs in the field of agriculture may be designated for a total duration of 18 months. Program extensions are permitted within the maximum duration as set forth in the letter of designation/redesignation provided that the need for an extended training or internship program is documented by the full completion and execution of a new Form DS-7002. 12-month training programs in the field of agriculture may not be extended to 18 months by adding six months of classroom participation and studies at the end of the original 12-month program duration. Per above, the six months of related classroom participation and studies must have been part of the trainee's original T/IPP.

§ 62.23

22 CFR Ch. I (4–1–12 Edition)

(1) *Evaluations.* In order to ensure the quality of training and internship programs, sponsors must develop procedures for evaluating all trainees and interns. All required evaluations must be completed prior to the conclusion of a training and internship program, and both the trainees and interns and their immediate supervisors must sign the evaluation forms. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. For programs of six months or less, at a minimum, concluding evaluations are required. Sponsors must retain trainee and intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each training and internship program.

(m) *Issuance of certificate of eligibility for exchange visitor (J-1) status.* Sponsors must not deliver or cause to be delivered any Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) to potential trainees or interns unless the individualized Form DS-7002 required by § 62.22(i) has been completed and signed by all requisite parties.

(n) *Additional training and internship program participation.* Foreign nationals who enter the United States under the Exchange Visitor Program to participate in training and internship programs are eligible to participate in additional training and internship programs under certain conditions. For both trainees and interns, additional training and internship programs must address the development of more advanced skills or a different field of expertise. Interns may apply for additional internship programs if they:

(1) Are currently enrolled full-time and pursuing studies at degree- or certificate-granting post-secondary academic institutions outside the United States; or,

(2) Have graduated from such institutions no more than 12 months prior to the start of their proposed exchange visitor program. A new internship is also permissible when a student has successfully completed a recognized course of study (*i.e.*, associate, bachelors, masters, Ph.D., or their recognized equivalents) and has enrolled and is pursuing studies at the next higher

level of academic study. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following completion of their training program. Participants who have successfully completed internship programs and no longer meet the selection criteria for an internship program may participate in a training program if they have resided outside the United States or its territories for at least two years. If participants meet these selection criteria and fulfill these conditions, there will be no limit to the number of times they may participate in a training and internship program.

[75 FR 48559, Aug. 11, 2010]

§ 62.23 College and university students.

(a) *Purpose.* A program under this section provides foreign students the opportunity to participate in a designated exchange visitor program while studying at a degree-granting post-secondary accredited academic institution or participating in a student internship program which fulfills the student's academic study. A student sponsored in this category may participate in a degree, non-degree, or student internship program. Such an exchange is intended to promote mutual understanding by fostering the exchange of ideas between foreign students and their American counterparts.

(b) *Designation.* The Department of State may, in its sole discretion, designate *bona fide* programs which offer foreign students the opportunity to study in the United States at a post-secondary accredited academic institution or to participate in a student internship program.

(c) *Selection criteria.* A sponsor selects the college and university students who participate in its exchange visitor program. A sponsor must secure sufficient background information on the students to ensure that they have the academic credentials required for its program. A student is eligible for participation in the Exchange Visitor Program if at any time during his or her educational program in the United States:

(1) The student or his or her program is financed directly or indirectly by:

Department of State

§ 62.23

(i) The United States Government;
(ii) The government of the student's home country; or

(iii) An international organization of which the United States is a member by treaty or statute;

(2) The program is carried out pursuant to an agreement between the United States Government and a foreign government;

(3) The program is carried out pursuant to written agreement between:

(i) American and foreign academic institutions;

(ii) An American academic institution and a foreign government; or

(iii) A state or local government in the United States and a foreign government;

(4) The student is supported substantially by funding from any source other than personal or family funds; or

(5) The student is participating in a student internship program as described in paragraph (1) of this section.

(d) *Admissions requirement.* In addition to satisfying the requirements of §62.10(a), a sponsor must ensure that the student has been admitted to, or accepted for a student internship program offered by, the post-secondary accredited academic institution listed on the Form DS-2019 before issuing the Form.

(e) *Full course of study requirement.* A student, other than a student intern described in paragraph (h)(3)(i) of this section, must pursue a full course of study at a post-secondary accredited academic institution in the United States as defined in §62.2, except under the following circumstances:

(1) *Vacation.* During official school breaks and summer vacations if the student is eligible and intends to register for the next term. A student attending a school on a quarter or trimester calendar may be permitted to take the annual vacation during any one of the quarters or trimesters instead of during the summer.

(2) *Medical illness.* If the student is compelled to reduce or interrupt a full course of study due to an illness or medical condition and the student presents to the responsible officer a written statement from a physician requiring or recommending an interruption or reduction in studies.

(3) *Bona fide academic reason.* If the student is compelled to pursue less than a full course of study for a term and the student presents to the responsible officer a written statement from the academic dean or advisor recommending the student to reduce his or her academic load to less than a full course of study due to an academic reason.

(4) *Non-degree program.* If the student is engaged full time in a prescribed course of study in a non-degree program of up to 24 months duration conducted by a post-secondary accredited academic institution.

(5) *Academic training.* If the student is participating in authorized academic training in accordance with paragraph (f) of this section.

(6) *Final term.* If the student needs less than a full course of study to complete the academic requirements in his or her final term.

(f) *Academic training—(1) Purpose.* The primary purpose of academic training is to permit a student, other than a student intern described in paragraph (i) of this section, to participate in an academic training program during his or her studies, without wages or other remuneration, with the approval of the academic dean or advisor and the responsible officer.

(2) *Conditions.* A student, other than a student intern described in paragraph (i) of this section, may be authorized to participate in an academic training program for wages or other remuneration:

(i) During his or her studies; or

(ii) Commencing not later than 30 days after completion of his or her studies, if the criteria, time limitations, procedures, and evaluations listed below in paragraphs (f)(3) through (f)(6) are satisfied:

(3) *Criteria.* (i) The student is primarily in the United States to study rather than engage in academic training;

(ii) The student is participating in academic training that is directly related to his or her major field of study at the post-secondary accredited academic institution listed on his or her Form DS-2019;

§ 62.23

22 CFR Ch. I (4-1-12 Edition)

(iii) The student is in good academic standing with the post-secondary accredited academic institution; and

(iv) The student receives written approval in advance from the responsible officer for the duration and type of academic training.

(4) *Time limitations.* The student is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training:

(i) Is approved by the academic dean or advisor and approved by the responsible officer;

(ii) For undergraduate and pre-doctoral training, does not exceed 18 months, inclusive of any prior academic training in the United States, or the period of full course of study in the United States, whichever is less; except that additional time for academic training is allowed to the extent necessary for the exchange visitor to satisfy the mandatory requirements of his or her degree program in the United States;

(iii) For post-doctoral training, does not exceed a total of 36 months, inclusive of any prior academic training in the United States as an exchange visitor, or the period of the full course of study in the United States, whichever is less.

(5) *Procedures.* To obtain authorization to engage in academic training:

(i) The student must present to the responsible officer a letter of recommendation from the student's academic dean or advisor setting forth:

(A) The goals and objectives of the specific academic training program;

(B) A description of the academic training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;

(C) How the academic training relates to the student's major field of study; and

(D) Why it is an integral or critical part of the academic program of the student.

(ii) The responsible officer must:

(A) Determine if and to what extent the student has previously participated in academic training as a student, in order to ensure the student does not

exceed the period permitted in paragraph (f) of this section;

(B) Review the letter of recommendation required in paragraph (f)(5)(i) of this section; and

(C) Make a written determination of whether the academic training currently being requested is warranted and the criteria and time limitations set forth in paragraph (f)(3) and (4) of this section are satisfied.

(6) *Evaluation requirements.* The sponsor must evaluate the effectiveness and appropriateness of the academic training in achieving the stated goals and objectives in order to ensure the quality of the academic training program.

(g) *Student employment.* A student, other than a student intern described in paragraph (i) of this section, may engage in part-time employment when the following criteria and conditions are satisfied.

(1) The student employment:

(i) Is pursuant to the terms of a scholarship, fellowship, or assistantship;

(ii) Occurs on the premises of the post-secondary accredited academic institution the visitor is authorized to attend; or

(iii) Occurs off-campus when necessary because of serious, urgent, and unforeseen economic circumstances which have arisen since acquiring exchange visitor status.

(2) A student may engage in employment as provided in paragraph (g)(1) of this section if the:

(i) Student is in good academic standing at the post-secondary accredited academic institution;

(ii) Student continues to engage in a full course of study, except for official school breaks and the student's annual vacation;

(iii) Employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation; and

(iv) The responsible officer has approved the specific employment in advance and in writing. Such approval may be valid for up to 12 months, but is automatically withdrawn if the student's program is transferred or terminated.

(h) *Duration of participation*—(1) *Degree student*. A student who is in a degree program may be authorized to participate in the Exchange Visitor Program as long as he or she is either:

(i) Studying at the post-secondary accredited academic institution listed on his or her Form DS-2019 and:

(A) Pursuing a full course of study as set forth in paragraph (e) of this section, and

(B) Maintaining satisfactory advancement towards the completion of the student's academic program; or

(ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section.

(2) *Non-degree student*. A student who is in a non-degree program may be authorized to participate in the Exchange Visitor Program for up to 24 months. Such a student must be:

(i) Studying at the post-secondary accredited academic institution listed on his or her Form DS-2019 and:

(A) Participating full-time in a prescribed course of study; and

(B) Maintaining satisfactory advancement towards the completion of his or her academic program; or

(ii) Participating in an authorized academic training program as permitted in paragraph (f) of this section.

(3) *Student intern*. A student intern participating in a student internship program may be authorized to participate in the Exchange Visitor Program for up to 12 months for each degree/major as permitted in paragraph (i) of this section as long as the student intern is:

(i) Engaged full-time in a student internship program sponsored by the post-secondary accredited academic institution that issued Form DS-2019; and

(ii) Maintaining satisfactory advancement towards the completion of his or her student internship program.

(i) *Student intern*. The student intern is a foreign national enrolled in and pursuing a degree at an accredited post-secondary academic institution outside the United States and is participating in a student internship program in the United States that will fulfill the educational objectives for his or her current degree program at his or her home institution. The student in-

tern must meet the following requirements:

(1) *Criteria*. (i) In addition to satisfying the general requirements set forth in § 62.10(a), a sponsor must ensure that the student intern has verifiable English language skills sufficient to function on a day-to-day basis in the internship environment. English language proficiency must be verified through a sponsor-conducted interview, by a recognized English language test, or by signed documentation from an academic institution or English language school.

(ii) The student intern is primarily in the United States to engage in a student internship program rather than to engage in employment or provide services to an employer;

(iii) The student intern has been accepted into a student internship program at the post-secondary accredited academic institution listed on his or her Form DS-2019;

(iv) The student intern is in good academic standing with the post-secondary academic institution outside the United States from which he or she is enrolled in and pursuing a degree; and

(v) The student intern will return to the academic program and fulfill and obtain a degree from such academic institution after completion of the student internship program.

(2) *Program requirements*. In addition to the requirements set forth in Subpart A, a sponsor must ensure that:

(i) It does not issue Form DS-2019 to a potential participant in a student internship program until it has secured a placement for the student intern and it completes and secures the requisite signatures on Form DS-7002 (T/IPP);

(ii) A student intern has sufficient finances to support himself or herself and dependants for their entire stay in the United States, including housing and living expenses; and

(iii) The student internship program exposes participants to American techniques, methodologies, and technology and expands upon the participants' existing knowledge and skills. A program must not duplicate the student intern's prior experience.

(3) *Obligations of student internship program sponsors.* (i) A sponsor designated by the Department to administer a student internship program must:

(A) Ensure that the student internship program is full-time (minimum of 32 hours a week); and

(B) Ensure that any host organization or other third party involved in the recruitment, selection, screening, placement, orientation, evaluation, or provision of a student internship program is sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adheres to all regulations set forth in this part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(ii) A sponsor must ensure that it or any host organization acting on the sponsor's behalf:

(A) Has sufficient resources, plant, equipment, and trained personnel available to provide the specified student internship program;

(B) Does not displace full- or part-time or temporary or permanent American workers or serve to fill a labor need and ensures that the position that the student interns fills exists solely to assist the student intern in achieving the objectives of his or her participation in a student internship program; and

(C) Certifies that student internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(iii) *Screening and vetting host organizations.* A sponsor must adequately screen all potential host organizations at which a student intern will be placed by obtaining the following information:

(A) The Dun & Bradstreet identification number (unless the host organization is an academic institution, government entity, or family farm);

(B) Employer Identification Number (EIN) used for tax purposes;

(C) Verification of telephone number, address, and professional activities via advertising, brochures, Web site, and/or feedback from prior participants; and

(D) Verification of Workman's Compensation Insurance Policy.

(iv) *Site visits.* A sponsor must conduct a site visit of any host organization that has not previously participated successfully in the sponsor's student internship program, has fewer than 25 employees, or has less than three million dollars in annual revenue. Any placement at an academic institution or at a Federal, State, or local government office is specifically excluded from this requirement. The purpose of the site visit is for the sponsor to ensure that each host organization possesses and maintains the ability and resources to provide structured and guided work-based learning experiences according to individualized T/ IPPs, and that each host organization understands and meets its obligations set forth in this part.

(4) *Use of third parties.* A sponsor may engage a third party (including, but not limited to a host organization, partner, local business, governmental entity, academic institution, or any other foreign or domestic agent) to assist it in the conduct of its designated student internship program. Such a third party must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the full relationship between the sponsor and third party on all matters involving the administration of its exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsor.

(5) *Evaluation requirements.* In order to ensure the quality of a student internship program, a sponsor must develop procedures for evaluating all student interns. All required evaluations

must be completed prior to the conclusion of a student internship program, and the student intern and his or her immediate supervisor must sign the evaluation forms. At a minimum, all programs require a concluding evaluation, and programs lasting longer than six months also require a midpoint evaluation. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. A sponsor must retain student intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each student internship program.

(6) *Employment, wages, or remuneration.* A student intern is permitted to engage in full-time employment during the student internship program as outlined on his or her T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. A student intern may be employed, however, only with the approval of the responsible officer and the student's home institution's dean or academic advisor.

(7) *Training/Internship Placement Plan (Form DS-7002).* (i) A sponsor must fully complete and obtain requisite signatures for a Form DS-7002 for each student intern before issuing a Form DS-2019. A sponsor must provide to each signatory an executed copy of the Form DS-7002. Upon request, a student intern must present his or her fully executed Form DS-7002 to a Consular Official during the visa interview.

(ii) To further distinguish between work-based learning for student interns, which is permitted, and ordinary employment or unskilled labor which is not, a T/IPP must:

(A) State the specific goals and objectives of the student internship program (for each phase or component, if applicable);

(B) Detail the knowledge, skills, or techniques to be imparted to the student intern (for each phase or component, if applicable); and

(C) Describe the methods of performance evaluation and the frequency of supervision (for each phase or component, if applicable).

(8) *Program exclusions.* A sponsor designated by the Department to admin-

ister a student internship program must:

(i) Not place a student intern in an unskilled or casual labor position, in a position that requires or involves child care or elder care, a position in the field of aviation, or, in clinical positions or engaging in any other kind of work that involves patient care or contact, including any work that would require student interns to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education);

(ii) Not place a student intern in a position, occupation, or business that could bring the Exchange Visitor Program or the Department into notoriety or disrepute;

(iii) Not engage or otherwise cooperate or contract with a staffing/employment agency to recruit, screen, orient, place, evaluate, or train student interns, or in any other way involve such agencies in an Exchange Visitor Program student internship program;

(iv) Ensure that the duties of a student intern as outlined in the T/IPP will not involve more than 20 per cent clerical work, and that all tasks assigned to a student intern are necessary for the completion of the student internship program; and

(v) Ensure that all "Hospitality and Tourism" student internship programs of six months or longer contain at least three departmental or functional rotations.

[73 FR 35068, June 20, 2008]

§ 62.24 Teachers.

(a) *Purpose.* These regulations govern exchange visitors who teach full-time in primary and secondary accredited educational institutions. Programs under this section promote the interchange of American and foreign teachers in public and private schools and the enhancement of mutual understanding between people of the United States and other countries. They do so

§ 62.25

22 CFR Ch. I (4–1–12 Edition)

by providing foreign teachers opportunities to teach in primary and secondary accredited educational institutions in the United States, to participate actively in cross-cultural activities with Americans in schools and communities, and to return home ultimately to share their experiences and their increased knowledge of the United States. Such exchanges enable visitors to understand better American culture, society, and teaching practices at the primary and secondary levels, and enhance American knowledge of foreign cultures, customs, and teaching approaches.

(b) *Designation.* The Department of State may, in its discretion, designate *bona fide* programs satisfying the objectives in section (a) above as exchange visitor programs in the teacher category.

(c) *Visitor eligibility.* A foreign national shall be eligible to participate in an exchange visitor program as a full-time teacher if the individual:

(1) Meets the qualifications for teaching in primary or secondary schools in his or her country of nationality or last legal residence;

(2) Satisfies the standards of the U.S. state in which he or she will teach;

(3) Is of good reputation and character;

(4) Seeks to come to the United States for the purpose of full-time teaching at a primary or secondary accredited educational institution in the United States; and

(5) Has a minimum of three years of teaching or related professional experience.

(d) *Visitor selection.* Sponsors shall adequately screen teachers prior to accepting them for the program. Such screening, in addition to the requirements of § 62.10(a), shall include:

(1) Evaluating the qualifications of the foreign applicants to determine whether the criteria set forth in paragraph (c) of this section are satisfied; and

(2) Securing references from colleagues and current or former employers, attesting to the teachers' good reputation, character and teaching skills.

(e) *Teaching position.* Prior to the issuance of the Form DS-2019, the exchange visitor shall receive a written

offer and accept in writing of a teaching position from the primary or secondary accredited educational institution in which he or she is to teach. Such position shall be in compliance with any applicable collective bargaining agreement, where one exists. The exchange visitor's appointment to a position at a primary or secondary accredited educational institution shall be temporary, even if the teaching position is permanent.

(f) *Program disclosure.* Before the program begins, the sponsor shall provide the teacher, in addition to what is required in § 62.10(b), with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program, including a written statement of the teaching requirements and related professional obligations; and

(3) A written statement which clearly states the compensation, if any, to be paid to the teacher and any other financial arrangements in regards to the exchange visitor program.

(g) *Location of the exchange.* The teacher shall participate in an exchange visitor program at the primary or secondary accredited educational institution(s) listed on his or her Form DS-2019 and at locations where the institution(s) are involved in official school activities (e.g., school field trips and teacher training programs).

(h) *Duration of participation.* The teacher shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed three years.

§ 62.25 Secondary school students.

(a) *Purpose.* This section governs Department of State designated exchange visitor programs under which foreign secondary school students are afforded the opportunity to study in the United States at accredited public or private secondary schools for an academic semester or an academic year, while living with American host families or residing at accredited U.S. boarding schools.

(b) *Program sponsor eligibility.* Eligibility for designation as a secondary

Department of State

§ 62.25

school student exchange visitor program sponsor is limited to organizations:

(1) With tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(2) Which are United States citizens as such term is defined in § 62.2.

(c) *Program eligibility.* Secondary school student exchange visitor programs designated by the Department of State must:

(1) Require all exchange students to be enrolled and participating in a full course of study at an accredited academic institution;

(2) Allow entry of exchange students for not less than one academic semester (or quarter equivalency) and not more than two academic semesters (or quarter equivalency) duration; and

(3) Ensure that the program is conducted on a U.S. academic calendar year basis, except for students from countries whose academic year is opposite that of the United States. Exchange students may begin an exchange program in the second semester of a U.S. academic year only if specifically permitted to do so, in writing, by the school in which the exchange student is enrolled. In all cases, sponsors must notify both the host family and school prior to the exchange student's arrival in the United States whether the placement is for an academic semester, an academic year, or a calendar year.

(d) *Program administration.* Sponsors must ensure that all organizational officers, employees, representatives, agents, and volunteers acting on their behalf:

(1) Are adequately trained. Sponsors must administer training for local coordinators that specifically includes, at a minimum, instruction in: Conflict resolution; procedures for handling and reporting emergency situations; awareness or knowledge of child safety standards; information on sexual conduct codes; procedures for handling and reporting allegations of sexual misconduct or any other allegations of abuse or neglect; and the criteria to be used to screen potential host families and exercise good judgment when identifying what constitutes suitable host

family placements. In addition to their own training, sponsors must ensure that all local coordinators complete the Department of State mandated training module prior to their appointment as a local coordinator or assumption of duties. The Department of State training module will include instruction designed to provide a comprehensive understanding of the Exchange Visitor Program; its public diplomacy objectives; and the Secondary School Student category rules and regulations. Sponsors must demonstrate the individual's successful completion of all initial training requirements and that annual refresher training is also successfully completed.

(2) Are adequately supervised. Sponsors must create and implement organization-specific standard operating procedures for the supervision of local coordinators designed to prevent or deter fraud, abuse, or misconduct in the performance of the duties of these employees/agents/volunteers. They must also have sufficient internal controls to ensure that such employees/agents/volunteers comply with such standard operating procedures.

(3) Have been vetted annually through a criminal background check (which must include a search of the Department of Justice's National Sex Offender Public Registry);

(4) Place no exchange student with his or her relatives;

(5) Make no exchange student placement beyond 120 miles of the home of the local coordinator authorized to act on the sponsor's behalf in both routine and emergency matters arising from that exchange student's participation in the Exchange Visitor Program;

(6) Make no monetary payments or other incentives to host families;

(7) Provide exchange students with reasonable access to their natural parents and family by telephone and e-mail;

(8) Make certain that the exchange student's government issued documents (*i.e.*, passports, Forms DS-2019) are not removed from his/her possession;

(9) Conduct the host family orientation after the host family has been fully vetted and accepted;

§ 62.25

22 CFR Ch. I (4–1–12 Edition)

(10) Refrain, without exception, from acting as:

(i) Both a host family and a local coordinator or area supervisor for an exchange student;

(ii) A host family for one sponsor and a local coordinator for another sponsor; or

(iii) A local coordinator for any exchange student over whom he/she has a position of trust or authority such as the student’s teacher or principal. This requirement is not applicable to a boarding school placement.

