

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 12016]

RIN 1400–AC36

Exchange Visitor Program—General Provisions

AGENCY: Department of State.

ACTION: Interim final rule, with request for comment.

SUMMARY: The U.S. Department of State (Department of State) is publishing an interim final rule with request for comment (interim final rule) for Exchange Visitor Program regulations, the regulations that apply to sponsors the Department of State designates to conduct international educational and cultural exchange programs. The Department of State is making administrative changes to the regulations to include providing sponsors two new options: using digital signature software to sign Certificates of Eligibility for Exchange Visitor (J–1) Status (Forms DS–2019) and electronically transmitting Forms DS–2019. Sponsors should experience cost savings and increased efficiencies from these changes.

DATES: This interim final rule is effective on April 27, 2023. The Department of State will accept public comments until May 30, 2023.

ADDRESSES: Interested parties may submit comments to the Department of State by any of the following methods:

- Visit the *Regulations.gov* website at: <http://www.regulations.gov> and search for the docket number DOS–2023–0010.
- Email: JExchanges@state.gov.

Commenting parties must include RIN 1400–AC36 in the subject line of the email message.

- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department of State is unable to read a comment for any reason, and cannot contact the commenting party for clarification, the Department of State may not be able to consider your comment. After the conclusion of the comment period, the Department of State will publish a final rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT:

Karen Ward, Director, Office of Private Sector Exchange Designation, at SA–5, 2200 C Street NW, Washington, DC 20522 or via email at JExchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department of State published a notice of proposed rulemaking (NPRM) for subpart A of 22 CFR part 62 in the **Federal Register** on September 22, 2009 (74 FR 48177). Subpart A sets forth the general provisions for eligibility and continuing requirements for all designated sponsors that conduct exchange visitor programs. After considering the comments that more than 100 parties submitted in response to the NPRM, the Department of State published a final rule on October 6, 2014 (79 FR 60294), at which time it requested additional comments (2014 final rule).

The sponsor community has long sought the ability to digitally sign and electronically transmit (e.g., via email) Forms DS–2019, i.e., the Student and Exchange Visitor Information System–(SEVIS–) generated documents that prospective exchange visitors and their spouses and dependents, if any, must present at U.S. embassies or consulates to apply for J–visas. This Interim Final Rule permits sponsors to sign Forms DS–2019 using digital signatures, defined as follows: An application of technology for cryptographically derived signatures that ensures meaningful authentication of the identity of the signer and integrity of the document. Digital signatures are a subset of electronic signatures, but unlike other electronic signatures, digital signatures employ cryptography, i.e., are backed by a process such as a public key infrastructure. Commonly used digital signature software packages include, but are not limited to, DocuSign, Adobe Sign, and Global Sign. For sponsors that are unable or do not wish to apply digital signatures, the Interim Final Rule retains the current option of printing and hand signing Forms DS–2019 in ink.

With the implementation of this rule, sponsors may transmit Forms DS–2019 electronically, including directly to exchange visitors. Sponsors without digital signature capacity may print and sign forms in ink (as they do now, except that blue ink is no longer required), scan the forms (e.g., into portable document format (PDF) files), and then transmit them electronically. The Department of State notes that these regulatory changes will have no impact on SEVIS functionality or the number of Forms DS–2019 allotted to sponsors.

The Department of State believes that many sponsors already have digital signature software, and that the elimination of the requirement that sponsors mail paper forms worldwide will result in significant cost-savings. Accordingly, it anticipates that most

sponsors will recognize the benefits of digital signatures and, if they have not already done so, will invest in digital signature software.

In this interim final rule, the Department of State also clarifies, corrects, and/or deletes ambiguous, obsolete, or technically inaccurate language and requirements, some of which were adopted before SEVIS-generated Forms DS–2019 replaced paper Forms IAP–66. The following two changes are also made by this rulemaking: adoption of the plural forms of nouns (e.g., sponsors, exchange visitors); and replacement of the term “original” with the term “paper” when describing the physical Forms DS–2019.

The reasons for the regulatory changes, including comments about such changes, follow for each provision of 22 CFR 62.12 that the Department of State modifies herein. The following bolded citations represent current regulatory text in 22 CFR part 62.

22 CFR 62.12(a) Issuance of Forms DS–2019

22 CFR 62.12(a)(1). The Department of State adds the language “to SEVIS” to clarify that it is access to SEVIS that is restricted to Responsible Officers and Alternate Responsible Officers (collectively, Officers).

22 CFR 62.12(a)(3). The Department of State incorporates into this paragraph the requirement that sponsors may issue Forms DS–2019 for the enumerated purposes only if the regulations permit, and if necessary, the Department of State authorizes the action. This change updates this specific regulatory language to clarify requirements for sponsors.

22 CFR 62.12(a)(3)(ii). The Department of State eliminates the phrase “when permitted by the regulations and authorized by the Department of State” because these general requirements are now present in 22 CFR 62.12(a)(3).

22 CFR 62.12(a)(3)(iii). For the same reason, the Department of State eliminates the phrase “when permitted by the regulations and/or authorized in writing by the Department of State.”