(11) Maintain, at minimum, a monthly schedule of personal contact with the exchange student. The first monthly contact between the local coordinator and the exchange student must be in person. All other contacts may take place in-person, on the phone, or via electronic mail and must be properly documented. The sponsor is responsible for ensuring that issues raised through such contacts are promptly and appropriately addressed.

(12) That a sponsor representative other than the local coordinator who recruited, screened and selected the host family visit the exchange student/host family home within the first or second month following the student’s placement in the home.

(13) Maintain, at a minimum, a monthly schedule of personal contact with the host family. At least once during the fall semester and at least once during the spring semester, (*i.e.*, twice during the academic year) the contact by the local coordinator with the host family must be in person. All other contacts may take place in person, on the phone, or via electronic mail and must be properly documented. The sponsor is responsible for ensuring the issues raised through such contacts are promptly and appropriately addressed.

(14) That host schools are provided contact information for the local organizational representative (including name, direct phone number, and e-mail address), the program sponsor, and the Department’s Office of Designation; and

(15) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions gov-

erning program administration that the Department may impose.

(e) *Student selection.* In addition to satisfying the requirements of § 62.10(a), sponsors must ensure that all participants in a designated secondary school student exchange visitor program:

(1) Are secondary school students in their home countries who have not completed more than 11 years of primary and secondary study, exclusive of kindergarten; or are at least 15 years of age, but not more than 18 years and six months of age as of the program start date;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States or attended school in the United States in either F-1 or J-1 visa status.

(f) *Student enrollment.* (1) Sponsors must secure prior written acceptance for the enrollment of any exchange student in a United States public or private secondary school. Such prior acceptance must:

(i) Be secured from the school principal or other authorized school administrator of the school or school system that the exchange student will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Under no circumstance may a sponsor facilitate the entry into the United States of an exchange student for whom a written school placement has not been secured.

(3) Under no circumstance may a sponsor charge a student private school tuition if such arrangements are not finalized in writing prior to the issuance of Form DS-2019.

(4) Sponsors must maintain copies of all written acceptances for a minimum of three years and make such documents available for Department of State inspection upon request.

(5) Sponsors must provide the school with a translated “written English language summary” of the exchange student’s complete academic course work prior to commencement of school, in addition to any additional documents

the school may require. Sponsors must inform the prospective host school of any student who has completed secondary school in his/her home country.

(6) Sponsors may not facilitate the enrollment of more than five exchange students in one school unless the school itself has requested, in writing, the placement of more than five students from the sponsor.

(7) Upon issuance of a Form DS-2019 to a prospective participant, the sponsor accepts full responsibility for securing a school and host family placement for the student, except in cases of voluntary student withdrawal or visa denial.

(g) *Student orientation.* In addition to the orientation requirements set forth at §62.10, all sponsors must provide exchange students, prior to their departure from their home countries, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program along with a detailed summary of travel arrangements;

(2) A copy of the Department's welcome letter to exchange students;

(3) Age and language appropriate information on how to identify and report sexual abuse or exploitation;

(4) A detailed profile of the host family with whom the exchange student will be placed. The profile must state whether the host family is either a permanent placement or a temporary-arrival family;

(5) A detailed profile of the school and community in which the exchange student will be placed. The profile must state whether the student will pay tuition; and

(6) An identification card, that lists the exchange student's name, United States host family placement address and telephone numbers (landline and cellular), sponsor name and main office and emergency telephone numbers, name and telephone numbers (landline and cellular) of the local coordinator and area representative, the telephone number of Department's Office of Designation, and the Secondary School Student program toll free emergency telephone number. The identification card must also contain the name of the health insurance provider and policy

number. Such cards must be corrected, reprinted, and reissued to the student if changes in contact information occur due to a change in the student's placement.

(h) *Student extra-curricular activities.* Exchange students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) Authorized by the local school district in which the student is enrolled; and

(2) Authorized by the state authority responsible for determination of athletic eligibility, if applicable. Sponsors shall not knowingly be party to a placement (inclusive of direct placements) based on athletic abilities, whether initiated by a student, a natural or host family, a school, or any other interested party.

(3) Any placement in which either the student or the sending organization in the foreign country is party to an arrangement with any other party, including receiving school personnel, whereby the student will attend a particular school or live with a particular host family must be reported to the particular school and the National Federation of State High School Associations prior to the first day of classes.

(i) *Student employment.* Exchange students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) *Host family application and selection.* Sponsors must adequately screen and select all potential host families and at a minimum must:

(1) Provide potential host families with a detailed summary of the Exchange Visitor Program and of their requirements, obligations and commitment to host;

(2) Utilize a standard application form developed by the sponsor that includes, at a minimum, all data fields provided in Appendix F, "Information to be Collected on Secondary School Student Host Family Applications". The form must include a statement stating that: "The income data collected will be used solely for the purposes of determining that the basic needs of the exchange student can be met, including three quality meals and

transportation to and from school activities.” Such application form must be signed and dated at the time of application by all potential host family applicants. The host family application must be designed to provide a detailed summary and profile of the host family, the physical home environment (to include photographs of the host family home’s exterior and grounds, kitchen, student’s bedroom, bathroom, and family or living room), family composition, and community environment. Exchange students are not permitted to reside with their relatives.

(3) Conduct an in-person interview with all family members residing in the home where the student will be living;

(4) Ensure that the host family is capable of providing a comfortable and nurturing home environment and that the home is clean and sanitary; that the exchange student’s bedroom contains a separate bed for the student that is neither convertible nor inflatable in nature; and that the student has adequate storage space for clothes and personal belongings, reasonable access to bathroom facilities, study space if not otherwise available in the house and reasonable, unimpeded access to the outside of the house in the event of a fire or similar emergency. An exchange student may share a bedroom, but with no more than one other individual of the same sex.

(5) Ensure that the host family has a good reputation and character by securing two personal references from within the community from individuals who are not relatives of the potential host family or representatives of the sponsor (*i.e.*, field staff or volunteers), attesting to the host family’s good reputation and character;

(6) Ensure that the host family has adequate financial resources to undertake hosting obligations and is not receiving needs-based government subsidies for food or housing;

(7) Verify that each member of the host family household 18 years of age and older, as well as any new adult member added to the household, or any member of the host family household who will turn eighteen years of age during the exchange student’s stay in that household, has undergone a crimi-

nal background check (which must include a search of the Department of Justice’s National Sex Offender Public Registry);

(8) Maintain a record of all documentation on a student’s exchange program, including but not limited to application forms, background checks, evaluations, and interviews, for all selected host families for a period of three years following program completion; and

(9) Ensure that a potential single adult host parent without a child in the home undergoes a secondary level review by an organizational representative other than the individual who recruited and selected the applicant. Such secondary review should include demonstrated evidence of the individual’s friends or family who can provide an additional support network for the exchange student and evidence of the individual’s ties to his/her community. Both the exchange student and his or her natural parents must agree in writing in advance of the student’s placement with a single adult host parent without a child in the home.

(k) *Host family orientation.* In addition to the orientation requirements set forth in § 62.10, sponsors must:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor’s exchange visitor program, including examples of “best practices” developed by the exchange community;

(2) Provide all selected host families with a copy of the Department’s letter of appreciation to host families;

(3) Provide all selected host families with a copy of Department of State-promulgated Exchange Visitor Program regulations;

(4) Advise all selected host families of strategies for cross-cultural interaction and conduct workshops to familiarize host families with cultural differences and practices; and

(5) Advise host families of their responsibility to inform the sponsor of any and all material changes in the status of the host family or student, including, but not limited to, changes in address, finances, employment and criminal arrests.

(1) *Host family placement.* (1) Sponsors must secure, prior to the student's departure from his or her home country, a permanent or arrival host family placement for each exchange student participant. Sponsors may not:

(i) Facilitate the entry into the United States of an exchange student for whom a host family placement has not been secured;

(ii) Place more than one exchange student with a host family without the express prior written consent of the host family, the natural parents, and the students being placed. Under no circumstance may more than two exchange students be placed with a host family, or in the home of a local coordinator, regional coordinator, or volunteer. Sponsors may not place students from the same countries or with the same native languages in a single home.

(2) Prior to the student's departure from his or her home country, sponsors must advise both the exchange student and host family, in writing, of the respective family compositions and backgrounds of each, whether the host family placement is a permanent or arrival placement, and facilitate and encourage the exchange of correspondence between the two.

(3) In the event of unforeseen circumstances that necessitate a change of host family placement, the sponsor must document the reason(s) necessitating such change and provide the Department of State with an annual statistical summary reflecting the number and reason(s) for such change in host family placement in the program's annual report.

(m) *Advertising and marketing for the recruitment of host families.* In addition to the requirements set forth in § 62.9 in advertising and promoting for host family recruiting, sponsors must:

(1) Utilize only promotional materials that professionally, ethically, and accurately reflect the sponsor's purposes, activities, and sponsorship;

(2) Not publicize the need for host families via any public media with announcements, notices, advertisements, etc. that are not sufficiently in advance of the exchange student's arrival, appeal to public pity or guilt, imply in any way that an exchange

student will be denied participation if a host family is not found immediately, or identify photos of individual exchange students and include an appeal for an immediate family;

(3) Not promote or recruit for their programs in any way that compromises the privacy, safety or security of participants, families, or schools. Specifically, sponsors shall not include personal student data or contact information (including addresses, phone numbers or email addresses) or photographs of the student on Web sites or in other promotional materials; and

(4) Ensure that access to exchange student photographs and personally identifying information, either online or in print form, is only made available to potential host families who have been fully vetted and selected for program participation. Such information, if available online, must also be password protected.

(n) *Reporting requirements.* Along with the annual report required by regulations set forth at § 62.15, sponsors must file with the Department of State the following information:

(1) Sponsors must immediately report to the Department any incident or allegation involving the actual or alleged sexual exploitation or any other allegations of abuse or neglect of an exchange student. Sponsors must also report such allegations as required by local or state statute or regulation. Failure to report such incidents to the Department and, as required by state law or regulation, to local law enforcement authorities shall be grounds for the suspension and revocation of the sponsor's Exchange Visitor Program designation;

(2) A report of all final academic year and semester program participant placements by August 31 for the upcoming academic year or January 15 for the Spring semester and calendar year. The report must be in the format directed by the Department and must include at a minimum, the exchange student's full name, Form DS-2019 number (SEVIS ID #), host family placement (current U.S. address), school (site of activity) address, the local coordinator's name and zip code, and other information the Department may request; and

§ 62.26

(3) A report of all situations which resulted in the placement of an exchange student with more than one host family or in more than one school. The report must be in a format directed by the Department and include, at a minimum, the exchange student's full name, Form DS-019 number (SEVIS ID #), host family placements (current U.S. address), schools (site of activity address), the reason for the change in placement, and the date of the move. This report is due by July 31 for the previous academic school year.

[75 FR 65981, Oct. 27, 2010]

§ 62.26 Specialists.

(a) *Introduction.* These regulations govern experts in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills, except:

(1) Research scholars and professors, who are governed by regulations set forth at § 62.20;

(2) Short-term scholars, who are governed by regulations set forth at § 62.21; and

(3) Alien physicians in graduate medical education or training, who are governed by regulations set forth in § 62.27.

(b) *Purpose.* The Exchange Visitor Program promotes the interchange of knowledge and skills among foreign and American specialists, who are defined as experts in a field of specialized knowledge or skills, and who visit the United States for the purpose of observing, consulting, or demonstrating their special skills. It does so by providing foreign specialists the opportunity to observe American institutions and methods of practice in their professional fields, and to share their specialized knowledge with their American colleagues. The exchange of specialists promotes mutual enrichment, and furthers linkages among scientific institutions, government agencies, museums, corporations, libraries, and similar types of institutions. Such exchanges also enable visitors to better understand American culture and society and enhance American knowledge of foreign cultures and skills. This category is intended for exchanges with experts in such areas, for example, as mass media communication, environ-

22 CFR Ch. I (4-1-12 Edition)

mental science, youth leadership, international educational exchange, museum exhibitions, labor law, public administration, and library science. This category is not intended for experts covered by the exchange visitor categories listed in paragraphs (a) (1) through (3) of this section.

(c) *Designation.* The Department of State may, in its discretion, designate *bona fide* programs satisfying the objectives in section (b) above as an exchange visitor program in the specialist category.

(d) *Visitor eligibility.* A foreign national shall be eligible to participate in an exchange visitor program as a specialist if the individual:

(1) Is an expert in a field of specialized knowledge or skill;

(2) Seeks to travel to the United States for the purpose of observing, consulting, or demonstrating his or her special knowledge or skills; and

(3) Does not fill a permanent or long-term position of employment while in the United States.

(e) *Visitor selection.* Sponsors shall adequately screen and select specialists prior to accepting them for the program, providing a formal selection process, including at a minimum:

(1) Evaluation of the qualifications of foreign nationals to determine whether they meet the definition of specialist as set forth in § 62.4(g); and

(2) Screening foreign nationals to ensure that the requirements of § 62.10(a) are satisfied.

(f) *Program disclosure.* Before the program begins, the sponsor shall provide the specialist, in addition to what is required in § 62.10(b), with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program; and

(3) A written statement which clearly states the stipend, if any, to be paid to the specialist.

(g) *Issuance of Form IAP-66.* The Form DS-2019 shall be issued only after the specialist has been accepted by the organization(s) with which he or she will participate in an exchange visitor program.

(h) *Location of the exchange.* The specialist shall participate in an exchange

Department of State

§ 62.27

visitor program at the location(s) listed on his or her Form DS-2019.

(i) *Duration of participation.* The specialist shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed one year.

§ 62.27 Alien physicians.

(a) *Purpose.* Pursuant to the Mutual Educational and Cultural Exchange Act, as amended by the Health Care Professions Act, Public Law 94-484, the Department of State facilitates exchanges for foreign medical graduates seeking to pursue graduate medical education or training at accredited schools of medicine or scientific institutions. The Department of State also facilitates exchanges of foreign medical graduates seeking to pursue programs involving observation, consultation, teaching, or research activities.

(b) *Clinical exchange programs.* The Educational Commission for Foreign Medical Graduates must sponsor alien physicians who wish to pursue programs of graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions. Such Foreign Medical Graduates shall:

- (1) Have adequate prior education and training to participate satisfactorily in the program for which they are coming to the United States;
- (2) Be able to adapt to the educational and cultural environment in which they will be receiving their education or training;
- (3) Have the background, needs, and experiences suitable to the program as required in §62.10(a)(1);
- (4) Have competency in oral and written English;
- (5) Have passed either Parts I and II of the National Board of Medical Examiners Examination, the Foreign Medical Graduate Examination in the Medical Sciences, the United States Medical Licensing Examination, Step I and Step II, or the Visa Qualifying Examination (VQE) prepared by the National Board of Medical Examiners, administered by the Educational Commission for Foreign Medical Graduates. [NB—Graduates of a school of medicine accredited by the Liaison Committee

on Medical Education are exempted by law from the requirement of passing either Parts I and II of the National Board of Medical Examiners Examination or the Visa Qualifying Examination (VQE)]; and

(6) Provide a statement of need from the government of the country of their nationality or last legal permanent residence. Such statement must provide written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien physician seeks to acquire and shall be submitted to the Educational Commission for Foreign Medical Graduates by the participant's government. The statement of need must bear the seal of the concerned government and be signed by a duly designated official of the government. The text of such statement of need shall read as follows:

Name of applicant for Visa: _____. There currently exists in (Country) a need for qualified medical practitioners in the speciality of _____. (Name of applicant for Visa) has filed a written assurance with the government of this country that he/she will return to this country upon completion of training in the United States and intends to enter the practice of medicine in the specialty for which training is being sought. Stamp (or Seal and signature) of issuing official of named country.

Dated: _____

Official of Named Country.

(7) Submit an agreement or contract from a U.S. accredited medical school, an affiliated hospital, or a scientific institution to provide the accredited graduate medical education. The agreement or contract must be signed by both the alien physician and the official responsible for the training.

(c) *Non-clinical exchange programs.* (1) A United States university or academic medical center which has been designated an exchange visitor program by the Secretary of State of the Department of State is authorized to issue Form DS-2019 to alien physicians to enable them to come to the United States for the purposes of observation, consultation, teaching, or research if:

- (i) The responsible officer or duly designated alternate of the exchange visitor program involved signs and

appends to the Form DS-2019 a certification which states “this certifies that the program in which (name of physician) is to be engaged is solely for the purpose of observation, consultation, teaching, or research and that no element of patient care is involved” or

(ii) The dean of the involved accredited United States medical school or his or her designee certifies to the following five points and such certification is appended to the Form DS-2019 issued to the perspective exchange visitor alien physician:

(A) The program in which (name of physician) will participate is predominantly involved with observation, consultation, teaching, or research.

(B) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien and who is licensed to practice medicine in the State of _____.

(C) The alien physician will not be given final responsibility for the diagnosis and treatment of patients.

(D) Any activities of the alien physician will conform fully with the State licensing requirements and regulations for medical and health care professionals in the State in which the alien physician is pursuing the program.

(E) Any experience gained in this program will not be creditable towards any clinical requirements for medical specialty board certification.

(2) The Educational Commission for Foreign Medical Graduates may also issue Form DS-2019 to alien physicians who are coming to the United States to participate in a program of observation, consultation, teaching, or research provided the required letter of certification as outlined in this paragraph is appended to the Form DS-2019.

(d) *Public health and preventive medicine programs.* A United States university, academic medical center, school of public health, or other public health institution which has been designated as an exchange visitor program sponsor by the Secretary of State of the Department of State is authorized to issue Forms DS-2019 to alien physicians to enable them to come to the United States for the purpose of entering into those programs which do not include any clinical activities involv-

ing direct patient care. Under these circumstances, the special eligibility requirements listed in paragraphs (b) and (c) of this section need not be met. The responsible officer or alternate responsible officer of the exchange visitor program involved shall append a certification to the Form DS-2019 which states.

This certifies that the program in which (name of physician) is to be engaged does not include any clinical activities involving direct patient care.

(e) *Duration of participation.* (1) The duration of an alien physician’s participation in a program of graduate medical education or training as described in paragraph (b) of this section is limited to the time typically required to complete such program. Duration shall be determined by the Secretary of State of the Department of State at the time of the alien physician’s entry into the United States. Such determination shall be based on criteria established in coordination with the Secretary of Health and Human Services and which take into consideration the requirements of the various medical specialty boards as evidenced in the Director of Medical Specialties published by Marquis Who’s Who for the American Board of Medical Specialties.

(2) Duration of participation is limited to seven years unless the alien physician has demonstrated to the satisfaction of the Secretary of State that the country to which the alien physician will return at the end of additional specialty education or training has an exceptional need for an individual with such additional qualification.

(3) Subject to the limitations set forth above, duration of participation may, for good cause shown, be extended beyond the period of actual training or education to include the time necessary to take an examination required for certification by a specialty board.

(4) The Secretary of State may include within the duration of participation a period of supervised medical practice in the United States if such practice is an eligibility requirement for certification by a specialty board.

(i) Alien physicians shall be permitted to undertake graduate medical

education or training in a specialty or subspecialty program whose board requirements are not published in the Director of Medical Specialists if the Board requirements are certified to the Secretary of State and to the Educational Commission for Foreign Medical Graduates by the Executive Secretary of the cognizant component board of the American Board of Medical Specialties.

(ii) The Secretary of State may, for good cause shown, grant an extension of the program to permit an alien physician to repeat one year of clinical medical training.

(5) The alien physician must furnish the Attorney General each year with an affidavit (Form I-644) that attests the alien physician:

(i) Is in good standing in the program of graduate medical education or training in which the alien physician is participating; and

(ii) Will return to the country of his nationality or last legal permanent resident upon completion of the education or training for which he came to the United States.

(f) *Change of program.* The alien physician may, once and not later than two years after the date the alien physician enters the United States as an exchange visitor or acquires exchange visitor status, change his designated program of graduate medical education or training if the Secretary of State approves the change and if the requirements of paragraphs (b) and (e) of this section are met for the newly designated specialty.

(g) *Applicability of section 212(e) of the Immigration and Nationality Act.* (1) Any exchange visitor physician coming to the United States on or after January 10, 1977 for the purpose of receiving graduate medical education or training is automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act, as amended. Such physicians are not eligible to be considered for section 212(e) waivers on the basis of "No Objection" statements issued by their governments.

(2) Alien physicians coming to the United States for the purpose of observation, consultation, teaching, or re-

search are not automatically subject to the two-year home-country physical presence requirement of section 212(e) of the Immigration and Nationality Act, as amended, but may be subject to this requirement if they are governmentally financed or pursuing a field of study set forth on their countries' Exchange Visitor Skills List. Such alien physicians are eligible for consideration of waivers under section 212(e) of the Immigration and Nationality Act, as amended, on the basis of "No Objection" statements submitted by their governments in their behalf through diplomatic channels to the Secretary of State of the Department of State.

[58 FR 15196, Mar. 19, 1993; 58 FR 48448, Sept. 16, 1993. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 62.28 International visitors.

(a) *Purpose.* The international visitor category is for the exclusive use of the Department of State. Programs under this section are for foreign nationals who are recognized or potential leaders and are selected by the Department of State to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel. These programs are designed to enable the international visitors to better understand American culture and society and contribute to enhanced American knowledge of foreign cultures. The category is for people-to-people programs which seek to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions.

(b) *Selection.* The Department of State and third parties assisting the Department of State shall adequately screen and select prospective international visitors to determine compliance with § 62.10(a) and the visitor eligibility requirements set forth below.

(c) *Visitor eligibility.* An individual participating in an exchange visitor program as an international visitor shall be:

(1) Selected by the Department of State;

(2) Engaged in consultation, observation, research, training, or demonstration of special skills; and

§ 62.29

22 CFR Ch. I (4–1–12 Edition)

(3) A recognized or potential leader in a field of specialized knowledge or skill.

(d) *Program disclosure.* At the beginning of the program, the sponsor shall provide the international visitor with:

(1) Information on the length and location(s) of his or her exchange visitor program; and

(2) A summary of the significant components of the program.

(e) *Issuance of Form DS-2019.* The Form DS-2019 shall be issued only after the international visitor has been selected by the Department of State.

(f) *Location of the exchange.* The international visitor shall participate in an exchange visitor program at locations approved by the Department of State.

(g) *Duration of participation.* The international visitor shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed one year.

§ 62.29 Government visitors.

(a) *Purpose.* The government visitor category is for the exclusive use of the U.S. federal, state, or local government agencies. Programs under this section are for foreign nationals who are recognized as influential or distinguished persons, and are selected by U.S. federal, state, or local government agencies to participate in observation tours, discussions, consultation, professional meetings, conferences, workshops, and travel. These are people-to-people programs designed to enable government visitors to better understand American culture and society, and to contribute to enhanced American knowledge of foreign cultures. The objective is to develop and strengthen professional and personal ties between key foreign nationals and Americans and American institutions. The government visitor programs are for such persons as editors, business and professional persons, government officials, and labor leaders.

(b) *Designation.* The Department of State may, in its sole discretion, designate as sponsors U.S. federal, state, and local government agencies which offer foreign nationals the opportunity to participate in people-to-people pro-

grams which promote the purpose as set forth in (a) above.

(c) *Selection.* Sponsors shall adequately screen and select prospective government visitors to determine compliance with § 62.10(a) and the visitor eligibility requirements set forth below.

(d) *Visitor eligibility.* An individual participating in an exchange visitor program as a government visitor shall be:

(1) Selected by a U.S. federal, state, and local government agency;

(2) Engaged in consultation, observation, training, or demonstration of special skills; and

(3) An influential or distinguished person.

(e) *Program disclosure.* Before the beginning of the program, the sponsor shall provide the government visitor with:

(1) Information on the length and location(s) of his or her exchange visitor program;

(2) A summary of the significant components of the program; and

(3) A written statement which clearly states the stipend, if any, to be paid to the government visitor.

(f) *Issuance of Form DS-2019.* The Form DS-2019 shall be issued only after the government visitor has been selected by a U.S. federal, state, or local government agency and accepted by the private and/or public organization(s) with whom he or she will participate in the exchange visitor program.

(g) *Location of the exchange.* The government visitor shall participate in an exchange visitor program at the locations listed on his or her Form DS-2019.

(h) *Duration of participation.* The government visitor shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which shall not exceed eighteen months.

§ 62.30 Camp counselors.

(a) *Introduction.* In order to promote diverse opportunities for participation in educational and cultural exchange programs, the Department of State designates exchange sponsors to facilitate the entry of foreign nationals to serve as counselors in U.S. summer

camp. These programs promote international understanding by improving American knowledge of foreign cultures while enabling foreign participants to increase their knowledge of American culture. The foreign participants are best able to carry out this objective by serving as counselors *per se*, that is, having direct responsibility for supervision of groups of American youth and of activities that bring them into interaction with their charges. While it is recognized that some non-counseling chores are an essential part of camp life for all counselors, this program is not intended to assist American camps in bringing in foreign nationals to serve as administrative personnel, cooks, or menial laborers, such as dishwashers or janitors.

(b) *Participant eligibility.* Participation in camp counselor exchange programs is limited to foreign nationals who:

- (1) Are at least 18 years of age;
- (2) Are *bona fide* youth workers, students, teachers, or individuals with specialized skills; and

(c) *Participant selection.* In addition to satisfying the requirements in § 62.10(a), sponsors shall adequately screen all international candidates for camp counselor programs and at a minimum:

- (1) Conduct an in-person interview; and
- (2) Secure references from a participant's employer or teacher regarding his or her suitability for participation in a camp counselor exchange.

(d) *Participant orientation.* Sponsors shall provide participants, prior to their departure from the home country, detailed information regarding:

- (1) Duties and responsibilities relating to their service as a camp counselor;
- (2) Contractual obligations relating to their acceptance of a camp counselor position; and
- (3) Financial compensation for their service as a camp counselor.

(e) *Participant placements.* Sponsors shall place eligible participants at camping facilities which are:

- (1) Accredited;
- (2) A member in good standing of the American Camping Association;

(3) Officially affiliated with a nationally recognized non-profit organization; or

(4) Have been inspected, evaluated, and approved by the sponsor.

(f) *Participant compensation.* Sponsors shall ensure that international participants receive pay and benefits commensurate with those offered to their American counterparts.

(g) *Participant supervision.* Sponsors shall provide all participants with a phone number which allows 24 hour immediate contact with the sponsor.

(h) *Program administration.* Sponsors shall:

(1) Comply with all provisions set forth in subpart A of this part;

(2) Not facilitate the entry of any participant for a program of more than four months duration; and

(3) Under no circumstance facilitate the entry into the United States of a participant for whom a camp placement has not been pre-arranged.

(i) *Placement report.* In lieu of listing the name and address of the camp facility at which the participant is placed on Form DS-2019, sponsors shall submit to the Department of State, no later than July 1st of each year, a report of all participant placements. Such report shall reflect the participant's name, camp placement, and the number of times the participant has previously participated in a camp counselor exchange.

(j) In order to ensure that as many different individuals as possible are recruited for participation in camp counselor programs, sponsors shall limit the number of participants who have previously participated more than once in any camp counselor exchange to not more than ten percent of the total number of participants that the sponsor placed in the immediately preceding year.

[58 FR 15196, Mar. 19, 1993, as amended at 59 FR 16984, Apr. 11, 1994. Redesignated at 64 FR 54539, Oct. 7, 1999]

§ 62.31 Au pairs.

(a) *Introduction.* This section governs Department of State-designated exchange visitor programs under which foreign nationals are afforded the opportunity to live with an American host family and participate directly in

the home life of the host family. All au pair participants provide child care services to the host family and attend a U.S. post-secondary educational institution. Au pair participants provide up to forty-five hours of child care services per week and pursue not less than six semester hours of academic credit or its equivalent during their year of program participation. Au pairs participating in the EduCare program provide up to thirty hours of child care services per week and pursue not less than twelve semester hours of academic credit or its equivalent during their year of program participation.

(b) *Program designation.* The Department of State may, in its sole discretion, designate bona fide programs satisfying the objectives set forth in paragraph (a) of this section. Such designation shall be for a period of two years and may be revoked by the Department of State for good cause.

(c) *Program eligibility.* Sponsors designated by the Department of State to conduct an au pair exchange program shall:

(1) Limit the participation of foreign nationals in such programs to not more than one year;

(2) Limit the number of hours an EduCare au pair participant is obligated to provide child care services to not more than 10 hours per day or more than 30 hours per week and limit the number of hours all other au pair participants are obligated to provide child care services to not more than 10 hours per day or more than 45 hours per week;

(3) Require that EduCare au pair participants register and attend classes offered by an accredited U.S. post-secondary institution for not less than twelve semester hours of academic credit or its equivalent and that all other au pair participants register and attend classes offered by an accredited U.S. post-secondary institution for not less than six semester hours of academic credit or its equivalent;

(4) Require that all officers, employees, agents, and volunteers acting on their behalf are adequately trained and supervised;

(5) Require that the au pair participant is placed with a host family within one hour's driving time of the home

of the local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from the au pair's participation in their exchange program;

(6) Require that each local organizational representative maintain a record of all personal monthly contacts (or more frequently as required) with each au pair and host family for which he or she is responsible and issues or problems discussed;

(7) Require that all local organizational representatives contact au pair participants and host families twice monthly for the first two months following a placement other than the initial placement for which the au pair entered the United States.

(8) Require that local organizational representatives not devoting their full time and attention to their program obligations are responsible for no more than fifteen au pairs and host families; and

(9) Require that each local organizational representative is provided adequate support services by a regional organizational representative.

(d) *Au pair selection.* In addition to satisfying the requirements of § 62.10(a), sponsors shall ensure that all participants in a designated au pair exchange program:

(1) Are between the ages of 18 and 26;

(2) Are a secondary school graduate, or equivalent;

(3) Are proficient in spoken English;

(4) Are capable of fully participating in the program as evidenced by the satisfactory completion of a physical;

(5) Have been personally interviewed, in English, by an organizational representative who shall prepare a report of the interview which shall be provided to the host family; and

(6) Have successfully passed a background investigation that includes verification of school, three, non-family related personal and employment references, a criminal background check or its recognized equivalent and a personality profile. Such personality profile will be based upon a psychometric test designed to measure differences in characteristics among applicants against those characteristics

considered most important to successfully participate in the au pair program.

(e) *Au pair placement.* Sponsors shall secure, prior to the au pair's departure from the home country, a host family placement for each participant. Sponsors shall not:

(1) Place an au pair with a family unless the family has specifically agreed that a parent or other responsible adult will remain in the home for the first three days following the au pair's arrival;

(2) Place an au pair with a family having a child aged less than three months unless a parent or other responsible adult is present in the home;

(3) Place an au pair with a host family having children under the age of two, unless the au pair has at least 200 hours of documented infant child care experience. An au pair participating in the EduCare program shall not be placed with a family having pre-school children in the home unless alternative full-time arrangements for the supervision of such pre-school children are in place;

(4) Place an au pair with a host family having a special needs child, as so identified by the host family, unless the au pair has specifically identified his or her prior experience, skills, or training in the care of special needs children and the host family has reviewed and acknowledged in writing the au pair's prior experience, skills, or training so identified;

(5) Place an au pair with a host family unless a written agreement between the au pair and the host family detailing the au pair's obligation to provide child care has been signed by both the au pair and the host family prior to the au pair's departure from his or her home country. Such agreement shall clearly state whether the au pair is an EduCare program participant or not. Such agreement shall limit the obligation to provide child care services to not more than 10 hours per day or more than 45 hours per week unless the au pair is an EduCare participant. Such agreement shall limit the obligation of an EduCare participant to provide child care service to not more than 10 hours per day or more than 30 hours per week.

(6) Place the au pair with a family who cannot provide the au pair with a suitable private bedroom; and

(7) Place an au pair with a host family unless the host family has interviewed the au pair by telephone prior to the au pair's departure from his or her home country.

(f) *Au pair orientation.* In addition to the orientation requirements set forth at § 62.10, all sponsors shall provide au pairs, prior to their departure from the home country, with the following information:

(1) A copy of all operating procedures, rules, and regulations, including a grievance process, which govern the au pair's participation in the exchange program;

(2) A detailed profile of the family and community in which the au pair will be placed;

(3) A detailed profile of the educational institutions in the community where the au pair will be placed, including the financial cost of attendance at these institutions;

(4) A detailed summary of travel arrangements; and

(5) A copy of the Department of State's written statement and brochure regarding the au pair program.

(g) *Au pair training.* Sponsors shall provide the au pair participant with child development and child safety instruction, as follows:

(1) Prior to placement with the host family, the au pair participant shall receive not less than eight hours of child safety instruction no less than 4 of which shall be infant-related; and

(2) Prior to placement with the American host family, the au pair participant shall receive not less than twenty-four hours of child development instruction of which no less than 4 shall be devoted to specific training for children under the age of two.

(h) *Host family selection.* Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) Require that the host parents are U.S. citizens or legal permanent residents;

(2) Require that host parents are fluent in spoken English;

(3) Require that all adult family members resident in the home have

§62.31

22 CFR Ch. I (4-1-12 Edition)

been personally interviewed by an organizational representative;

(4) Require that host parents and other adults living full-time in the household have successfully passed a background investigation including employment and personal character references;

(5) Require that the host family have adequate financial resources to undertake all hosting obligations;

(6) Provide a written detailed summary of the exchange program and the parameters of their and the au pair's duties, participation, and obligations; and

(7) Provide the host family with the prospective au pair participant's complete application, including all references.

(i) *Host family orientation.* In addition to the requirements set forth at §62.10 sponsors shall:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program and provide all families with a copy of the Department of State's written statement and brochure regarding the au pair program;

(2) Provide all selected host families with a complete copy of Department of State-promulgated Exchange Visitor Program regulations, including the supplemental information thereto;

(3) Advise all selected host families of their obligation to attend at least one family day conference to be sponsored by the au pair organization during the course of the placement year. Host family attendance at such a gathering is a condition of program participation and failure to attend will be grounds for possible termination of their continued or future program participation; and

(4) Require that the organization's local counselor responsible for the au pair placement contacts the host family and au pair within forth-eight hours of the au pair's arrival and meets, in person, with the host family and au pair within two weeks of the au pair's arrival at the host family home.

(j) *Wages and hours.* Sponsors shall require that au pair participants:

(1) Are compensated at a weekly rate based upon 45 hours of child care services per week and paid in conformance

with the requirements of the Fair Labor Standards Act as interpreted and implemented by the United States Department of Labor. EduCare participants shall be compensated at a weekly rate that is 75% of the weekly rate paid to non-EduCare participants;

(2) Do not provide more than 10 hours of child care per day, or more than 45 hours of child care in any one week. EduCare participants may not provide more than 10 hours of child care per day or more than 30 hours of child care in any one week;

(3) Receive a minimum of one and one half days off per week in addition to one complete weekend off each month; and

(4) Receive two weeks of paid vacation.

(k) *Educational component.* Sponsors must:

(1) Require that during their initial period of program participation, all EduCare au pair participants complete not less than 12 semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions and that all other au pair participants complete not less than six semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions. As a condition of program participation, host family participants must agree to facilitate the enrollment and attendance of au pairs in accredited U.S. post secondary institutions and to pay the cost of such academic course work in an amount not to exceed \$1,000 for EduCare au pair participants and in an amount not to exceed \$500 for all other au pair participants.

(2) Require that during any extension of program participation, all participants (*i.e.*, Au Pair or EduCare) satisfy an additional educational requirement, as follows:

(i) For a nine or 12-month extension, all au pair participants and host families shall have the same obligation for coursework and payment therefore as is required during the initial period of program participation.

(ii) For a six-month extension, EduCare au pair participants must complete not less than six semester hours (or their equivalent) of academic

credit in formal educational settings at accredited U.S. post-secondary institutions. As a condition of participation, host family participants must agree to facilitate the enrollment and attendance of au pairs at accredited U.S. post-secondary institutions and to pay the cost of such academic coursework in an amount not to exceed \$500. All other au pair participants must complete not less than three semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions. As a condition of program participation, host family participants must agree to facilitate the enrollment and attendance of au pairs at accredited U.S. post-secondary institutions and to pay the cost of such academic coursework in an amount not to exceed \$250.

(1) *Monitoring.* Sponsors shall fully monitor all au pair exchanges, and at a minimum shall:

(1) Require monthly personal contact by the local counselor with each au pair and host family for which the counselor is responsible. Counselors shall maintain a record of this contact;

(2) Require quarterly contact by the regional counselor with each au pair and host family for which the counselor is responsible. Counselors shall maintain a record of this contact;

(3) Require that all local and regional counselors are appraised of their obligation to report unusual or serious situations or incidents involving either the au pair or host family; and

(4) Promptly report to the Department of State any incidents involving or alleging a crime of moral turpitude or violence.

(m) *Reporting requirements.* Along with the annual report required by regulations set forth at § 62.17, sponsors shall file with the Department of State the following information:

(1) A summation of the results of an annual survey of all host family and au pair participants regarding satisfaction with the program, its strengths and weaknesses;

(2) A summation of all complaints regarding host family or au pair participation in the program, specifying the nature of the complaint, its resolution, and whether any unresolved complaints are outstanding;

(3) A summation of all situations which resulted in the placement of an au pair participant with more than one host family;

(4) A report by a certified public accountant, conducted pursuant to a format designated by the Department of State, attesting to the sponsor's compliance with the procedures and reporting requirements set forth in this subpart;

(5) A report detailing the name of the au pair, his or her host family placement, location, and the names of the local and regional organizational representatives; and

(6) A complete set of all promotional materials, brochures, or pamphlets distributed to either host family or au pair participants.

(n) *Sanctions.* In addition to the sanctions provisions set forth at § 62.50, the Department of State may undertake immediate program revocation procedures upon documented evidence that a sponsor has failed to:

(1) Comply with the au pair placement requirements set forth in paragraph (e) of this section;

(2) Satisfy the selection requirements for each individual au pair as set forth in paragraph (d) of this section; and

(3) Enforce and monitor host family's compliance with the stipend and hours requirements set forth in paragraph (j) of this section.

(o) *Extension of program.* The Department, in its sole discretion, may approve extensions for au pair participants beyond the initial 12-month program. Applications to the Department for extensions of six, nine, or 12 months, must be received by the Department not less than 30 calendar days prior to the expiration of the exchange visitor's initial authorized stay in either the Au Pair or EduCare program (*i.e.*, 30-calendar days prior to the program end date listed on the exchange visitor's Form DS-2019). The request for an extension beyond the maximum duration of the initial 12-month program must be submitted electronically in the Department of Homeland

§ 62.32

22 CFR Ch. I (4–1–12 Edition)

Security's Student and Exchange Visitor Information System (SEVIS). Supporting documentation must be submitted to the Department on the sponsor's organizational letterhead and contain the following information:

(1) Au pair's name, SEVIS identification number, date of birth, the length of the extension period being requested;

(2) Verification that the au pair completed the educational requirements of the initial program; and

(3) Payment of the required non-refundable fee (see 22 CFR 62.90) via Pay.gov.

(p) *Repeat participation.* A foreign national who enters the United States as an au pair Exchange Visitor Program participant and who has successfully completed his or her program is eligible to participate again as an au pair participant, provided that he or she has resided outside the United States for at least two years following completion of his or her initial au pair program.

[60 FR 8552, Feb. 15, 1995, as amended at 62 FR 34633, June 27, 1997; 64 FR 53930, Oct. 5, 1999. Redesignated at 64 FR 54539, Oct. 7, 1999; 66 FR 43087, Aug. 17, 2001; 71 FR 33238, June 8, 2006; 73 FR 34862, June 19, 2008]

§ 62.32 Summer work travel.

(a) *Introduction.* These regulations govern program participation in Summer Work Travel programs conducted by Department of State-designated sponsors pursuant to the authority granted the Department of State under Public Law 105–277.

(b) *Purpose.* The purpose of this program is to provide bona fide foreign students who are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside the United States with the opportunity to work and travel in the United States for the shorter of four months or the length of the long break between academic years at the schools they attend (*i.e.*, the summer break).

(c) *Duration of participation.* Summer work travel participants are authorized to participate in the Exchange Visitor Program for up to four months during their official summer breaks. Extensions of program participation are not permitted.

(d) *Participant screening and selection.* In addition to satisfying the requirements set forth at § 62.10(a), sponsors are solely responsible for adequately screening and making the final selection of their program participants and at a minimum must:

(1) Conduct and document interviews with potential participants either in-person or by video-conference;

(2) Ensure that selected applicants have English language skills sufficient to successfully function on a day-to-day basis in their work environments. Sponsors must verify each participant's English language proficiency either through a recognized language test administered by an academic institution or English language school or through the required documented interview; and

(3) Confirm that at the time of application, applicants (including final year students) are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside of the United States and have successfully completed at least one semester, or equivalent, of post-secondary academic study.

(e) *Participant orientation.* In addition to satisfying the requirements set forth at § 62.10(b) and (c), sponsors must provide program participants, prior to participants' departures from their home countries, the following information and/or documentation:

(1) A copy of the Department of State's Summer Work Travel Participant Letter;

(2) A copy of the Department of State's Summer Work Travel Program Brochure;

(3) The Department of State's toll-free help line telephone number;

(4) The sponsor's 24/7 immediate contact telephone number;

(5) Information advising participants of their obligation to notify their sponsors when they arrive in the United States and to provide information, within 10 days, of any change in jobs or residences; and

(6) Information concerning any contractual obligations related to participants' acceptance of paid employment in the United States, if employment has been pre-arranged.

(f) *Participant placement.* Sponsors and foreign entities (*i.e.*, overseas agents or partners acting on their behalf) may not pay or otherwise provide any incentive to host employers to accept program participants for job placements. Sponsors must confirm the placements of all Summer Work Travel participants before the participants may start work, at a minimum, by verifying the terms and conditions of such employment and vetting their identified host employers as set forth at § 62.32(1).

(1) Sponsors of participants who are nationals of non-Visa Waiver Program countries must:

(i) Ensure that all such participants enter the United States with job placements secured in advance by the sponsors (direct-placement) or by the participants (self-placement);

(ii) Fully vet and confirm such placements in advance of placement by, at a minimum, verifying the terms and conditions of such employment and fully vetting their identified host employers as set forth at § 62.32(1); and

(iii) Enter the participants' host employers, sites of activities, and job titles in SEVIS prior to issuing their Forms DS-2019.

(2) Sponsors of participants who are nationals of Visa Waiver Program countries must:

(i) Ensure that participants who enter the United States without job placements secured in advance are nationals of Visa Waiver Program countries;

(ii) Ensure that such participants receive pre-departure information that explains how to seek employment and secure lodging in the United States;

(iii) Maintain and provide such participants with a roster of bona fide job listings equal to or greater than the number of participants who entered the United States without pre-arranged and confirmed job placements;

(iv) Ensure that such participants have sufficient financial resources to support themselves during their search for employment;

(v) Undertake reasonable efforts to assist any such participant who has not found suitable employment within two weeks of commencing his or her job search; and

(vi) Instruct participants of their obligation to notify their sponsors when they obtain job offers.

(g) *Participant compensation.* Sponsors must inform program participants of Federal Minimum Wage requirements and ensure that at a minimum participants are compensated at the prevailing local wage, which must meet the higher of either the applicable state or the Federal minimum wage requirement, including payment for overtime in accordance with state-specific employment laws.