22 CFR 62.12(a)(3)(iv). The Department of State makes no changes to this paragraph. The Department of State confirms the need to use the reprint function in SEVIS when replacing Forms DS–2019 that have been lost, stolen, or damaged. When nonimmigrants traveling on J–visas lose their Forms DS–2019, sponsors historically would reprint the previously issued forms and send them to the exchange visitors who requested a copy. With electronic transmission,

sponsors should still use the reprint function in SEVIS to appropriately record the action before electronically transmitting replacement forms to exchange visitors.

22 CFR 62.12(a)(3)(v). Commenting parties opined that re-entry into the United States is not a reason that sponsors initially issue Forms DS-2019. The Department of State notes, however, there are instances when all travel signature lines on Forms DS-2019 are filled, and Officers must issue new forms. Accordingly, the Department of State retains this provision.

22 CFR 62.12(a)(3)(vi). The Department of State eliminates the phrase “when requested in SEVIS and authorized by the Department of State.” The phrase “when requested in SEVIS” describes the method of requesting category changes and is unnecessary in a rule that enumerates the reasons for issuing Forms DS-2019.

22 CFR 62.12(a)(3)(vii). The Department of State eliminates the phrase “or a change in actual and current U.S. address” in response to numerous comments that explained that this was not a valid example of reasons to issue Forms DS-2019 since this SEVIS field is not printed on Forms DS-2019.

22 CFR 62.12(b) Verification

22 CFR 62.1(b)(2)(ii). The Department of State eliminates the requirement that Officers sign paper Forms DS-2019 using only blue ink to permit greater flexibility for sponsors.

22 CFR 62.12(b)(2)(iii). In response to numerous requests from sponsors to be able to sign Forms DS-2019 electronically, the Department of State adds a new paragraph to permit digital signatures, defined as an application of technology for cryptographically derived signatures that ensures meaningful authentication of the identity of the signer and integrity of the document. Digital signatures are a subset of electronic signatures, but unlike other electronic signatures, digital signatures employ cryptography, *i.e.*, are backed by a process such as a public key infrastructure. Sponsors may also continue to sign paper Forms DS-2019 forms in ink. The Department removes the requirement that the DS-2019 be signed in blue ink to allow greater flexibility for sponsors. The Department of State also recommends that sponsors remind applicants and their accompanying spouses and dependents, if any, that they must take a paper form to their visa interviews to be stamped and signed by a consular officer. They must also present a paper

copy of their Forms DS-2019 at their ports of entry into the United States.

Several commenting parties also sought the flexibility to allow any Officer to sign Forms DS-2019 that they submit via batch processing, when Officers whose names were printed on forms are not present to sign paper forms. However, when Officers print or reprint Forms DS-2019, SEVIS automatically populates Field #7 with the name of the Officer who initially submitted the action, making it necessary for that Officer to sign the paper form. In the electronic environment, digital signatures are embedded in documents, allowing Officers to sign forms as they create them, thereby mitigating this concern.

Several commenting parties also asked whether different Officers could sign Forms DS-2019 when they are reprinted for travel purposes. As noted above, SEVIS prints in Field #7 the name of the Officer who initiated the print/reprint function. Since a signature must match the name of the Officer printed on each form, sponsors should ensure that Officers whose names appear on forms are available to sign them. The Officer that signs the original Form DS-2019 may be different than the Officer that reprints the form from SEVIS. The Department of State will explore the capability of enhancing SEVIS to allow users to select the names of Officers that will print on forms.

22 CFR 62.12(c) Distribution of Forms DS-2019

The Department of State changes the heading of paragraph (c) to “Transmission of Forms DS-2019” and clarifies to whom sponsors may transmit Forms DS-2019. Many commenting parties read the current regulatory language to limit sponsors’ transmission of Forms DS-2019 to only “authorized parties,” meaning the Department of State and the Department of Homeland Security. Many commenters requested the Department of State expand the definition of “authorized parties.” To clarify this provision, the Department of State now specifically enumerates the parties to whom sponsors may transmit Forms DS-2019 electronically (*e.g.*, via email) or by mail (*e.g.*, via postal or delivery service): exchange visitors; accompanying spouses and dependents; legal guardians of minor exchange visitors; sponsor staff; Fulbright commissions and their staff; and Federal, State, and local government agencies or departments. The Fulbright commissions (and their staff) referenced above are authorized and established pursuant to section 103 of the Mutual Educational and Cultural Exchange Act

of 1961 (commonly known as the Fulbright-Hays Act) (22 U.S.C. 2453). The Department of State notes that sponsors’ Officers must ensure that Forms DS-2019 are secured; and they may transmit them electronically to other sponsor staff only on a shared network.

The Department of State clarifies that sponsors may continue to transmit paper Forms DS-2019 via mail to foreign third parties acting on their behalf to facilitate their gathering necessary paperwork for multiple applicants to take to their visa interviews. Sponsors may not transmit Forms DS-2019 electronically to foreign third parties, however, as the ability to transmit forms electronically to the parties enumerated above eliminates the need for foreign third parties to have access to electronic forms.