(h) *Monitoring.* Sponsors must:

(1) Maintain, at a minimum, a monthly schedule of personal contact with program participants. Such contact may be in-person, by telephone, or via electronic mail and must be properly documented. Sponsors must ensure that issues affecting the participants' health, safety, and welfare identified through such contacts are promptly and appropriately addressed; and

(2) Ensure appropriate assistance is provided to participants on an as-needed basis and that sponsors are available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(i) *Internal controls.* Sponsors must utilize organization-specific standard operating procedures for training and supervising all organization employees. In addition, sponsors must establish internal controls to ensure that host employers and/or foreign entities comply with the terms of agreements with such third parties involved in the administration of the sponsors' exchange visitor programs, *i.e.*, affect the core programmatic functions.

(j) *Sponsors' use of third parties.* (1) If sponsors utilize foreign entities to assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (*i.e.*, screening, selection, and orientation), they must obtain written and executed agreements with such third parties. For the purpose of this section, U.S. entities operating outside the United States (or its possessions or territories) are considered foreign entities. These agreements must outline the obligations and full relationship between the sponsors and such third parties on all

§ 62.32

22 CFR Ch. I (4-1-12 Edition)

matters involving the administration of the sponsors' exchange visitor programs;

(2) Written and executed agreements between sponsors and foreign entities acting on their behalf must delineate the respective responsibilities of the sponsors and third parties and include:

(i) Annually updated price lists for Summer Work Travel programs marketed by the foreign entities;

(ii) Representations that such foreign entities will not engage in, permit the use of, or otherwise cooperate or contract with other third parties (including staffing or employment agencies or subcontractors) for the purpose of recruiting or outsourcing any core programmatic functions covered by the agreement (*i.e.*, screening, selection, and orientation); and

(iii) Confirmation that the foreign entities agree not to pay or provide incentives to host employers in the United States to accept program participants for job placements.

(3) Sponsors may utilize only host employers to assist in fulfilling the sponsors' core programmatic functions that are generally conducted within the United States (*i.e.*, orientation and monitoring). Sponsors may not engage third parties other than host employers; and host employers may not engage or subcontract any third parties to assist in fulfilling these functions.

(k) *Screening and vetting of foreign entities.* Sponsors must undertake appropriate due diligence in the review of potential overseas agents or partners who assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (*i.e.*, screening, selection, and orientation) and must, at a minimum, review the following documentation for each potential overseas agent or partner:

(1) Proof of business licensing and/or registration to enable it to conduct business in the venue(s) where it operates;

(2) Disclosure of any previous bankruptcy and of any pending legal actions;

(3) Written references from three current business associates or partner organizations;

(4) Summary of previous experience conducting J-1 Exchange Visitor Program activities;

(5) Criminal background check reports (including original and English translation) for all owners and officers of the organization; and

(6) A copy of the sponsor-approved advertising materials the overseas agent or partner intends to use to market the sponsor's program (including original and English translation).

(1) *Vetting host employers.* (1) Sponsors must adequately vet all potential host employers of Summer Work Travel program participants to confirm that the job offers are viable and at a minimum sponsors must:

(i) Make direct contact in person or by telephone with host employers to verify the business owners'/managers' names, telephone numbers, email addresses, street addresses, and professional activities;

(ii) Utilize publicly available information (*i.e.*, Web sites of Secretaries of States, advertisements, brochures, Web sites, and/or feedback from prior participants) to confirm that all job offers have been made by viable business entities;

(iii) Obtain and verify the host employers' Employer Identification Numbers used for tax purposes; and

(iv) Verify the Worker's Compensation Insurance Policy or equivalent in each state where a participant will be placed or, if applicable, evidence of that state's exemption from requirement of such coverage.

(2) [Reserved]

(m) *Host employer obligations.* Sponsors must ensure that employers of Summer Work Travel program participants:

(1) Provide participants the number of hours of paid employment per week as identified on the job offer and agreed to when the sponsors vetted the jobs;

(2) Pay those participants eligible for overtime worked in accordance with applicable state or federal law;

(3) Notify sponsors promptly when participants arrive at the work sites to begin their programs; when there are any changes or deviations in the job placements during the participants' programs; when participants are not meeting the requirements of their job

Department of State

§ 62.41

placements; or when participants leave their position ahead of their planned departure; and

(4) Contact sponsors immediately in the event of any emergency involving participants or any situation that impacts the welfare of participants.

(n) *Reporting requirements.* Sponsors must electronically submit the following reports utilizing Department-provided templates:

(1) A Placement Report, on January 31 and July 31 of each year, identifying all Summer Work Travel exchange visitor participants who began an exchange program during the preceding six-month period. The report must include the exchange visitors' names, SEVIS Identification Numbers (or other Department-mandated participant identification numbers), countries of citizenship or legal permanent residence, names of employers, the length of time it took non-pre-placed participants to secure job placements, and other information the Department may deem essential. For participants who change jobs or have multiple jobs during their programs, the report must include all such placements; and

(2) Sponsors are required to maintain current listings of all foreign agents or partners on the Foreign Entity Report by promptly informing the Department of any additions, deletions, or changes to overseas partner information by submitting new versions of the report that reflect all current information. The report must include the names, addresses, and contact information (*i.e.*, telephone numbers and email addresses) of all foreign entities that assist the sponsors in fulfilling the provision of core program services, and other information the Department may deem essential. Sponsors may utilize only vetted foreign entities identified in the report to assist in fulfilling the sponsors' core programmatic functions outside the United States.

(o) *Program exclusions.* U.S. sponsors must not place participants:

(1) In any position in the adult entertainment industry;

(2) In sales positions that require participants to purchase inventory that they must sell in order to support themselves;

(3) In domestic help positions in private homes (e.g., child care, elder care, gardener, chauffeur);

(4) As pedicab or rolling chair drivers or operators;

(5) As operators of vehicles or vessels that carry passengers for hire and/or for which commercial drivers licenses are required;

(6) In any position related to clinical care that involves patient contact; or

(7) In any position that could bring notoriety or disrepute to the Exchange Visitor Program.

[76 FR 23183, Apr. 26, 2011]

Subpart C—Status of Exchange Visitors

§ 62.40 Termination of program participation.

(a) A sponsor shall terminate an exchange visitor's participation in its program when the exchange visitor:

(1) Fails to pursue the activities for which he or she was admitted to the United States;

(2) Is unable to continue, unless otherwise exempted pursuant to these regulations;

(3) Violates the Exchange Visitor Program regulations and/or the sponsor's rules governing the program, if, in the sponsor's opinion, termination is warranted;

(4) Willfully fails to maintain the insurance coverage required under § 62.14 of these regulations; or

(b) An exchange visitor's participation in the Exchange Visitor Program is subject to termination when he or she engages in unauthorized employment. Upon establishing such violation, the Department of State shall terminate the exchange visitor's participation in the Exchange Visitor Program.

§ 62.41 Change of category.

(a) The Department of State may, in its discretion, permit an exchange visitor to change his or her category of exchange participation. Any change in category must be clearly consistent with and closely related to the participant's original exchange objective and necessary due to unusual or exceptional circumstances.

§ 62.42

(b) A request for change of category along with supporting justification must be submitted to the Department of State by the participant's sponsor. Upon Department of State approval the sponsor shall issue to the exchange visitor a duly executed Form DS-2019 reflecting such change of category and provide a notification copy of such form to the Department of State.

(c) Requests for change of category from research scholar to student will be evaluated recognizing the fact that, in some cases, research skills can be substantially enhanced by doctoral study.

(d) An exchange visitor who applies for a change of category pursuant to these regulations is considered to be maintaining lawful status during the pendency of the application.

(e) An exchange visitor who applies for a change of category and who subsequently receives notice from the Department of State that the request has been denied is considered to be maintaining lawful status for an additional period of thirty days from the day of such notice, during which time the exchange visitor is expected to depart the country, or for a period of thirty days from expiration of the exchange visitors' Form DS-2019, whichever is later.

§ 62.42 Transfer of program.

(a) Program sponsors may, pursuant to the provisions set forth in this section, permit an exchange visitor to transfer from one designated program to another designated program.

(b) The responsible officer of the program to which the exchange visitor is transferring:

- (1) Shall verify the exchange visitor's visa status and program eligibility;
- (2) Execute the Form DS-2019; and
- (3) Secure the written release of the current sponsor.

(c) Upon return of the completed Form DS-2019, the responsible officer of the program to which the exchange visitor has transferred shall provide:

- (1) The exchange visitor his or her copy of the Form DS-2019; and
- (2) A notification copy of such form to the Department of State.

22 CFR Ch. I (4-1-12 Edition)

§ 62.43 Extension of Program.

(a) Responsible officers may extend an exchange visitor's participation in the Exchange Visitor Program up to the limit of the permissible period of participation authorized for his or her specific program category.

(b) A responsible officer extending the program of an exchange visitor shall issue to the exchange visitor a duly executed Form DS-2019 reflecting such extension and provide a notification copy of such form to the Department of State.

(c) The responsible officer seeking a program extension on behalf of an exchange visitor in excess of that authorized for his or her specific category of participation shall:

- (1) Adequately document the reasons which justify such extension; and
- (2) Secure the prior written approval of the Department of State for such extension.

(d) In addition to individual requests, the Department of State shall entertain requests for groups of similarly situated exchange visitors.

§ 62.45 Reinstatement to valid program status.

(a) *Definitions.* For purpose of this section—

You means the Responsible Officer or Alternate Responsible Officer;

Exchange visitor means the person who enters the United States on a J visa in order to participate in an exchange program designated by the Secretary of State of the Department of State.

Fails or failed maintain valid program status means the status of an exchange visitor who has completed, concluded, ceased, interrupted, graduated from, or otherwise terminated the exchange visitor's participation in the exchange program, or who remains in the United States beyond the end date on the exchange visitor's current Form DS-2019.

Unauthorized employment means any employment not properly authorized by you or by the Attorney General, *i.e.*, the Immigration and Naturalization Service, prior to commencement of employment. Unauthorized employment does not include activities that are normally approvable, as described in paragraph (c)(3) of this section.

We, our, or us means the office of Exchange Visitor Program Services of the Department of State.

(b) *Who is authorized to correct minor or technical infractions of the Exchange Visitor Program regulations?* (1) If the exchange visitor committed a technical or minor infraction of the regulations, you are authorized to correct the exchange visitor's records with respect to such technical or minor infractions of the regulations in this part. Your correction of such an infraction(s) returns the exchange visitor to the status quo ante, *i.e.*, it is as if the infraction never occurred.

(2) You may only correct the exchange visitor's record with respect to a technical or minor infraction of the regulations in this part if the exchange visitor is pursuing or intending to pursue the exchange visitor's original program objective.

(3) You may not correct the exchange visitor's records with respect to a technical or minor infraction of the regulations in this part if the exchange visitor has willfully failed to maintain insurance coverage during the period for which the record is being corrected; if the exchange visitor has engaged in unauthorized employment during that period, as defined in paragraph (a) of this section, or if the exchange visitor was involuntarily suspended or terminated from his or her program during the period.

(4) If the exchange visitor has failed to maintain valid program status because of a substantive violation of the regulations in this part, you must apply to us for reinstatement.

(c) *What violations or infractions of the regulations in this part do we consider to be technical or minor ones, and how do you correct the record?* We consider the following to be examples of technical or minor infractions which you are authorized to correct:

(1) Failure to extend the Form DS-2019 in a timely manner (*i.e.*, prior to the end date on the current Form DS-2019) due to inadvertence or neglect on your part or on the part of the exchange visitor.

(2) Failure on the part of the exchange visitor to conclude a transfer of program prior to the end date on the current Form DS-2019 due to adminis-

trative delay or oversight, inadvertence or neglect on your part or on the part of the exchange visitor;

(3) Failure to receive your prior approval and/or an amended Form DS-2019 before accepting an honorarium or other type of payment for engaging in a normally approvable and appropriate activity. Example, a lecture, consultation, or other activity appropriate to the category which is provided by a professor, research scholar, short-term scholar or specialist without prior approval or an amended Form DS-2019 issued prior to the occurrence of the activity.

(4) You correct the record *status quo ante* by issuing a Form DS-2019 or by writing an authorization letter to reflect the continuity in the program or the permission to engage in the activity that a timely issued document would have reflected.

(i) Forms DS-2019 should be:

(A) Issued to show continued authorized stay without interruption;

(B) Marked in the "purpose" box with the appropriate purpose (*i.e.*, extension, transfer, etc.) and with the additional notation of "correct the record" typed in;

(C) Dated as of the date the Form was actually executed; and,

(D) Submitted to the Department of State in the same way as any other notification.

(ii) Letters or other authorization documents should be:

(A) Issued according to the regulations in this part appropriate to the category and the activity;

(B) Marked or annotated to show "correct the record,"

(C) Dated as of the date the letter or document was actually executed; and,

(D) Attached to the exchange visitor's Form DS-2019 and/or retained in the sponsor's file as required by the regulations in this part for that particular type of letter or document.

(d) *How do you determine if an infraction, other than those examples listed above is a technical or minor infraction?* It is impossible to list every example of a technical or minor infraction. To guide you in making a determination, you are to examine the following criteria:

§ 62.45

22 CFR Ch. I (4–1–12 Edition)

(1) Regardless of the reason, has the exchange visitor failed to maintain valid program status for more than 120 calendar days after the end date on the current Form DS–2019?

(2) Has the exchange visitor, by his or her actions, failed to maintain, at all relevant times, his or her original program objective?

(3) Has the exchange visitor willfully failed to comply with our insurance coverage requirements (§ 62.14)?

(4) Has the exchange visitor engaged in unauthorized employment, as that term is defined in paragraph (a) of this section?

(5) Has the exchange visitor category been involuntarily suspended or terminated from his or her program?

(6) Has an exchange visitor in the student category failed to maintain a full course of study (as defined in § 62.2) without prior consultation with you and the exchange visitor’s academic advisor?

(7) Has the exchange visitor failed to pay the fee mandated by Public Law 104–208 (the “CIPRIS” fee)?

(8) If the answer to any of the above questions is “yes,” then the infraction is not a technical or minor one and you are not authorized to reinstate the exchange visitor to valid program status.

(e) *Which violations or infractions do we consider to be substantive ones requiring you to apply to us for reinstatement?* The following are substantive violations or infractions of the regulations in this part by the exchange visitor which require you to apply to us for reinstatement to valid program status:

(1) Failure to maintain valid program status for more than 120 days after the end date on the current Form DS–2019;

(2) If a student, failure to maintain a full course of study (as defined in § 62.2) without prior consultation with you and the exchange visitor’s academic advisor.

(f) *Which, if any, violations of the regulations in this part or other conditions preclude reinstatement and will result in a denial if application is made?* We will not consider requests for reinstatement (nor should you) when an exchange visitor has:

(1) Knowingly or willfully failed to obtain or maintain the required health

insurance (§ 62.14) at all times while in the United States;

(2) Engaged in unauthorized employment, as that term is defined in paragraph (a) of this section;

(3) Been suspended or terminated from the most recent exchange visitor program;

(4) Failed to maintain valid program status for more than 270 calendar days;

(5) Received a favorable recommendation from the Department of State on an application for waiver of section 212(e) of the Immigration and Nationality Act [8 U.S.C. 1182(e)]; or,

(6) Failed to pay the fee mandated by Public Law 104–208 (the “CIPRIS” fee.)

(g) *What if you cannot determine which category (technical, substantive, or non-reinstatable) the violation or infraction falls within?* If you cannot determine which category the violation or condition falls within, then you must, on behalf of the exchange visitor, apply to us for reinstatement.

(h) *If you determine that the exchange visitor’s violation of the regulations in this part is a substantive one, how do you apply for a reinstatement to valid program status?* (1) If you determine that the violation of the regulations in this part is a substantive one, and that the exchange visitor has failed to maintain valid program status for 120 days or less, you must apply to us for reinstatement of the exchange visitor to valid program status. Your application must include:

(i) All copies of the exchange visitor’s Forms DS–2019 issued to date;

(ii) A new, completed Form DS–2019, showing in Block 3 the date of the period for which reinstatement is sought, *i.e.*, the new program end date;

(iii) A copy of the receipt showing that the Public Law 104–208 fee has been paid; and,

(iv) A written statement (and documentary information supporting such statement):

(A) Declaring that the exchange visitor is pursuing or was at all times intending to pursue the original exchange visitor program activity for which the exchange visitor was admitted to the United States; and,

(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond the

Department of State

§ 62.50

control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; or,

(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

(2) If you determine that the violation of the regulations is a substantive one, and that the exchange visitor has failed to maintain valid program status for more than 120 days, then you must apply to us for reinstatement of the exchange visitor to valid program status. Your application must include:

(i) Copies of all the exchange visitor's Forms DS-2019 issued to date;

(ii) A new, completed Form DS-2019, showing in Block 3 the date for which reinstatement is sought, *i.e.*, the new program end date;

(iii) A copy of the receipt showing that the Pub. L. 104-208 fee has been paid; and,

(iv) A written statement (together with documentary evidence supporting such statement):

(A) Declaring that the exchange visitor is pursuing or was at all times intending to pursue the exchange visitor program activity for which the exchange visitor was admitted to the United States; and,

(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond the control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; and,

(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

(i) *How will we notify you of our decision on your request for reinstatement?* (1) If we deny your request for reinstatement, we will notify you by letter.

(2) If we approve your request for reinstatement, we will notify you:

(i) By stamping Box 6 on the new Form DS-2019 to show that reinstatement was granted, effective as of the date on which the application for reinstatement was received by the Ex-

change Visitor Program Services office; and

(ii) By returning the new Form DS-2019 for the exchange visitor.

(j) *How long will it take us to act on your request for reinstatement?* We will act on your request for reinstatement within forty-five days from the date on which we receive the request and supporting documentation.

(k) *Are you required to notify us each time that you correct a record?* No special notification is necessary. Submission of the notification copy of Form DS-2019 to the Department of State serves as notice that a record has been corrected. Following the regulations in this part in issuing a letter or document serves as correction in the sponsor's file for those items not normally sent to the Department of State under existing notification procedures.

[64 FR 44126, Aug. 13, 1999. Redesignated at 64 FR 54539, Oct. 7, 1999]

Subpart D—Sanctions

§ 62.50 Sanctions.

(a) *Reasons for sanctions.* The Department of State (Department) may impose sanctions against a sponsor upon a finding by its Office of Exchange Coordination and Designation (Office) that the sponsor has:

(1) Violated one or more provisions of this Part;

(2) Evidenced a pattern of failure to comply with one or more provisions of this Part;

(3) Committed an act of omission or commission, which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or

(4) Otherwise conducted its program in such a way as to undermine the foreign policy objectives of the United States, compromise the national security interests of the United States, or bring the Department or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this Part, the Department, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions ("lesser sanctions") on a

sponsor upon a finding that the sponsor engaged in any of the acts or omissions set forth in paragraph (a) of this section:

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this part may result in suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(ii) A declaration placing the exchange visitor sponsor's program on probation, for a period of time determined by the Department in its discretion, signifying a pattern of violation of regulations such that further violations could lead to suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) Up to a 15 percent (15%) reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity. If the sponsor continues to violate the regulations in this Part, the Department may impose subsequent additional reductions, in ten-percent (10%) increments, in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity.

(2) Within ten (10) days after service of the written notice to the sponsor imposing any of the sanctions set forth in paragraph (b)(1) of this section, the sponsor may submit to the Office a statement in opposition to or mitigation of the sanction. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. Sponsors shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. Upon review and consideration of such submission, the Office may, in its discretion, modify, withdraw, or confirm such sanction. All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The decision of the Office is the final Department decision with regard

to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section.

(c) *Suspension.* (1) Upon a finding that a sponsor has committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, or of damaging the national security interests of the United States, the Office may serve the sponsor with written notice of its decision to suspend the designation of the sponsor's program for a period not to exceed one hundred twenty (120) days. Such notice must specify the grounds for the sanction and the effective date thereof, advise the sponsor of its right to oppose the suspension, and identify the procedures for submitting a statement of opposition thereto. Suspension under this paragraph need not be preceded by the imposition of any other sanction or notice.

(2)(i) Within five (5) days after service of such notice, the sponsor may submit to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (Principal Deputy Assistant Secretary, or PDAS) a statement in opposition to the Office's decision. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. A sponsor shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. The submission of a statement in opposition to the Office's decision will not serve to stay the effective date of the suspension.

(ii) Within five (5) days after receipt of, and upon consideration of, such opposition, the Principal Deputy Assistant Secretary shall confirm, modify, or withdraw the suspension by serving the sponsor with a written decision. Such decision must specify the grounds therefore, and advise the sponsor of the procedures for requesting review of the decision.

(iii) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The procedures for review of the decision of the Principal Deputy Assistant Secretary are set forth in paragraphs (d)(3) and (4), (g), and (h) of this section, except that the submission of

a request for review will not serve to stay the suspension.

(d) *Revocation of designation.* (1) Upon a finding of any act or omission set forth at paragraph (a) of this section, the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to revoke the sponsor's Exchange Visitor Program designation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Revocation of designation under this paragraph need not be preceded by the imposition of any other sanction or notice.

(2)(i) Within ten (10) days after service of such written notice of intent to revoke designation, the sponsor may submit to the Principal Deputy Assistant Secretary a statement in opposition to or mitigation of the proposed sanction, which may include a request for a meeting.

(ii) The submission of such statement will serve to stay the effective date of the proposed sanction pending the decision of the Principal Deputy Assistant Secretary.

(iii) The Principal Deputy Assistant Secretary shall provide a copy of the statement in opposition to or mitigation of the proposed sanction to the Office. The Office shall submit a statement in response, and shall provide the sponsor with a copy thereof.

(iv) A statement in opposition to or mitigation of the proposed sanction, or statement in response thereto, may not exceed 25 pages in length, double-spaced and, if appropriate, may include additional documentary material. Any additional documentary material may include an index of the documents and a summary of the relevance of each document presented.

(v) Upon consideration of such statements, the Principal Deputy Assistant Secretary shall modify, withdraw, or confirm the proposed sanction by serving the sponsor with a written decision. Such decision shall specify the grounds therefor, identify its effective date, advise the sponsor of its right to request a review, and identify the procedures for requesting such review.

(vi) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) Within ten (10) days after service of such written notice of the decision of the Principal Deputy Assistant Secretary, the sponsor may submit a request for review with the Principal Deputy Assistant Secretary. The submission of such request for review will serve to stay the effective date of the decision pending the outcome of the review.

(4) Within ten (10) days after receipt of such request for review, the Department shall designate a panel of three Review Officers pursuant to paragraph (g) of this section, and the Principal Deputy Assistant Secretary shall forward to each panel member all notices, statements, and decisions submitted or provided pursuant to the preceding paragraphs of paragraph (d) of this section. Thereafter, the review will be conducted pursuant to paragraphs (g) and (h) of this section.

(e) *Denial of application for redesignation.* Upon a finding of any act or omission set forth at paragraph (a) of this section, the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to deny the sponsor's application for redesignation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Denial of redesignation under this section need not be preceded by the imposition of any other sanction or notice. The procedures for opposing a proposed denial of redesignation are set forth in paragraphs (d)(2), (d)(3), (d)(4), (g), and (h) of this section.

(f) *Responsible officers.* The Office may direct a sponsor to suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in paragraph (a) of this section. The procedures for suspending or revoking a responsible officer or alternate responsible officer are set forth at paragraphs (d), (g), and (h) of this section.

(g) *Review officers.* A panel of three Review Officers shall hear a sponsor's

request for review pursuant to paragraphs (c), (d), (e), and (f) of this section. The Under Secretary of State for Public Diplomacy and Public Affairs shall designate one senior official from an office reporting to him/her, other than from the Bureau of Educational and Cultural Affairs, as a member of the Panel. The Assistant Secretary of State for Consular Affairs and the Legal Adviser shall each designate one senior official from their bureaus as members of the Panel.

(h) *Review.* The Review Officers may affirm, modify, or reverse the sanction imposed by the Principal Deputy Assistant Secretary. The following procedures shall apply to the review:

(1) Upon its designation, the panel of Review Officers shall promptly notify the Principal Deputy Assistant Secretary and the sponsor in writing of the identity of the Review Officers and the address to which all communications with the Review Officers shall be directed.

(2) Within fifteen (15) days after service of such notice, the sponsor may submit to the Review Officers four (4) copies of a statement identifying the grounds on which the sponsor asserts that the decision of the Principal Deputy Assistant Secretary should be reversed or modified. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. A sponsor shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the Principal Deputy Assistant Secretary, who shall, within fifteen (15) days after receipt of such statement, submit four (4) copies of a statement in response. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. The Principal Deputy Assistant Secretary shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the sponsor. No other submissions may be made unless spe-

cifically authorized by the Review Officers.

(3) If the Review Officers determine, in their sole discretion, that a meeting for the purpose of clarification of the written submissions should be held, they shall schedule a meeting to be held within twenty (20) days after the receipt of the last written submission. The meeting will be limited to no more than two (2) hours. The purpose of the meeting will be limited to the clarification of the written submissions. No transcript may be taken and no evidence, either through documents or by witnesses, will be received. The sponsor and the representative of the Principal Deputy Assistant Secretary may attend the meeting on their own behalf and may be accompanied by counsel.

(4) Following the conclusion of the meeting, or the submission of the last written submission if no meeting is held, the Review Officers shall promptly review the submissions of the sponsor and the Principal Deputy Assistant Secretary, and shall issue a signed written decision within thirty (30) days, stating the basis for their decision. A copy of the decision will be delivered to the Principal Deputy Assistant Secretary and the sponsor.

(5) If the Review Officers decide to affirm or modify the sanction, a copy of their decision shall also be delivered to the Department of Homeland Security and to the Bureau of Consular Affairs of the Department of State. The Office, at its discretion, may further distribute the decision.

(6) Unless otherwise indicated, the sanction, if affirmed or modified, is effective as of the date of the Review Officers' written decision, except in the case of suspension of program designation, which is effective as of the date specified pursuant to paragraph (c) of this section.

(i) *Effect of suspension, revocation, or denial of redesignation.* A sponsor against which an order of suspension, revocation, or denial of redesignation has become effective may not thereafter issue any Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) or advertise, recruit for, or otherwise promote its program. Under no circumstances shall the sponsor facilitate the entry of an exchange

visitor into the United States. An order of suspension, revocation, or denial of redesignation will not in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program applicants or participants.

(j) *Miscellaneous—(1) Computation of time.* In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is fewer than eleven (11) days, intermediate Saturdays, Sundays, or Federal legal holidays are excluded in the computation.

(2) *Service of notice to sponsor.* Service of notice to a sponsor pursuant to this section may be accomplished through written notice by mail, delivery, or facsimile, upon the president, chief executive officer, managing director, General Counsel, responsible officer, or alternate responsible officer of the sponsor.

[72 FR 72247, Dec. 20, 2007]

Subpart E—Termination and Revocation of Programs

SOURCE: 72 FR 72249, Dec. 20, 2007, unless otherwise noted.

§ 62.60 Termination of designation

Designation will be terminated upon the occurrence of any of the circumstances set forth in this section.

(a) *Voluntary termination.* A sponsor notifies the Department of its intent to terminate its designation voluntarily and withdraws its program in SEVIS via submission of a "cancel program" request. The sponsor's designation shall terminate upon submission of such notification. Such sponsor may apply for a new program designation.

(b) *Inactivity.* A sponsor fails to comply with the minimum program size or duration requirements, as specified in § 62.8 (a) and (b), in any 12-month pe-

riod. Such sponsor may apply for a new program designation.

(c) *Failure to file annual reports.* A sponsor fails to file annual reports for two (2) consecutive years. Such sponsor is eligible to apply for a new program designation.

(d) *Failure to file an annual management audit.* A sponsor fails to file an annual management audit, if such audits are required in the relevant program category. Such sponsor is eligible to apply for a new program designation upon the filing of the past due management audit.

(e) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply for designation of the new entity, and it may continue to administer the exchange visitor activities of the previously-designated program while the application for designation is pending before the Department of State:

(1) With respect to a for-profit corporation, a major change in ownership or control is deemed to have occurred when one third (33.33%) or more of its stock is sold or otherwise transferred within a 12-month period;

(2) With respect to a not-for-profit corporation, a major change of control is deemed to have occurred when 51 percent (51%) or more of the board of trustees or other like body, vested with its management, is replaced within a 12-month period.

(f) *Non-compliance with other requirements.* A sponsor fails to remain in compliance with Federal, State, local, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation, or licensure.

(g) *Failure to apply for redesignation.* A sponsor fails to apply for redesignation, pursuant to the terms and conditions of § 62.7, prior to the conclusion of its current designation period. If so terminated, the former sponsor may apply for a new program designation, but the program activity will be suspended during the pendency of the application.

§ 62.61

§ 62.61 Revocation.

The Department may terminate a sponsor's program designation by revocation for cause as specified in § 62.50. Such sponsor may not apply for a new designation for five (5) years following the effective date of the revocation.

§ 62.62 Termination of, or denial of redesignation for, a class of designated programs.

The Department may, in its sole discretion, determine that a class of designated programs compromises the national security of the United States or no longer furthers the public diplomacy mission of the Department of State. Upon such a determination, the Office shall:

(a) Give all sponsors of such class of designated programs not less than thirty (30) days' written notice of the revocation of Exchange Visitor Program designations for such programs, specifying therein the grounds and effective date for such revocations; or

(b) Give any sponsor of such class of designated programs not less than thirty (30) days' written notice of its denial of the sponsor's application for redesignation, specifying therein the grounds for such denial and effective date of such denial. Revocation of designation or denial of redesignation on the above-specified grounds for a class of designated programs is the final decision of the Department.

§ 62.63 Responsibilities of the sponsor upon termination or revocation.

Upon termination or revocation of its program designation, a sponsor must:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation; and

(b) Notify exchange visitors who have not entered the United States that the program has been terminated or revoked, unless a transfer to another designated program can be obtained.

Subpart F—Student and Exchange Visitor Information System (SEVIS)

SOURCE: 67 FR 76314, Dec. 12, 2002, unless otherwise noted.

22 CFR Ch. I (4–1–12 Edition)

§ 62.70 SEVIS reporting requirements.

(a) *Enrollment and initial use of SEVIS.* Sponsors shall apply for enrollment in SEVIS no later than December 16, 2002. Upon notification that they have been successfully enrolled in SEVIS, sponsors shall:

(1) Create a SEVIS record for any program participant seeking visa issuance or for whom an extension, transfer, change of category, or reinstatement request is sought;

(2) Create a SEVIS record to replace a previously issued but lost or stolen copy of a participant's Form IAP-66 or Form DS-2019;

(3) Create a SEVIS record if an amendment or change is made in the start or end date of a program participant's program;

(4) Create a SEVIS record for a program participant's accompanying spouse and all accompanying dependent children if a SEVIS record has been created for the participant;

(5) Utilize SEVIS to up-date information on any participant, spouse, or dependent child for whom a SEVIS record has been created; and

(6) No later than August 1, 2003, create a separate SEVIS record for each participant, accompanying spouse and dependent child that will continue to have Exchange Visitor Program participant status after August 1, 2003.

(b) *Current U.S. address.* Sponsors shall ensure that the actual and current U.S. address of all sponsored participants is reported to SEVIS. Sponsors shall update the actual and current U.S. address information for participants within 21 days of being notified by a participant of a change in his or her address. A sponsor's failure to update the actual and current U.S. address information within 21 days of receipt may be grounds for revocation of their Exchange Visitor Program status. Sponsors shall report a U.S. mailing address, *i.e.*, P.O. box address, in those limited circumstances where mail cannot be delivered to the current and actual U.S. address. If a U.S. mailing address is reported to SEVIS, sponsors shall also maintain a record of the actual and current U.S. address, *e.g.*, dorm, building and room number, for that exchange visitor.

Department of State

§ 62.75

(c) *Notification to program participants.* Sponsors shall notify all participants in their exchange visitor program and accompanying spouse and dependent children that any change in the U.S. address must be reported to the sponsor within 10 days of such change. Sponsors may direct the participant to provide the notification of change in address in a format acceptable to the sponsor.

(d) *Validation of program participation.* Sponsors shall within 30 calendar days of a program participant's start date verify that the participant has in fact begun their program participation. Sponsors shall update the participant's SEVIS record and current U.S. address.

§ 62.71 Control and production of the electronic Form DS-2019.

(a) SEVIS generated Forms DS-2019 shall only be completed, printed and signed by a responsible officer and/or alternate responsible officer(s) who are physically present in the United States or a U.S. territory at the time of the Form's production.

(b) Responsible officers and alternate responsible officers shall secure their SEVIS logon IDs and passwords at all times.

(1) At no time and under no circumstances are SEVIS logon IDs and passwords to be shared with anyone, either on a transitory or permanent basis.

(2) Sponsors for whom the responsible officer or alternate responsible officers have been found to have willfully or negligently violated the requirements of this section will be subject to sanctions as set forth in § 62.50(a)(2).

§ 62.72 Staffing and support services.

(a) Sponsors shall appoint a responsible officer and may appoint up to ten (10) alternate responsible officers to adequately administer their exchange visitor program to fulfill the duties set forth in § 62.11.

(1) The Department may limit the number of alternate responsible officers appointed by the sponsor at its discretion.

(2) The Department reserves the right to withdraw the appointment of a responsible or alternate responsible officer at its discretion.

(b) [Reserved]

§ 62.73 Academic training.

(a) Students meeting the definition listed in § 62.4(a)(1)(ii) and (iii) may, if approved by the academic dean or advisor and approved by the responsible officer or alternate responsible officer, engage in academic training pursuant to § 62.23(f).

(b) The responsible officer or alternate responsible shall update the exchange visitor's SEVIS record to reflect the details of any academic training pursuant to § 62.23(f)(5)(i). An update of the SEVIS record constitutes compliance with § 62.23(f)(5)(ii).

§ 62.74 Student employment.

(a) Students meeting the definition listed in § 62.4(a)(1)(ii) and (iii) may engage in student employment pursuant to § 62.23(g).

(b) The responsible officer or alternate responsible officer shall update the exchange visitor's SEVIS record to reflect the details of such employment pursuant to § 62.23(g)(1). An update of the SEVIS record constitutes compliance with § 62.23(g)(2)(iv).

§ 62.75 Extension of program participation.

(a) A sponsor may extend an exchange visitor's participation in the Exchange Visitor Program up to the limit of the permissible period of participation authorized for the specified program category by entering a new end program date and an optional comment—all other information collected on a DS-2019 will be automatically completed by SEVIS.

(1) A sponsor extending the program of an exchange visitor who is not currently listed in the SEVIS database is required to create a record for the exchange participant (and the accompanying spouse and any dependents as a "continuing exchange visitor". In creating the exchange visitor's SEVIS record, the sponsor shall issue the exchange visitor (and the accompanying spouse and any dependent children) a duly executed Form DS-2019 reflecting such extension.

(2) When creating a SEVIS record for a "continuing exchange visitor," the initial program start date and Form

§ 62.76

number taken from the non-SEVIS Form IAP-66 or DS-2019 issued to begin new program must be entered in the exchange visitor's SEVIS record.

(b) A responsible officer or alternate responsible officer seeking an extension of program status on behalf of an exchange visitor in excess of the duration of program participation authorized for the specific category shall:

(1) Submit an electronic request to the Department through the real-time interactive mode in SEVIS.

(2) Create a record for the exchange participant (and the accompanying spouse and any dependent children) as a "continuing exchange visitor" listing the initial program start date and Form number taken from the non-SEVIS Form IAP-66 or DS-2019 issued to begin new program.

(3) Submit written supporting documentation and the required non-reimbursable fee to the Department within 30 calendar days of the SEVIS submission date.

§ 62.76 Transfer procedures.

(a) Program sponsors may, pursuant to the provisions set forth in § 62.42, permit an exchange visitor to transfer from one designated program to another designated program. Transfers will not extend the maximum duration of participation for the category in which the exchange visitor is currently participating.

(b) Current sponsor and transfer sponsor shall communicate appropriately to ensure an uninterrupted transfer, continuous status of the exchange visitor and proper change of address reporting and shall utilize the provisions of this section to effect such transfer.

(1) SEVIS-to-SEVIS transfer. When both the transfer and current sponsors are enrolled in SEVIS, a transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of the current status and eligibility to transfer by the transfer sponsor, the current sponsor shall update the exchange visitor's record by processing a "transfer out" in SEVIS. The current sponsor must enter the name and program number of

the transfer sponsor and the effective date of transfer. The "transfer out" process gives the transfer sponsor access to the SEVIS record of the exchange visitor (and accompanying spouse and any dependent children).

(iii) The transfer sponsor shall initiate a "transfer in," issue a Form DS-2019 for the exchange visitor (an accompanying spouse and any dependent children), and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor, and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.

(2) Non-SEVIS to SEVIS transfer: When the transfer sponsor is enrolled in SEVIS but the current sponsor is not, the transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of current status and eligibility to transfer, the transfer sponsor shall create a Form DS-2019 to enact a transfer and will send the Form to the current sponsor to acquire the written release of the exchange visitor by obtaining a signature in Section 8.

(iii) Upon receipt of the Form DS-2019 with signature, the transfer sponsor shall record the effective date of transfer; the date, name and title of person who signed the release; the name and program number of the current sponsor. The transfer sponsor shall print a Form DS-2019 for the exchange visitor, and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.

(3) SEVIS to Non-SEVIS transfer. When the transfer sponsor is not enrolled in SEVIS and the current sponsor is a SEVIS-enrolled sponsor, a transfer is enacted as follows:

(i) The exchange visitor shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of current status and eligibility to transfer, the transfer sponsor shall create a non-SEVIS Form DS-2019 and submit it to the transfer sponsor for the release of the exchange visitor by acquiring a signature in Section 8 of the Form.

(iii) The transfer is required to update the exchange visitor's SEVIS record by recording the effective date of transfer; name and program number of the transfer sponsor; and, name of the responsible officer/alternate responsible officer of the transfer (non-SEVIS) sponsor requesting the transfer as noted on the four-color, four-page paper Form DS-2019.

(4) The transfer sponsor will provide the exchange visitor with the pink copy of the Form DS-2019 and submit the yellow copy of the form to the Department.

§ 62.77 Reinstatement.

(a) Reinstatements will continue to be handled in accordance with the procedures established in § 62.45. A SEVIS reinstatement is processed as follows:

(1) The responsible officer must submit an electronic request for reinstatement to the Department through SEVIS.

(2) The responsible officer must print a copy of the reinstatement request (draft copy of the Form DS-2019) from the SEVIS system.

(3) The responsible officer must submit the official request along with the required supporting documentation justifying the reinstatement and the required, non-reimbursable fee (refer to § 62.90-Fee) to the Department within 30 calendar days of the SEVIS submission date.

(4) The Department will review the request. If approved, the Department will enter the approval in SEVIS, thereby opening the file so that the responsible officer may print a Form DS-2019. How is the sponsor going to know they received an answer to their re-

quest? The Department's approval is required before a Form DS-2019 can be printed. What happens if the request is denied?

(b) An exchange visitor (and the accompanying spouse and any dependent children) who failed to submit a change of current U.S. address as required under § 62.63 is in violation of the Exchange Visitor Program regulations and is not eligible for reinstatement. The Department will deny any such application for reinstatement.

(c) An exchange visitor (and accompanying spouse and any dependent children) who is ineligible for reinstatement or whose request for reinstatement has been denied is no longer an Exchange Visitor Program participant. He or she cannot remain in the United States unless another lawful immigration status is obtained.

§ 62.78 Termination.

An exchange visitor who willfully or negligently fails to comply with the requirements established in Public Law 104-208, as amended, shall be terminated from the Exchange Visitor Program by the sponsor.

§ 62.79 Sanctions.

(a) The Department of State shall impose sanctions against a sponsor that has:

(1) Willfully or negligently failed to comply with the reporting requirements established in Public Law 104-208, as amended; or,

(2) Produced SEVIS Forms DS-2019 outside the United States or a United States territory; or,

(3) Whose authorized representatives fail to secure their SEVIS logon ID and password.

(b) [Reserved]

Subpart G [Reserved]

APPENDIX A TO PART 62—CERTIFICATION OF RESPONSIBLE OFFICERS AND SPONSORS

In accordance with the requirement at § 514.5(c)(6), the text of the certifications shall read as follows:

1. Responsible Officers and Alternate Responsible Officers

I hereby certify that I am the responsible officer (or alternate responsible officer,

Pt. 62, App. B

22 CFR Ch. I (4-1-12 Edition)

specify) for exchange visitor program number _____, and that I am a United States citizen or permanent resident. I understand that the Department of State may request supporting documentation as to my citizenship or permanent residence at any time and that I must supply such documentation when and as requested. (Name of organization) agrees that my inability to substantiate the representation of citizenship or permanent residence made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all Forms IAP-66 transferred to it.

Signed in ink by _____
(Name)

(Title)

Witness: _____
This _____ day of _____, 19____.
Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public
2. *Sponsors.*

I hereby certify that I am the chief executive officer of (Name of Organization) with the title of (specify); that I am authorized to sign this certification and bind (Name of Organization). I further certify that (Name of Organization) is a citizen of the United States as that term is defined at 22 CFR §514.2. (Name of Organization) agrees that inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all Forms IAP-66 transferred to it.

Signed in ink by _____
(Name)

(Title)

Attestation/Witness: _____
This _____ day of _____, 19____.
Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

APPENDIX B TO PART 62—EXCHANGE VISITOR PROGRAM SERVICES, EXCHANGE-VISITOR PROGRAM APPLICATION

Form Approved OMB _____
Serial No. _____

1. Name and Address of Sponsoring Organization _____

2. Name and Title of Responsible Officer _____
Telephone Number _____

3. Name and Title of Alternate Responsible Officer _____
Telephone Number _____

4. Type of Application (check one)
New _____ Re-Apply _____
Re-Designation _____

SECTION I—PROGRAM PARTICIPANT DATA (FOR DEFINITION & LENGTH OF STAY SEE 22 CFR _____)

5. Participation by Category (indicate total no. and approximate duration of stay in each category)
- A. Student _____
 - B. Teacher _____
 - C. Professor _____
 - D. Researcher _____
 - E. Short-term Scholar _____
 - F. Specialist _____
 - G. Trainee _____
 - 1. Specialty _____
 - 2. Nonspecialty _____
 - H. Int'l Visitor _____
 - I. Gov't Visitor _____
 - J. Physicians _____
 - K. Camp Cnslr _____
 - L. Sumr/Wk/Trvl _____

6. Method Of Selection _____

7. Arrangements for Financial Support of Exchange Visitor while in the U.S. _____

SECTION II—PROGRAM DATA

8. Outline of Proposed Activities (If training, See Reverse) _____

9. Arrangements for Supervision and Direction _____

10. Purpose of Objective _____

11. Role of other Organizations Associated with Program (if any) _____

SECTION III—CERTIFICATION

12. Citizenship Certification of Organization and Responsible Officer (see reverse)

13. I certify that information given in this application is true to the best of my knowledge and belief and that I have completed appropriate information on reverse of this form.

Signature of Responsible Officer

Date

Department of State

Pt. 62, App. C

INSTRUCTIONS FOR ALL PROGRAMS

If additional space is needed in supplying answers to any questions, please use continuation sheets on plain white paper.

1-3. Names and addresses of organization and telephone numbers.

4. Select type of application.

5. Select appropriate categories (see 22 CFR prior to filling out this data).

6-7. Complete information on program sponsor.

8-11. Complete information on program.

IF TRAINING PROGRAM, identify appropriate fields: 01—Arts & Culture; 02—Information Media and Communications; 03—Education; 04—Business and Commercial; 05—Banking and Financial; 06—Aviation; 07—Science, Mechanical and Industrial; 08—Construction and Building Trades; 09—Agricultural; 10—Public Administration; 11—Training, Other

Reapplication and Redesignation:

If your organization is making reapplication as an exchange visitor program, or applying for redesignation under 22 CFR, please certify to the following:

I hereby certify that as an officer of the organization making application for an exchange program under 22 CFR or 22 CFR that the following documents which have been submitted to the Department of State, Exchange Visitor Program Services, remain in effect and not altered in any way:

(1) Legal status as a corporation such as Articles of Incorporation and By Laws. Provide dates and state of both:

(2) Accreditation. Provide date, type of accreditation, and State of accreditation:

(3) Evidence of Licensure. Provide date, type of license, and state of licensure:

(4) Authorization of governing body authorizing application. Please provide date of such authorization and authorizing body:

(5) Activities in which the organization has been engaged have not changed since application dated:

(6) Citizenship. Provide the date of compliance with citizenship requirements: If citizenship compliance is not current, please complete the following:

Organization: I hereby certify that I am an officer of with the title of ; that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind ; and that a true copy certified by the (Board of Directors, Trustees, etc.) of such authorization is attached. I further certify that is a citizen of the United States as that term is defined at 22 CFR 514.1.

Responsible Officer or Alternate Responsible Officer: I hereby certify that I am the responsible officer (or alternate responsible officer) for , and that I am a citizen of

the United States (or a person lawfully admitted to the United States for permanent residence, agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation and immediate return of or accounting for all IAP-66 forms transferred to it.

Certification as to (1)-(6) Requirements:

I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

Signed in ink by (Name) _____

Title _____

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public

Department of State Use Only

Type of program: _____

Subtype if applicable: _____

No. Forms IAP-66: _____

Categories: _____

Please return form to: Exchange Visitor Program Services-GC/V, Department of State, Washington, DC 20547

NOTE: Public reporting burden for this collection of information (Paperwork Reduction Project: OMB No. 3116-0011) is estimated to average minutes/hours per response, including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of State Clearance Officer, M/ASP, Department of State, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

APPENDIX C TO PART 62—UPDATE OF INFORMATION ON EXCHANGE-VISITOR PROGRAM SPONSOR

Please amend the Department of State records for Exchange-Visitor

Program Number _____

assigned to _____ as follows:

(Name of institution/organization)

1. Change the name of the Program Sponsor

Pt. 62, App. D

22 CFR Ch. I (4-1-12 Edition)

from the above to _____

(A) STATISTICAL REPORT

2. Change the address of the Program Sponsor

(1) ACTIVITY BY CATEGORY

From: _____

Number

(city) (state) (zip)
To: _____

Professor	_____
Research Scholar	_____
Short-term Scholar	_____
Trainee	_____
Student (College and University)	_____
Student (Practical Trainee)	_____
Teacher	_____
Student (Secondary)	_____
Specialists	_____
Physicians	_____
International Visitors	_____
Government Visitors	_____
Camp Counselors	_____

(city) (state) (zip)

3. () Change the telephone number from _____ to _____

() Change the fax number from _____ to _____

Total

4. () Change the name of the Responsible Officer of the above program from _____ to _____

(2) Forms IAP-66 Reconciliation

(i) Number of Forms IAP-66 voided or otherwise not used by participant _____.

(ii) Number of Forms IAP-66 issued for dependents _____.

(iii) Number of Forms IAP-66 currently on hand _____.

5. a. Delete the following Alternate Responsible Officer:

(B) PROGRAM EVALUATION

5. b. Add the following Alternate Responsible Officer:

On a separate sheet, please provide a brief narrative report on program activity, difficulties encountered and their resolution, program transfers, anticipated growth and the proposed new activity, cross-cultural activities, as well as the reciprocal component of the program.

(Citizenship is required for all Responsible and Alternate Responsible Officers-See Reverse)

6. () Send _____ (indicate number) IAP-66 forms. (PLEASE ALLOW FOUR TO SIX WEEKS FOR RESPONSE AND REMEMBER TO SUBMIT THE ANNUAL REPORT)

7. () Send _____ copies of this form.

8. () Send _____ copies of Codes for Educational and Cultural Exchange.

9. () Cancel the above named Exchange Visitor Program.

I, The Responsible Officer of the program indicated above, certify that we have complied with the insurance requirement (22 CFR 514.14). I also certify that the information contained in this report is complete and correct to the best of my knowledge and belief.

(Signature of Responsible or Alternate Responsible Officer)

Responsible Officer (signed)
Date _____

(Date)

Name and address of sponsoring institution

(Title of Signing Officer)

APPENDIX E TO PART 62—UNSKILLED OCCUPATIONS

APPENDIX D TO PART 62—ANNUAL REPORT—EXCHANGE VISITOR PROGRAM SERVICES (GC/V), DEPARTMENT OF STATE, WASHINGTON, DC 20547, (202-401-7964)

For purposes of 22 CFR 514.22(c)(1), the following are considered to be "unskilled occupations":

- (1) Assemblers
- (2) Attendants, Parking Lot
- (3) Attendants (Service Workers such as Personal Services Attendants, Amusement and Recreation Service Attendants)
- (4) Automobile Service Station Attendants
- (5) Bartenders
- (6) Bookkeepers
- (7) Caretakers

Exchange Visitor Program No. _____ Reporting Period _____ Provide Range of Forms IAP-66 Documents Covered by this Report (_____ - _____).

Department of State

Pt. 62, App. F

- (8) Cashiers
- (9) Charworkers and Cleaners
- (10) Chauffeurs and Taxicab Drivers
- (11) Cleaners, Hotel and Motel
- (12) Clerks, General
- (13) Clerks, Hotel
- (14) Clerks and Checkers, Grocery Stores
- (15) Clerk Typist
- (16) Cooks, Short Order
- (17) Counter and Fountain Workers
- (18) Dining Room Attendants
- (19) Electric Truck Operators
- (20) Elevator Operators
- (21) Floorworkers
- (22) Groundskeepers
- (23) Guards
- (24) Helpers, any industry
- (25) Hotel Cleaners
- (26) Household Domestic Service Workers
- (27) Housekeepers
- (28) Janitors
- (29) Key Punch Operators
- (30) Kitchen Workers
- (31) Laborers, Common
- (32) Laborers, Farm
- (33) Laborers, Mine
- (34) Loopers and Toppers
- (35) Material Handlers
- (36) Nurses' Aides and Orderlies
- (37) Packers, Markers, Bottlers and Related
- (38) Porters
- (39) Receptionists
- (40) Sailors and Deck Hands
- (41) Sales Clerks, General
- (42) Sewing Machine Operators and Handstitchers
- (43) Stock Room and Warehouse Workers
- (44) Streetcar and Bus Conductors
- (45) Telephone Operators
- (46) Truck Drivers and Tractor Drivers
- (47) Typist, Lesser Skilled
- (48) Ushers, Recreation and Amusement
- (49) Yard Workers

APPENDIX F TO PART 62—INFORMATION TO BE COLLECTED ON SECONDARY SCHOOL STUDENT HOST FAMILY APPLICATIONS

- Basic Family Information:
- a. Host Family Member—Full name and relationship (children and adults) either living full-time or part-time in the home or who frequently stay at the home)
 - b. Date of Birth (DOB) of all family members
 - c. Street Address
 - d. Contact information (telephone; e-mail address) of host parents
 - e. Employment—employer name, job title, and point of contact for each working resident of the home
 - f. Is the residence the site of a functioning business? (e.g., daycare, farm)
 - g. Description of each household member (e.g., level of education, profession, interests, community involvement, and relevant

behavioral or other characteristics of such household members that could affect the successful integration of the exchange visitor into the household)

- h. Has any member of your household ever been charged with any crime?

Household Pets:

- a. Number of Pets
- b. Type of Pets

Financial Resources:

- a. Average Annual Income Range: Less than \$25,000; \$25,000–\$35,000; \$35,000–\$45,000; \$45,000–\$55,000; \$55,000–\$65,000; \$65,000–\$75,000; and \$75,000 and above. Note: The form must include a statement stating that: “The income data collected will be used solely for the purposes of ensuring that the basic needs of the exchange students can be met, including three quality meals and transportation to and from school activities”

- b. Describe if anyone residing in the home receives any kind of public assistance (financial needs-based government subsidies for food or housing)

- c. Identify those personal expenses expected to be covered by the student

Diet:

- a. Does anyone in the family follow any dietary restrictions? (Y/N)

If yes, describe:

- b. Do you expect the student to follow any dietary restrictions? (Y/N)

If yes, describe:

- c. Would you feel comfortable hosting a student who follows a particular dietary restriction (ex. Vegetarian, Vegan, etc.)? (Y/N)

- d. Would the family provide three (3) square meals daily?

High School Information:

- a. Name and address of school (private or public school)

- b. Name, address, e-mail and telephone number of school official

- c. Approximate size of the school student body

- d. Approximate distance between the school and your home

- e. Approximate start date of the school year

- f. How will the exchange student get to the school (e.g. bus, carpool, walk)?

- g. Would the family provide special transportation for extracurricular activities after school or in the evenings, if required?

- h. Which, if any, of your family's children, presently attend the school in which the exchange visitor is enrolled?

- If applicable list sports/clubs/activities, if any, your child(ren) participate(s) in at the school

- i. Does any member of your household work for the high school in a coaching/teaching/or administrative capacity?

- j. Has any member of your household had contact with a coach regarding the hosting of an exchange student with particular athletic ability?

If yes, please describe the contact and sport.

Community Information:

- a. In what type of community do you live (e.g.: Urban, Suburban, Rural, Farm)
- b. Population of community
- c. Nearest Major City (Distance and population)
- d. Nearest Airport (Distance)
- e. City or town website
- f. Briefly describe your neighborhood and community
- g. What points of interest are near your area (parks, museums, historical sites)?
- h. Areas in or near neighborhood to be avoided?

Home Description:

- a. Describe your type of home (e.g., single family home, condominium, duplex, apartment, mobile home) and include photographs of the host family home's exterior and grounds, kitchen, student's bedroom, student's bathroom, and family and living areas.
- b. Describe Primary Rooms and Bedrooms
- c. Number of Bathrooms
- d. Will the exchange student share a bedroom? (Y/N)

If yes, with which household resident?

- e. Describe the student's bedroom
- f. Describe amenities to which the student has access

g. Utilities

Family Activities:

- a. Language spoken in home
- b. Please describe activities and/or sports each family member participates in: (e.g., camping, hiking, dance, crafts, debate, drama, art, music, reading, soccer, baseball, horseback riding)
- c. Describe your expectations regarding the responsibilities and behavior of the student while in your home (e.g., homework, household chores, curfew (school night and weekend), access to refrigerator and food, drinking of alcoholic beverages, driving, smoking, computer/Internet/E-Mail)

Would you be willing voluntarily to inform the exchange visitor in advance of any religious affiliations of household members? (Y/N)

Would any member of the household have difficulty hosting a student whose religious beliefs were different from their own? (Y/N)
Note: A host family may want the exchange visitor to attend one or more religious services or programs with the family. The exchange visitor cannot be required to do so, but may decide to experience this facet of U.S. culture at his or her discretion.

How did you learn about being a host family?

References:

[75 FR 65984, Oct. 27, 2010]

PART 63—PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN THE INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM

Sec.

- 63.1 Definitions.
- 63.2 Applicability of this part under special circumstances.
- 63.3 Grants to foreign participants to observe, consult, demonstrate special skills, or engage in specialized programs.
- 63.4 Grants to foreign participants to lecture, teach, and engage in research.
- 63.5 Grants to foreign participants to study.
- 63.6 Assignment of United States Government employees to consult, lecture, teach, engage in research, or demonstrate special skills.
- 63.7 Grants to United States participants to consult, lecture, teach, engage in research, demonstrate special skills, or engage in specialized programs.
- 63.8 Grants to United States participants to study.
- 63.9 General provisions.

AUTHORITY: Sec. 4, 63 Stat. 111, as amended, 75 Stat. 527–538; 22 U.S.C. 2658, 2451 note; Reorganization Plan No. 2 of 1977; Executive Order 12048 of March 27, 1978.

SOURCE: 44 FR 18019, Mar. 26, 1979, unless otherwise noted. Redesignated at 64 FR 54540, Oct. 7, 1999.

EDITORIAL NOTE: Nomenclature changes to part 63 appear at 64 FR 54540, Oct. 7, 1999.

§ 63.1 Definitions.

For the purpose of this part the following terms shall have the meaning here given:

(a) *International educational and cultural exchange program of the Department of State.* A program to promote mutual understanding between the people of the United States and those of other countries and to strengthen cooperative international relations in connection with which payments are made direct by the Department of State, as well as similar programs carried out by other Government departments and agencies and by private organizations with funds appropriated or allocated to the Department of State when the regulations in this part apply under the provisions of § 515.2 (a) and (b).

(b) *Program and Agency.* For convenience, the international educational

Department of State

§ 63.3

and cultural exchange program of the Department of State will hereinafter be referred to as the “program,” and the Department of State will hereinafter be referred to as the “Agency.”

(c) *Participant.* Any person taking part in the program for purposes listed in §515.3 through §515.8 including both citizens of the United States and citizens and nationals of the other countries with which the program is conducted.

(d) *Transportation.* All necessary travel on railways, airplanes, steamships, buses, streetcars, taxicabs, and other usual means of conveyance.

(e) *Excess baggage.* Baggage in excess of the weight or size carried free by public carriers on first class service.

(f) *Per diem allowance.* Per diem in lieu of subsistence includes all charges for meals and lodging; fees and tips; telegrams and telephone calls reserving hotel accommodations; laundry, cleaning and pressing of clothing; transportation between places of lodging or business and places where meals are taken.

§ 63.2 Applicability of this part under special circumstances.

(a) *Funds administered by another department or agency.* The regulations in this part shall apply to payments made to or on behalf of participants from funds appropriated or allocated to the Agency and transferred by the Agency to some other department, agency or independent establishment of the Government unless the terms of the transfer provide that such regulations shall not apply in whole or in part or with such modification as may be prescribed in each case to meet the exigencies of the particular situation.

(b) *Funds administered by private organizations.* The regulations in this part shall apply to payments made to or on behalf of participants from funds appropriated or allocated to the Agency and administered by an institution, facility, or organization in accordance with the terms of a contract or grant made by the Agency with or to such private organizations, unless the terms of such contract or grant provide that the regulations in this part are not to be considered applicable or that they are to be applied with such modifica-

tions as may be prescribed in each case to meet the exigencies of the particular situation.

(c) *Appropriations or allocations.* The regulations in this part shall apply to payments made by the Agency with respect to appropriations or allocations which are or may hereafter be made available to the Agency for the program so far as the regulations in this part are not inconsistent therewith.

§ 63.3 Grants to foreign participants to observe, consult, demonstrate special skills, or engage in specialized programs.

A citizen or national of a foreign country who has been awarded a grant to observe, consult with colleagues, demonstrate special skills, or engage in specialized programs, may be entitled to any or all of the following benefits when authorized by the Agency.

(a) *Transportation.* Accommodations, as authorized, on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Federal Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Agency.

(c) *Per diem allowance.* Per diem allowances in lieu of subsistence expenses while participating in the program in the United States, its territories or possessions and while traveling within or between the United States, its territories or possessions shall be established by the Secretary of State from time to time, within limitations prescribed by law. The participant shall be considered as remaining in a travel status during the entire period covered by his or her grant unless otherwise designated.

(d) *Allowance.* A special allowance in lieu of per diem while traveling to and from the United States may be established by the Secretary of State, within limitations prescribed by law.

(e) *Tuition and related expenses.* Tuition and related expenses in connection with attendance at seminars and workshops, professional meetings, or other events in keeping with the purpose of the grant.

§ 63.4

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Advance of funds.* Advance of funds including per diem.

[44 FR 18019, Mar. 26, 1979, as amended at 49 FR 12214, Mar. 29, 1984. Redesignated at 64 FR 54540, Oct. 7, 1999]

§ 63.4 Grants to foreign participants to lecture, teach, and engage in research.

A citizen or national of a foreign country who has been awarded a grant to lecture, teach, and engage in research may be entitled to any or all of the following benefits when authorized by the Agency:

(a) *Transportation.* Accommodations, as authorized on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Federal Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Agency.

(c) *Per diem allowance.* Per diem allowance in lieu of subsistence expenses while participating in the program in the United States, its territories or possessions and while traveling within or between the United States, its territories or possessions shall be established by the Secretary of State from time to time, within limitations prescribed by law.

(d) *Allowance.* A special allowance in lieu of per diem while traveling to and from the United States may be established by the Secretary of State, within limitations prescribed by law.

(e) *Tuition and related expenses.* Tuition and related expenses in connection with attendance at educational institutions, seminars and workshops, professional meetings or other events in keeping with the purpose of the grant.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Advance of funds.* Advance of funds including per diem.

§ 63.5 Grants to foreign participants to study.

A citizen or national of a foreign country who has been awarded a grant to study may be entitled to any or all

22 CFR Ch. I (4–1–12 Edition)

of the following benefits when authorized by the Agency:

(a) *Transportation.* Accommodations, as authorized, on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be accordance with the provisions of the Federal Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Agency.

(c) *Per diem allowance.* Per diem allowance in lieu of subsistence expenses while traveling (1) from point of entry in the United States, its territories or possessions to orientation centers and while in attendance at such centers for purposes of orientation, not to exceed 30 days, (2) to educational institutions of affiliation, and (3) to point of departure and while participating in authorized field trips or conferences, shall be established by the Secretary of State from time to time, within limitations prescribed by law.

(d) *Allowances.* (1) A maintenance allowance while present and in attendance at an educational institution, facility or organization, and

(2) A travel allowance in lieu of per diem while traveling to and from the United States may be established by the Secretary of State, within limitations prescribed by law.

(e) *Tuition.* Tuition and related fees for approved courses of study.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Tutoring assistance.* Special tutoring assistance in connection with approved courses of study.

(h) *Advance of funds.* Advance of funds including per diem.

§ 63.6 Assignment of United States Government employees to consult, lecture, teach, engage in research, or demonstrate special skills.

An employee of the United States Government who has been assigned for service abroad to consult, lecture, teach, engage in research, or demonstrate special skills, may be entitled to any or all of the following benefits when authorized by the Agency.

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu

Department of State

§ 63.8

of subsistence at the maximum rates allowable while in a travel status in accordance with the provisions of the Federal Travel Regulations. The participant shall be considered as remaining in a travel status during the entire period covered by his or her assignment unless otherwise designated.

(b) *Advance of funds.* Advances of per diem as provided by law.

(c) *Compensation.* Compensation in accordance with Civil Service rules; or in accordance with the grade in which the position occupied may be administratively classified; or Foreign Service Act, as amended.

(d) *Allowances for cost of living and living quarters.* Allowances for living quarters, heat, fuel, light, and to compensate for the increased cost of living in accordance with the Federal Travel Regulations (Government Civilians, Foreign Areas), when not in a travel status as provided in paragraph (a) of this section.

(e) *Books and educational materials allowance.* A reasonable allowance for books and educational materials. Such books and materials, unless otherwise specified, shall be selected by the employee and purchased and shipped by the Agency or its agent. At the conclusion of the assignment, the books and educational materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Agency.

(f) *Families and effects.* Cost of transportation of immediate family and household goods and effects when going to and returning from posts of assignment in foreign countries in accordance with the provisions of the Foreign Service Regulations of the United States of America.

§ 63.7 Grants to United States participants to consult, lecture, teach, engage in research, demonstrate special skills, or engage in specialized programs.

A citizen or resident of the United States who has been awarded a grant to consult, lecture, teach, engage in research, demonstrate special skills, or engage in specialized programs may be entitled to any or all of the following benefits when authorized by the Agency.

(a) *Transportation.* Transportation in the United States and abroad, including baggage charges.

(b) *Subsistence and miscellaneous travel expenses.* Per diem, in lieu of subsistence while in a travel status, at the maximum rates allowable in accordance with the provisions of the Federal Travel Regulations, unless otherwise specified, and miscellaneous travel expenses, in the United States and abroad. Alternatively, a travel allowance may be authorized to cover subsistence and miscellaneous travel expenses. The participant shall be considered as remaining in a travel status during the entire period covered by his or her grant unless otherwise designated.

(c) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States, compensation, travel, and per diem at the maximum rates allowable in accordance with the provisions of the Federal Travel Regulations, unless otherwise specified. Alternatively, a travel allowance may be authorized to cover subsistence and miscellaneous travel expenses.

(d) *Advance of funds.* Advance of funds, including allowance for books and educational materials and per diem, or alternatively, the allowance to cover subsistence and miscellaneous travel expenses.

(e) *Compensation.* Compensation at a rate to be specified in each grant.

(f) *Allowances.* Appropriate allowance as determined by the Agency.

(g) *Books and educational materials allowance.* Where appropriate, an allowance for books and educational materials. Such books and materials, unless otherwise specified, shall be selected by the grantee and purchased and shipped either by the grantee, or the Agency or its agent. At the conclusion of the grant, the books and materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Agency.

§ 63.8 Grants to United States participants to study.

A citizen of the United States who has been awarded a grant to study may

be entitled to any or all of the following benefits when authorized by the Agency.

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence while in a travel status. Per diem at the maximum rates allowable in accordance with the provisions of the Federal Travel Regulations, unless otherwise specified. Travel status shall terminate upon arrival at the place of study designated in the grant and shall recommence upon departure from the place to return home.

(b) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States travel and per diem at the maximum rates allowable in accordance with the provisions of the Federal Travel Regulations, unless otherwise specified.

(c) *Advance of funds.* Advance of funds including per diem.

(d) *Maintenance allowance.* A maintenance allowance at a rate to be specified in each grant.

(e) *Tuition.* Tuition and related fees for approved courses of study.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Tutoring assistance.* Special tutoring assistance in connection with approved courses of study.

§ 63.9 General provisions.

The following provisions shall apply to the foregoing regulations:

(a) *Health and accident insurance.* Payment for the costs of health and accident insurance for United States and foreign participants while such participants are enroute or absent from their homes for purposes of participation in the program when authorized by the Agency.

(b) *Transportation of remains.* Payments for the actual expenses of preparing and transporting to their former homes the remains of persons not United States Government employees, who may die away from their homes while participating in the program are authorized.

(c) *Maxima not controlling.* Payments and allowances may be made at the

rate or in the amount provided in the regulations in this part unless an individual grant or travel order specifies that less than the maximum will be allowed under any part of the regulation in this part. In such case, the grant or travel order will control.

(d) *Individual authorization.* Where the regulations in this part provide for compensation, allowance, or other payment, no payment shall be made therefor unless a definite amount or basis of payment is authorized in the individual case, or is approved as provided in paragraph (f) of this section.

(e) *Computation of per diem and allowance.* In computing per diem and allowance payable while on a duty assignment, except for travel performed under the Federal Travel Regulations, fractional days shall be counted as full days, the status at the end of the calendar day determining the status for the entire day.

(f) *Subsequent approval.* Whenever without prior authority expense has been incurred by a participant, or an individual has commenced his or her participation in the program as contemplated by the regulations in this part, the voucher for payments in connection therewith may be approved by an official designated for this purpose, such approval constituting the authority for such participation or the incurring of such expense.

(g) *Additional authorization.* Any emergency, unusual or additional payment deemed necessary under the program if allowable under existing authority, may be authorized whether or not specifically provided for by this part.

(h) *Biweekly payment.* Unless otherwise specified in the grant, all compensation and allowance for United States participants shall be payable biweekly and shall be computed as follows: An annual rate shall be derived by multiplying a monthly rate by 12; a biweekly rate shall be derived by dividing an annual rate by 26; and a calendar day rate shall be derived by dividing an annual rate by 364. If any maximum compensation or allowance authorized by these regulations or by the terms of any grant is exceeded by this method of computation and payment, such excess payment is hereby

Department of State

§ 64.2

authorized. This paragraph may apply to payments made to participants from funds administered as provided in § 515.2(a) and (b) in the discretion of the department, agency, independent establishment, institution, facility, or organization concerned.

(i) *Payments.* Payments of benefits authorized under any part of the regulations in this part may be made either by the Department of State or by such department, agency, institution, or facility as may be designated by the Agency.

(j) *Duration.* The duration of the grant shall be specified in each case.

(k) *Cancellation.* If a recipient of a grant under this program fails to maintain a satisfactory record or demonstrates unsuitability for furthering the purposes of the program as stated in § 515.1(a), his or her grant shall, in the discretion of the Secretary of State of the Department of State or such officer as he or she may designate, be subject to cancellation.

(l) *Outstanding grant authorization.* Grants and other authorizations which are outstanding and in effect on the date the present regulations become effective, and which do not conform to this part, shall nevertheless remain in effect and be governed by the regulations under which they were originally issued, unless such grants or other authorizations are specifically amended and made subject to the present regulations in which case the individual concerned will be notified.

PART 64—PARTICIPATION BY FEDERAL EMPLOYEES IN CULTURAL EXCHANGE PROGRAMS OF FOREIGN COUNTRIES

Sec.

- 64.1 Purpose.
- 64.2 Definitions.
- 64.3 Submission of application.
- 64.4 Contents of application.
- 64.5 Criteria for approval of program.
- 64.6 Request for further information.
- 64.7 Approval of application.
- 64.8 Obligation of employee to advise agency.
- 64.9 Termination of approval.
- 64.10 Grant not to constitute a gift.

AUTHORITY: Sec. 108A (Pub. L. 94-350, 90 Stat. 823) added to the Mutual Educational and Cultural Exchange Act, as amended, 75

Stat. 527-28, 22 U.S.C. 2451 *et seq.*; and under Executive Orders 11034 and 12048, as amended; Pub. L. 105-277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977 and the Continuity Order (Continuity of Operations) of April 1, 1978 (43 FR 15371).

SOURCE: 44 FR 42247, Sept. 20, 1978, unless otherwise noted. Redesignated at 64 FR 54540, Oct. 7, 1999.

EDITORIAL NOTE: Nomenclature changes to part 64 appear at 64 FR 54540, Oct. 7, 1999.

§ 64.1 Purpose.

This part sets forth the procedures for the application for approval of a cultural exchange program of a foreign government, so that Federal employees may participate in such program; the grant and termination of such approval; and related procedures.

§ 64.2 Definitions.

For the purpose of this part:

(a) *Federal employee* means: (1) An employee as defined by section 2105 of title 5, United States Code; (2) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the District of Columbia; (3) a member of a uniformed service; (4) the President and Vice President; and (5) a Member of the Senate or the House of Representatives, a Delegate from the District of Columbia in Congress, and the Resident Commissioner from Puerto Rico in Congress.

(b) A *foreign government* means a foreign government and an official agent or representative thereof; a group of governments and an official agent or representative thereof; an international organization composed of governments, and an official agent or representative thereof.

(c) A program of the *type described in section 102(a)(2)(i) of the Act* means a cultural exchange program involving “visits and interchanges between the United States and other countries of leaders, experts in fields of specialized knowledge or skill, and other influential or distinguished persons.”

(d) The “purpose stated in section 101 of the Act” is “to enable the Government of the United States to increase mutual understanding between the people of the United States and the people

§ 64.3

22 CFR Ch. I (4–1–12 Edition)

of the other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.”

(e) *Secretary of State* means the Secretary of State of the Department of State.

(f) *Department of State* means the Department of State.

(g) *Act* means the Mutual Educational Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 *et seq.*).

(h) *Member of the family or household* of a Federal employee means a relative of the employee by blood, marriage, or adoption or any person who is a resident of the household of the employee.

[44 FR 42247, Sept. 20, 1978, as amended at 51 FR 11016, Apr. 1, 1986. Redesignated at 64 FR 54540, Oct. 7, 1999]

§ 64.3 Submission of application.

A foreign government intending to provide grants or other assistance to facilitate the participation of Federal employees in a program of cultural exchange shall submit to the Department of State an application for approval of the program through its embassy, mission, or office at Washington, D.C. If there is no embassy, mission, or office at Washington, D.C., of the foreign government the application may be submitted by the home office or headquarters of the foreign government. The application shall be addressed to the Secretary of State.

§ 64.4 Contents of application.

The foreign government shall provide information in the application showing that its program meets the criteria set forth in § 516.5, and shall include in such application the following:

(a) Name and description of the program and the provisions of legislation or regulation authorizing the program;

(b) Number of annual U.S. citizen participants expected, including the number of U.S. Federal employees;

(c) Average duration of stay abroad;

(d) Department of State of the foreign government responsible for the program;

(e) Name and address of contact in the United States with whom communication may be made with respect to the program; in the absence of such a contact in the United States, the name and address of a contact in the home office or headquarters of the foreign government.

§ 64.5 Criteria for approval of program.

To obtain approval of its program of cultural exchanges, a foreign government is required to show that:

(a) The cultural exchange program is of the type described in section 102(a)(2)(i) of the Act;

(b) The cultural exchange program is conducted for a purpose comparable to the purpose stated in section 101 of the Act; and

(c) A grant under such program will not provide assistance with respect to any expenses incurred by or for any member of the family or household of such Federal employee.

§ 64.6 Request for further information.

The Department of State may request the foreign government to supply additional information.

§ 64.7 Approval of application.

The Secretary of State shall review the application and if satisfied that the criteria of § 516.5 are met shall inform the foreign government of the approval of its program.

§ 64.8 Obligation of employee to advise agency.

Any Federal employee receiving any offer of a grant or other assistance under a cultural exchange program approved by the Secretary of State shall advise the employee's agency of such offer and shall not accept such offer unless the employee's agency states

Department of State

§ 65.5

that it has no objection to such acceptance. In the case of the Department, an employee shall advise the DAEO who may, after consultation with appropriate officials of the Department, furnish a “no objection” statement.

[44 FR 42247, Sept. 20, 1978. Redesignated and amended at 64 FR 54540, Oct. 7, 1999]

§ 64.9 Termination of approval.

If at any time it appears to the Secretary of State that the purpose of a program which has been approved has been changed so that it no longer meets the criteria of § 516.5 or that the program is being misused, the Secretary of State may terminate such approval, or suspend such approval pending the supplying of additional information. However, a termination or suspension shall not affect a grant which has been made under a previously approved program.

§ 64.10 Grant not to constitute a gift.

A grant made under an approved program shall not constitute a gift for purposes of 22 CFR 10.735–203 and section 7342 of title 5, United States Code.

PART 65—FOREIGN STUDENTS

Sec.

- 65.1 Regulations to be drafted.
- 65.2 Applications.
- 65.3 Reference of applications.
- 65.4 Copies of regulations to Department of State.
- 65.5 Granting of application.

AUTHORITY: 52 Stat. 1034, as amended; 20 U.S.C. 221, E.O. 7964, 3 FR 2105; 3 CFR, 1943–1958, Comp.; Reorganization Plan No. 2 of 1977.

SOURCE: 44 FR 18021, Mar. 26, 1979, unless otherwise noted. Redesignated at 64 FR 54540, Oct. 7, 1999.

EDITORIAL NOTE: Nomenclature changes to part 65 appear at 64 FR 54540, Oct. 7, 1999.

§ 65.1 Regulations to be drafted.

Subject to the provisions and requirements of this part, appropriate administrative regulations shall be drafted by each executive department or agency of the Government which maintains and administers educational institutions and schools coming within the scope of the legislation. Such regulations shall carefully observe the limi-

tations imposed by the Act of June 24, 1938, and shall in each case include:

(a) A list of the institutions and courses in the department or agency concerned in which instruction is available under the terms of the legislation.

(b) A statement of the maximum number of students of the other American republics who may be accommodated in each such institution or course at any one time.

(c) A statement of the qualifications to be required of students of the other American republics for admission, including examinations, if any, to be passed.

(d) Provisions to safeguard information that may be vital to the national defense or other interests of the United States.

§ 65.2 Applications.

Applications for citizens of the other American republics to receive the instruction contemplated by the Act of June 24, 1938, shall be made formally through diplomatic channels to the Secretary of State of the Department of State by the foreign governments concerned.

§ 65.3 Reference of applications.

The Secretary of State of the Department of State shall refer the applications to the proper department or agency of the Government for advice as to what reply should be made to the application.

§ 65.4 Copies of regulations to Department of State.

In order to enable the Secretary of State of the Department of State to reply to inquiries received from the governments of the other American republics, the Department of State shall be promptly supplied with copies of the regulations drafted by the other departments and agencies of the Government and of subsequent amendments thereto.

§ 65.5 Granting of application.

Upon receipt of a reply from another department or agency of the Government, as contemplated by § 517.3, in which it is recommended that an application be granted, the Secretary of

State of the Department of State shall notify the government of the American republic concerned, through diplomatic channels, that permission to receive the instruction requested in the application is granted, provided the applicant complies with the terms of this part and with the terms of the administrative regulations of the department or agency concerned.

PART 66—AVAILABILITY OF THE RECORDS OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Sec.

- 66.1 Introduction.
- 66.2 Location of description of organization and substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated and adopted by NED.
- 66.3 Places at which forms and instructions for use by the public may be obtained.
- 66.4 Availability of final opinions, orders, policies, interpretations, manuals and instructions.
- 66.5 Availability of NED records.
- 66.6 Exemptions.
- 66.7 Limitation of exemptions.
- 66.8 Reports.

AUTHORITY: 22 U.S.C. 4411 *et seq.*; Pub. L. 99-570, Secs. 1801-1804, 100 Stat. 3207-48 (1986); Pub. L. 105-277, 112 Stat. 2681 *et seq.*

SOURCE: 51 FR 40162, Nov. 5, 1986, unless otherwise noted. Redesignated at 64 FR 54540, Oct. 7, 1999.

EDITORIAL NOTE: Nomenclature changes to part 66 appear at 64 FR 54540, Oct. 7, 1999.

§ 66.1 Introduction.

These regulations amend the Code of Federal Regulations to conform with Pub. L. 99-93. Pub. L. 99-93 amended the National Endowment for Democracy Act (22 U.S.C. 4411, *et seq.*) to require the National Endowment for Democracy (hereinafter "NED") to comply fully with the provisions of the Freedom of Information Act (5 U.S.C. 552) (hereinafter "FOIA"), notwithstanding that NED is not an agency or establishment of the United States Government. NED will make information about its operation, organization, procedures and records available to the public in accordance with the provisions of FOIA.

§ 66.2 Location of description of organization and substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated and adopted by NED.

See 22 CFR part 527 for a description of the organization of NED and substantive rules of general applicability formulated and adopted by NED.

§ 66.3 Places at which forms and instructions for use by the public may be obtained.

(a) All forms and instructions pertaining to procedures under FOIA may be obtained from the FOIA officer of the National Endowment for Democracy, 1101 15th St., NW; Suite 700, Washington, D.C. 20005-5000.

(b) Grant guidelines may be obtained from the Program Office of NED to the address shown in paragraph (a) of this section.

(c) General information may be obtained from the Public Affairs Office of NED at the address shown in paragraph (a) of this section.

[51 FR 40162, Nov. 5, 1986. Redesignated and amended at 64 FR 54540, Oct. 7, 1999]

§ 66.4 Availability of final opinions, orders, policies, interpretations, manuals and instructions.

NED is not an adjudicatory organization and therefore does not issue final opinions and orders made in the adjudication of cases. NED will, however, in accordance with the rules in this section and § 526.7, make available for public inspection and copying those statements of policy and interpretation that have been adopted by NED and are not published in the FEDERAL REGISTER, and administrative staff manuals and instructions to staff that affect any member of the public.

(a) *Deletion to protect privacy.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, NED may delete identifying details when it makes available or publishes a statement of policy, interpretation, or staff manual or instruction. Whenever NED finds any such deletion necessary, the responsible officer or employee must fully explain the justification therefor in writing.

Department of State

§ 66.5

(b) *Current index.* NED will maintain and make available on its premises for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967, and required by this section to be made available or published. NED will provide copies on request at a cost of \$0.15 per page.

§ 66.5 Availability of NED records.

Except with respect to the records made available under § 526.4, NED will, upon request that reasonably describes records in accordance with the requirements of this section, and subject to the exemptions listed in 5 U.S.C. 552(b), make such records promptly available to any person.

(a) Requests for records—How made and addressed. (1) Requesters seeking access to NED records under FOIA should direct all requests in writing to: Freedom of Information Act Officer, National Endowment for Democracy, 1101 15th St., NW; Suite 700, Washington, D.C. 20005-5000.

Although requesters are encouraged to make their requests for access to NED records directly to NED, requests for access to NED records also may be submitted to Department of State's Office of General Counsel and Congressional Liaison at the following address: Freedom of Information/Privacy Acts Coordinator, U.S. Information Agency, Room M-04, 301 Fourth Street SW., Washington, DC 20547.

(2) Appeals of denials of initial requests must be addressed to NED in the same manner or to the Department of State pursuant to the procedures set forth at part 171 of this Title, with the addition of the word "APPEAL" preceding the address on the envelope. Appeals addressed directly to the Department of State will not be deemed to have been received by NED for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(1) until actually received by NED. The Department of State shall forward any appeal received by it to NED within 2 working days from the actual day of receipt by the Department of State.

(3) The request letter should contain all available data concerning the desired records, including a description of

the material, dates, titles, authors, and other information that may help identify the records. The first paragraph of a request letter should state whether it is an initial request or an appeal.

(b) *Administrative time limits.* (1) Within 10 working days after NED's receipt of any request for access to NED records in compliance with paragraph (a) of this section, NED shall make an initial determination whether to provide the requested information and NED shall notify the requester in writing of its initial determination. In the event of an adverse determination, notification shall include the reasons for the adverse determination, the officials responsible for such determination, the right of the requester to appeal within NED, and that the final determination by NED to deny a request for records in whole or in part shall be submitted to the Secretary of State of Department of State for review. NED shall also provide Department of State a copy of its response as soon as practicable after it responds to the requester.

(2) When a request for records has been denied in whole or in part, the requester may, within 30 days of the date of receipt by the requester of the adverse determination from NED, appeal the denial to the President of NED or his designee, who will make a determination whether to grant or deny such appeal within 20 working days of receipt thereof. All appeals should be addressed in compliance with paragraph (a) of this section. If on appeal, the denial of the request for records is upheld, in whole or in part, NED shall notify the requester in writing of such determination, the reasons therefor, the officials responsible for such determination, the right of the requester to judicial review, and that the final determination by NED whether to deny a request for records in whole or in part shall be submitted to the Secretary of State of Department of State for review.

(3) If the requester elects not to appeal to the President of NED or his designee within the appeal period specified above, NED's initial determination will become the final NED determination upon expiration of said appeal period or

receipt by NED of notice from the requester that he does not elect to appeal, whichever is earlier. If the requester chooses to appeal NED's initial determination within NED, the decision on appeal will become NED's final determination.

(4)(i) Once NED's determination to deny a request in whole or in part becomes final, NED shall submit a report to the Secretary of State of Department of State explaining the reasons for such denial no later than 5 working days thereafter.

(ii) The Secretary of State of Department of State shall review NED's final determination within 20 working days. If the Secretary of State of Department of State or his designee approves NED's denial in whole or in part, Department of State shall inform the requester and NED in writing of such determination, the reasons therefor, the officials responsible for such determination, and the right of the requester to judicial review of NED's determination. In the event of such a determination, Department of State shall assume full responsibility, including financial responsibility, for defending NED in any litigation relating to such request.

(iii) If the Secretary of State of Department of State or his designee disapproves NED's denial in whole or in part, Department of State shall promptly notify NED and thereafter NED shall promptly comply with the request for the pertinent records.

(iv) Because review by the Secretary of State of Department of State may resolve any dispute over access to NED records in the requester's favor, the requester is encouraged (but not required) to wait for the determination on review by the Secretary of State of Department of State before seeking judicial review of NED's final determination.

(5) In unusual circumstances as defined in 5 U.S.C. 552(a)(6)(B), the time limit provisions noted in paragraphs (b)(1) and (b)(2) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination can be expected. Such extensions of the time limits may not

exceed 10 working days in the aggregate.

(6) Any person making a request for records pursuant to § 526.5 may consider administrative remedies exhausted if NED fails to comply within the applicable time limit provisions of this section. When no determination can be dispatched within the applicable time limits set forth in this section, NED shall nevertheless continue to process the request. On the expiration of the time limit, NED shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of the requester's right to treat the delay as a denial and of the requester's right to appeal. NED may ask the requester to forego appeal until a determination is made. A copy of any such notice of delay will be sent to the Secretary of State of Department of State or to his designee no later than 2 working days after it has been sent to the requester. A court may retain jurisdiction and allow NED additional time to complete its review of the records, if it can be determined that exceptional circumstances exist and that NED is exercising due diligence in responding to the request.

(c) *Definitions governing schedule of standard fees and fee waivers.* For purposes of these regulations governing fees and fee waivers:

(1) All of the terms defined in FOIA apply;

(2) A *statute specifically providing for setting the level of fees for particular types of records* means any statute that specifically requires the NED to set the level of fees for particular types of records;

(3) The term *direct costs* means those expenditures that NED actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents, photographs, drawings or any other material to respond to a FOIA request. [Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16% of that rate

Department of State

§ 66.5

to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, any heating or lighting, the facility in which the records are stored];

(4) The term *search* includes all time spent looking for material that is responsive to a request, including page by page or line by line identification of material within documents. Searches shall be conducted to ensure that they are undertaken in the most efficient and least expensive manner so as to minimize costs for both NED and the requester. "Search" is distinguished from "review" of material in order to determine whether the material is exempt from disclosure (*see* subparagraph (c)(6) below);

(5) The term *duplication* refers to the process of making a copy of a document, drawing, photograph, or any other material necessary to respond to a FOIA request. The copy provided by NED will be in a form that is reasonably usable by requesters;

(6) The term *review* refers to the process of examining documents that are located in response to a request that is for a commercial use (*see* subparagraph (c)(7) below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions;

(7) The term '*commercial use*' requests refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NED will determine the use to which a requester will put the documents requested. Where NED has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, NED will seek additional clarification before assigning the request to a specific category;

(8) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly study and/or research;

(9) The term *non-commercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (c)(7) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry;

(10) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "free-lance" journalists, such journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by a news organization. A publication contract would be the clearest proof, but NED will also look to the past publication record of a requester in making this determination.

(d) *Fees to be charged—general.* NED shall charge fees that recoup the full allowable direct costs it incurs. NED shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made under the FOIA.

(e) *Specific fees.* The specific fees for which NED shall charge the requester

§ 66.5

22 CFR Ch. I (4–1–12 Edition)

when so required by the FOIA are as follows:

(1) Manual searches for records—\$8.00 per hour for clerical personnel; \$15.00 per hour for supervisory personnel;

(2) Computer searches for records—In any case where a computer search is possible and the most efficient means by which to conduct a search, NED will charge the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and the operator-programmer salary apportionable to the search. The charge for the cost of the operator-programmer time shall be based on the salary of the operator-programmer plus 16 percent;

(3) Review of records—Requesters who seek documents for commercial use shall be charged for the time NED spends reviewing records to determine whether such records are exempt from mandatory disclosure. These charges shall be assessed only for the initial review; *i.e.*, the review undertaken the first time NED analyzes the applicability of a specific exemption to a particular record or portion of a record. Neither NED nor the Department of State will charge for review at the administrative appeal level for an exemption already applied. However, NED will charge for review of records or portions of records withheld in full under an exemption that is subsequently determined not to apply. The fee for review as that term is used in these regulations shall be \$15.00 per hour;

(4) Duplication of records—(i) making photocopies—15¢ per page; (ii) for copies prepared by computer, such as tapes or printouts, NED shall charge the actual cost, including operator time, of production of the tape or printout; (iii) for other methods of reproduction or duplication, NED shall charge the actual direct costs of producing the document(s);

(5) Other charges—(i) there shall be no fee for a signed statement of non-availability of a record; (ii) NED will not incur expenses arising out of sending records by special methods such as express mail;

(6) Restrictions on assessing fees—With the exception of requesters seeking documents for a commercial use,

section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires NED to provide the first 100 pages of duplication and the first two hours of search time without charge. NED shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. NED will not begin to assess fees until it has first provided the above-referenced free search and reproduction. The elements to be considered in determining the “cost of collecting a fee” are the administrative costs to NED of receiving and recording a requester’s remittance and processing the fee for deposit in NED’s account. For purposes of these restrictions on assessment of fees, the word “pages” refers to paper copies of a standard size, which will normally be 8½×11 or 11×14. Thus, for example, requesters shall not be entitled to 100 microfiche or 100 computer disks without charge.

(f) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The fees to be charged each of these categories of requesters are as follows:

(1) Commercial use requesters—when NED receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents. NED shall recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records. Requesters must reasonably describe the records sought;

(2) Educational and non-commercial scientific institution requesters—NED shall provide documents to educational and non-commercial scientific institution requesters for the cost of reproduction alone, excluding charges for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and

Department of State

§ 66.5

under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought;

(3) Requesters who are representatives of the news media—NED shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in subsection (c)(10) above, and the request must not be made for a commercial use. A request for records supporting the news-dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought;

(4) All other requesters—NED shall charge requesters who do not fit into any of the above categories those fees that recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must reasonably describe the records sought.

(g) *Assessment and collection of fees.* (1) NED shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by NED, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(2) Charges for unsuccessful searches—If NED estimates that search charges are likely to exceed \$25.00, it shall notify the requester of the estimated amount of fees unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost.

Dispatch of such a notice of request shall suspend the running of the period for response by NED until a reply is received from the requester.

(3) Aggregating requests—Except for requests that are for a commercial use, NED shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NED reasonably believes that a requester or a group of requesters acting in concert are attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, NED shall aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have been made. Before aggregating requests from more than one requester, NED must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case shall NED aggregate multiple requests on unrelated subjects from one requester.

(4) Advance payments—NED shall not require payment for fees before work has commenced or continued on a request unless:

(i) NED estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00. In this event, NED shall notify the requester of the likely cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee charged within 30 days of the date of billing.

In this event, NED shall require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NED begins to process a new request or a pending request from that requester.

(iii) When NED acts under paragraphs (g)(4)(i) or (ii) above, the administrative time limits prescribed in subsection (a)(6) of the FOIA will begin only after NED has received fee payments described above.

(5) Form of payment—Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of: National Endowment for Democracy. NED will assume no responsibility for cash lost in the mail.

(h) *Fee waiver or reduction.* NED shall furnish documents without charge or at a charge reduced below the fees established by these regulations if disclosure of the information is in the public interest because the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. In making a determination under this subsection, NED shall consider these factors in the following order:

(1) Whether the subject of the request for documents concerns the operations or activities of the government. For purposes of determining whether this factor is met:

(i) Records generated by a non-government entity are less likely to respond to a request for documents concerning the operations or activities of the government;

(ii) Records that are sought for their intrinsic informational content apart from their informative value with respect to specific activities or operations of government are less likely to meet this factor.

(2) Whether the information requested is likely to contribute to an understanding of government operations or activities. For purposes of determining whether the request meets this factor:

(i) NED will consider the extent to which the information requested already exists in the public domain;

(ii) NED will consider the extent to which the value of the information relates to an understanding of government operations or activities as op-

posed to the extent to which the information relates to other subjects.

(3) Whether the information requested will contribute to public understanding of government operations or activities. For purposes of determining whether the request meets this factor:

(i) NED will consider whether the disclosure will contribute to a public understanding as opposed to a primarily personal understanding of the requester;

(ii) NED will consider the identity of the requester to determine whether such requester is in a position to contribute to public understanding through disclosure of the information. Requesters shall describe their qualifications to satisfy this consideration;

(iii) NED will consider the expertise of the requester and the extent to which the expertise will enable the requester to extract, synthesize and convey the information to the public. Requesters shall describe their qualifications to satisfy this consideration;

(4) Whether the contribution to public understanding will be significant. In determining whether this factor has been met:

(i) NED will consider whether the public's understanding of the subject matter in question is likely to be enhanced by the disclosure of information by a significant extent;

(ii) NED will compare the likely level of public understanding of the subject matter of the request before and after disclosure.

(5) After NED is satisfied that factors (h)(1) through (4) have been met, it will consider whether the requested disclosure is primarily in the commercial interest of the requester.

(i) For purposes of this subsection, *commercial interest* is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. Under this subsection, a “commercial interest” shall not be an interest served by a request for records supporting the news dissemination function of the requester. All requesters who seek a fee waiver under section (h) of these regulations must disclose any and all commercial interests that would be furthered by the requested

disclosure. NED shall use this information, information in its possession, reasonable inferences drawn from the requester's identity, and the circumstances surrounding the request to determine whether the requester has any commercial interest that would be furthered by the disclosure. If information that NED obtains from a source other than the requester or reasonable inferences or other circumstances are used in making a determination under this paragraph (h)(5), NED shall inform the requester of the information, inferences or circumstances that were used in its initial determination. The requester may, prior to filing an appeal of the initial determination with the President of NED or his designee under paragraph (a)(2) of this section, provide further information to rebut such reasonable inferences, or to clarify the circumstances of the request to the person responsible for the initial determination. Such action by the requester must occur within 20 days of the initial determination by NED. Within 10 days of receipt of such further information, clarification, or rebuttal, NED shall respond to the additional information, reverse or affirm its original position and state the reasons for the reversal or affirmation. Receipt of an affirmation by the requester shall constitute an initial denial of a request for purposes of the appeal process described in paragraphs (a) and (b) of this section.

(ii) NED shall consider the magnitude of the requester's commercial interest. In making a determination under this factor, NED shall consider the role that the disclosed information plays with respect to the requester's commercial interests and the extent to which the disclosed information serves the range of commercial interests of the requester.

(iii) NED shall weigh the magnitude of the identified commercial interest of the requester against the public interest in disclosure in order to determine whether the disclosure is primarily in the commercial interest of the requester. If the magnitude of the public interest in disclosure is greater than the magnitude of the requester's commercial interest, NED shall grant a full or partial fee waiver.

(6) In determining whether to grant a full or partial fee waiver, NED shall, to the extent possible, identify the portion of the information sought by the requester that satisfies the standard governing fee waivers set forth in FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), and in paragraphs (h)(1) through (6) of this section, and grant a fee waiver with respect to those documents. Fees for reproduction of documents that do not satisfy these standards shall be assessed as provided in paragraphs (c) through (g) of this section.

(i) Except as provided in paragraph (h)(5)(i) of this section, a requester may appeal a determination of the fees to be charged or waived under these regulations as he or she would appeal an initial determination of documents to be disclosed under paragraphs (a) and (b) of this section.

[51 FR 40162, Nov. 5, 1986, as amended at 52 FR 37766, Oct. 9, 1987. Redesignated and amended at 64 FR 54540, Oct. 7, 1999]

§ 66.6 Exemptions.

NED reserves the right to withhold records and information that are exempt from disclosure under FOIA. *See* 5 U.S.C. 552(b).

§ 66.7 Limitation of exemptions.

FOIA does not authorize withholding of information or limit the availability of NED records to the public except as specifically stated in this part. Nor is authority granted to withhold information from Congress.

§ 66.8 Reports.

On or before March 1 of each calendar year, NED shall submit a reporting covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include those items specified at 5 U.S.C. 552(d).

PART 67—ORGANIZATION OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Sec.
67.1 Introduction.

§ 67.1

- 67.2 Board of Directors.
- 67.3 Management.
- 67.4 Description of functions and procedures.

AUTHORITY: 22 U.S.C. 4411 *et seq.*; Title II, Sec. 210, Pub. L. 99-93, 99 Stat. 431 (22 U.S.C. 4415); Pub. L. 105-277, 112 Stat. 2681 *et seq.*

SOURCE: 51 FR 40164, Nov. 5, 1986, unless otherwise noted. Redesignated at 64 FR 54541, Oct. 7, 1999.

§ 67.1 Introduction.

(a) The National Endowment for Democracy (hereinafter "NED") was created in 1983 to strengthen democratic values and institutions around the world through nongovernmental efforts. Incorporated in the District of Columbia and governed by a bipartisan Board of Directors, NED is tax-exempt, nonprofit, private corporation as defined in section 501(c)(3) of the Internal Revenue Code. Through its worldwide grant program, NED seeks to enlist the energies and talents of private citizens and groups to work with partners abroad who wish to build for themselves a democratic future.

(b) Since its establishment in 1983, NED has received an annual appropriation approved by the United States Congress as part of the United States Information Agency budget. Appropriations for NED are authorized in the National Endowment for Democracy Act (the "Act"), 22 U.S.C. 4411 *et seq.*

(c) The activities supported by NED are guided by the six purposes set forth in NED's Articles of Incorporation and the National Endowment for Democracy Act. These six purposes are:

(1) To encourage free and democratic institutions throughout the world through private-sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions;

(2) To facilitate exchanges between U.S. private sector groups (especially the two major American political parties, labor and business) and democratic groups abroad;

(3) To promote U.S. nongovernmental participation (especially through the two major American political parties, labor, and business) in democratic

22 CFR Ch. I (4-1-12 Edition)

training programs and democratic institution-building abroad;

(4) To strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces;

(5) To support the participation of the two major American political parties, labor, business, and other U.S. private-sector groups in fostering cooperation with those abroad dedicated to the cultural values, institutions, and organizations of democratic pluralism; and

(6) To encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific requirements of the democratic groups in other countries which are aided by NED-supported programs.

§ 67.2 Board of Directors.

(a) NED is governed by a bipartisan board of Directors of not fewer than thirteen and not more than twenty-five members reflecting the diversity of American society. The officers of the corporation are Chairman and Vice Chairman of the Board, who shall be members of the Board, a President, Secretary and Treasurer, and such other officers as the Board of Directors may from time to time appoint. Meetings of the Board of Directors are held at times determined by the Board, but in no event fewer than four times each year. A current list of members of the Board of Directors and a schedule of upcoming meetings is available from NED's office at 1101 15th Street, NW; Suite 700, Washington, DC 20005-5000.

(b) All major policy and funding decisions are made by the Board of Directors. The primary statement of NED's operating philosophy, general principles and priorities is contained in the National Endowment for Democracy's *Statement of Principles and Objectives*, adopted by the Board of Directors in December 1984. Copies of this statement as well as other general information concerning the organization are available from NED on request.

(c) As a grantmaking organization, NED does not carry out programs directly. All grants made by the corporation shall be by a two-thirds vote of

Department of State

§ 67.4

those voting at a meeting at which a quorum is present. Notwithstanding the foregoing, the Board may from time to time adopt, upon a two-thirds vote of those voting at a meeting at which a quorum is present, procedures to address emergency funding requests between meetings of the Board. In addition, “[a]ny Board member who is an officer or director of an organization seeking to receive grants from the Corporation must abstain from consideration of and any vote on such grant” (Article VI, Section 6). Copies of the bylaws are available from NED’s offices.

[51 FR 40164, Nov. 5, 1986. Redesignated and amended at 64 FR 54541, Oct. 7, 1999]

§ 67.3 Management.

(a) NED’s operations and staff are managed by a President selected by the Board of Directors. The President is the chief executive officer of the corporation and manages the business of the corporation under the policy direction of the Board of Directors. The President directs a staff whose functions are divided among the Office of the President, a Program Section and a Finance Office.

(b) The Office of the President provides policy direction and is responsible for day-to-day management of the organization, including personnel management, liaison with the Board of Directors and preparation of meetings of the Board and Board committees. The President’s office also provides information concerning NED’s activities to the press and public. The Program Section, under the direction of the Director of Program, is responsible for the review and preparation of proposals submitted to the Endowment and for the monitoring and evaluation of all programs funded by NED.

(c) The Finance Office, under the direction of the Comptroller, is responsible, with the President and the Board of Directors, for financial management of NED’s affairs, including both administrative financial management and grant management. The Director of Program and the Comptroller report to the NED President.

§ 67.4 Description of functions and procedures.

(a) In accordance with the *Statement of Principles and Objectives*, NED is currently developing and funding programs in five substantive areas:

(1) *Pluralism*. NED encourages the development of strong, independent private-sector organizations, especially trade unions and business associations. It also supports cooperatives, civic and women’s organizations, and youth groups, among other organizations. Programs in the areas of labor and business are carried out, respectively, through the Free Trade Union Institute and the Center for International Private Enterprise.

(2) *Democratic governance and political processes*. NED seeks to promote strong, stable political parties committed to the democratic process. It also supports programs in election administration and law, as well as programs that promote dialogue among different sectors of society and advance democratic solutions to national problems.

(3) *Education, culture and communications*. NED funds programs that nourish a strong democratic civic culture, including support for publications and other communications media and training programs for journalists; the production and dissemination of books and other materials to strengthen popular understanding and intellectual advocacy of democracy; and programs of democratic education.

(4) *Research*. A modest portion of NED’s resources is reserved for research, including studies of particular regions or countries where NED has a special interest, and evaluations of previous or existing efforts to promote democracy.

(5) *International cooperation*. NED seeks to encourage regional and international cooperation in promoting democracy, including programs that strengthen cohesion among democracies and enhance coordination among democratic forces.

(b) As a grantmaking organization, NED has certain responsibilities that govern its relationship with all potential and actual grantees. Briefly, these are:

(1) *Setting program priorities* within the framework of the purposes outlined in NED's articles of incorporation and contained in the legislation, and guided by the general policy Statement of the Board of Directors;

(2) *Reviewing and vetting proposals*, guided by the general guidelines and selection criteria adopted by the NED Board;

(3) *Coordinating among all grantees* to avoid duplication and to assure maximum program effectiveness;

(4) *Negotiating a grant agreement* which ensures a high standard of accountability on the part of each grantee;

(5) *Financial and programmatic monitoring* following the approval and negotiation of a grant, and ongoing and/or follow-up evaluation of programs prior to any subsequent funding of either a particular grantee or a specific program. Grantees will also be expected to monitor projects, to provide regular reports to NED on the progress of programs, and to inform NED promptly of any significant problems that could affect the successful implementation of the project. NED grantees will also conduct their own evaluations of programs.

(6) As a recipient of congressionally appropriated funds, NED has a special responsibility to:

(i) Operate openly,

(ii) Provide relevant information on programs and operations to the public, and

(iii) Ensure that funds are spent wisely, efficiently, and in accordance with all relevant regulations.

(c) Institutes representing business, labor, and the major political parties carry out programs which are central to NED's purposes. As a result of their unique relationship to NED, institute programs are an integral part of NED's priorities and the institutes themselves are "core" grantees. As such, the institutes, while subject to all the normal procedures governing NED's relationships with grantees, will be treated differently in the following respects:

(1) The institutes will have the mandate to carry out programs funded by NED in their respective sectors of business, labor and political parties.

(2) As an integral part of the process of budgeting and setting program priorities, the NED Board will target a certain amount of its annual resources for institute programs in their respective fields of activity.

(3) Unlike its practice for the majority of its grantees, NED will fund significant administrative costs for each of the core grantees.

(4) Institute staff will assume responsibility for program development and preparation of proposals for the Board in each field of activity for which it has a special mandate.

(5) NED will expect its core grantees to perform their monitoring/evaluation function described in programmatic monitoring under *Financial and programmatic monitoring* above in a manner that will minimize the need to devote NED resources for these purposes. (Individual copies of the Grants Policy are available from the NED office.)

(6) As stated above, in awarding grants the Board is guided by established grant selection criteria. In addition to evaluating how a program fits within NED's overall priorities, the Board considers factors such as the urgency of a program, its relevance to specific needs and conditions in a particular country, and the democratic commitment and experience of the applicant. NED is especially interested in proposals that originate with indigenous democratic groups. It is also interested in nonpartisan programs seeking to strengthen democratic values among all sectors of the democratic political spectrum.

(d) *Selection criteria.* In determining the relative merit of a particular proposal NED considers whether the grant application:

(1) Proposes a program that will make a concrete contribution to assisting foreign individuals or groups who are working for democratic ends and who need NED's assistance.

(2) Proposes a program, project or activity which is consistent with current NED program priorities and contributes to overall program balance and effectiveness.

(3) Proposes an activity that meets an especially urgent need.

(4) Does not overlap with what others are doing well.

Department of State

§ 67.4

(5) Proposes a program that will encourage an intellectual climate which is favorable to the growth of democratic institutions.

(6) Proposes a program that is not only culturally or intellectually appealing, but will affect the education and the awareness of minorities and/or the less privileged members of a society.

(7) Originates from an organization within a particular country representing the group whose needs are to be addressed.

(8) Appears to be well thought out, avoiding imprudent activities and possibilities for negative repercussions.

(9) Takes into consideration not only what objectively could be significant to a certain society, but how the cultural traditions and values of that society will react to the project.

(10) Incorporates an analysis of the problem of democracy in the area in question and the method by which the proposed program will have a constructive impact on the problem.

(11) Proposes a program that will enhance our understanding of what really helps in aiding democracy.

(12) Creatively enlists supports for foreign democratic organizations.

(13) Encourages democratic solutions and peaceful resolution of conflict in situations otherwise fraught with violence.

(14) Proposes a program, project or activity that is clearly relevant to NED program objectives and not better funded by other government or private organizations. (Proposing organizations will be referred to other funding organizations where substantial overlap exists.)

(15) Proposes a program or strategy that is appropriate to the circumstances in the country concerned.

(16) Proposes a program that can be expected to have a multiplier effect, hence having an impact broader than that of the specific project itself; or establishes a model that could be readily replicated in other countries or institutions.

(17) Proposes appropriate, qualified staff who have a demonstrated ability to administer programs capably so as to accomplish stated goals and objectives.

(18) Proposes an appropriate ratio of administrative to program funds.

(19) Is responsive to NED suggestions with regard to program revisions.

(20) Proposes a realistic budget that is consistent with NED perceptions of project value and is performed within a stated and realistic time frame; and

(21) Proposes a program that has, as one of its principal aspects, a major impact on the role of women and/or minorities.

(e) The following guidelines also apply to all projects funded by NED.

(1) The proposing organization must be able to show that it is a responsible, credible organization or group that has a serious and demonstrable commitment to democratic values. (Various factors may be considered in this regard: recognized democratic orientation; established professional reputation; proven ability to perform; existence of organization charter, board of directors, regular audits, etc.);

(2) The proposing organization must be willing to comply with all provisions of the National Endowment for Democracy Act as well as all provisions of current and subsequent agreements between the USIA and NED;

(3) The proposing organization must agree not to use grant funds for the purpose of educating, training, or informing United States audiences of any U.S. political party's policy or practice, or candidate for office. (This condition does not exclude making grants or expenditures for the purpose of educating, training or informing audiences of other countries on the institutions and values of democracy that may incidentally educate, train, or inform American participants);

(4) The proposing organization must agree that no NED funds will be used for lobbying or propaganda that is directed at influencing public policy decisions of the government of the United States or of any state or locality thereof;

(5) The proposing organization must agree that there shall be no expenditure of NED funds for the purpose of supporting physical violence by individuals, groups or governments;

(6) The proposing organization may not employ any person engaged in intelligence activity on behalf of the

§ 67.4

22 CFR Ch. I (4-1-12 Edition)

United States government or any other government;

(7) NED will not normally reimburse grantees for expenses incurred prior to the signing of a grant agreement with NED;

(8) Each grant made by NED will be an independent action implying no future commitment on NED's part to a project or program;

(9) NED may, from time to time, fund feasibility studies. Applications for grants in this category should include, but not be limited to, the following: Scope, method and objective of the study; Calendar; Proposed administration of the study; and Detailed budget. The funding of a feasibility study by NED does not imply support for any project growing out of the study. It does, however, imply interest by NED in the area under study and a willingness to entertain a project proposal growing out of the study; and

(10) The proposing organization may not use NED funds to finance the campaigns of candidates for public office.

(f) All proposals received by NED are reviewed by the staff in order to determine their congruence with NED's purposes as stated in the organization's Articles of Incorporation and the NED Act.

(g) Grant applications must contain the following information:

(1) A one-page summary of the proposed program;

(2) Organizational background and biographical information on staff and directors in the U.S. and abroad;

(3) A complete project description, including a statement of objectives, a

project calendar, and a description of anticipated results;

(4) A statement describing how the project relates to NED's purposes;

(5) A description of the methods to be used to evaluate the project in relation to its objectives;

(6) A detailed budget, including an explanation of any counterpart support anticipated by the applicant, whether monetary or in-kind, domestic or foreign; and

(7) The names and addresses of all other funding organizations to which the proposal has been submitted or will be submitted.

(h) After an award determination has been made by the Board, NED enters into a grant agreement with the recipient. That agreement is made in accordance with NED policy, the terms of NED's grant agreement with USIA, and the terms of the Act, and the terms of NED's standard grant agreement as they apply to the specific project in question. The NED Board of Directors approved a revised Statement of General Procedures and Guidelines on September 12, 1986. The statement, outlined above, is available from the NED office.

(i) NED Staff welcomes preliminary letters of inquiry prior to submission of a formal proposal. Letters of inquiry and formal proposals should be submitted to: Director of Program, National Endowment for Democracy 1101 15th Street, NW, Suite 700, Washington, DC 20005-5000.

[51 FR 40164, Nov. 5, 1986. Redesignated and amended at 64 FR 54541, Oct. 7, 1999]