22 CFR 62.12(d) Allotment Requests

The Department of State makes case corrections and clarifying edits in this paragraph. It also eliminates the language establishing four weeks as the estimated time for responding to allotment requests since conditions outside the control of the Department of State may delay meeting any specific deadline. It also clarifies that sponsors should refer to the most recent version of the *User Manual for Exchange Visitor Program Sponsor Users (RO/ARO) of SEVIS Volume I, Forms DS-3036 and DS-3037* on the j1visa.state.gov website to determine whether the Department of State has modified or updated the “other information” that the regulation states it may require. Otherwise, it maintains the current regulatory language.

22 CFR 62.12(e) Safeguards and Controls

22 CFR 62.12(e)(1). The Department of State replaces the term “SEVIS logon identification Numbers (IDs)” with the technically accurate term “SEVIS User Names.”

22 CFR 62.12(e)(2). The Department of State modifies this section to prohibit transmission of Forms DS-2019 to any parties other than those listed in paragraph (c).

22 CFR 62.12(e)(3). The Department of State adds the word “damaged” to be consistent with 22 CFR 62.12(a)(3)(iv). It reminds sponsors to use the reprint function in SEVIS to sign and transmit reprinted Forms DS-2019.

22 CFR 62.12(e)(4). The Department of State makes no changes to this section.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is issuing this rulemaking as an interim final rule for the following reasons. In the 2014 rulemaking, the Department of State stated its view that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjudications) of the Administrative Procedure Act (APA). It also asserts that this rulemaking is exempt from notice and comment for two separate reasons. First, the rule responds to relevant comments submitted in response to the 2014 final rule, and as such, is a logical outgrowth of the 2014 final rule. The changes included in this rulemaking constitute rules of “agency organization, procedure, or practice” (5 U.S.C. 553(b)(3)(A)). Also, the Department of State has “good cause” to find that notice and comment is “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)(3)(B)). In the 2014 Final Rule, the Department of State sought comments on 22 CFR 62.12, the control of Forms DS–2019. This interim final rule responds to those commenters and adopts some changes that were recommended at that time. With respect to the procedural rule exception (5 U.S.C. 553(b)(3)(A)), the Department is expanding options for signing and transmitting Forms DS–2019, without eliminating the current method. Although there may be de minimis costs for sponsors to obtain digital signature software to avail themselves of the new digital signature provision (if they choose to do so), those sponsors who elect to continue the current procedure will not incur that cost. Accordingly, the Department of State believes that additional prior notice and public comment on this provision are not necessary.

Congressional Review Act

This regulation is not a major rule as defined by 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local or Tribal governments, in the aggregate, or by the private sector, of \$100 million in any

year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*).

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of State has determined that this regulation will not have Tribal implications; will not impose substantial direct compliance costs on Indian Tribal governments; and will not preempt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act: Small Business Impacts

Since this rule is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the APA, this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* (1980)).

Executive Orders 12866 and 13563

The Department of State has submitted this rule to the Office of Information and Regulatory Affairs, pursuant to its longstanding practice.¹ The Department of State certifies that the benefits of this rulemaking outweigh any costs, since sponsors and exchange visitors will more likely experience cost savings from the options presented herein, and sponsors have in fact requested the changes. The Office of Information and Regulatory Affairs has designated this rule as non-significant, as defined by Executive Order 12866.

Executive Order 12988

The Department of State has reviewed this rulemaking considering sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens.

Executive Orders 12372 and 13132—Federalism

The Department of State finds that this regulation does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

¹ Pursuant to letters exchanged between the Department of State Legal Adviser and the Administrator of OIRA shortly after E.O. 12866 was signed, the Department of State is generally exempt from the provisions of E.O. 12866, except when it is promulgating regulations in conjunction with a domestic agency; provided that OIRA may review any significant regulatory actions of which it becomes aware.

Paperwork Reduction Act

This rulemaking does not create or modify any information collection that is subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange programs; Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of State amends 22 CFR part 62 as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation to 22 CFR part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431 *et seq.*; 22 U.S.C. 2451 *et seq.*; 22 U.S.C. 2651a; 22 U.S.C. 6531–6553; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048, 43 FR 13361, 3 CFR, 1978 Comp., p. 168; 8 U.S.C. 1372; section 416 of Pub. L. 107–56, 115 Stat. 354 (8 U.S.C. 1372 note); and 8 U.S.C. 1761–1762.

■ 2. Revise § 62.12 to read as follows:

§ 62.12 Control of Forms DS–2019.

(a) *Issuance of Forms DS–2019.*
Sponsors must:

- (1) Grant access to SEVIS only to Responsible Officers and Alternate Responsible Officers and ensure that they have access to and use SEVIS to update required information;
- (2) Ensure that Responsible Officers and Alternate Responsible Officers input into SEVIS accurate, current, and updated information in accordance with these regulations; and
- (3) Issue Forms DS–2019 only for the following purposes if permitted by the regulations and, as necessary, authorized by the Department of State:
 - (i) To facilitate the initial entry of exchange visitors and accompanying spouses and dependents, if any, into the United States;
 - (ii) To extend the duration of participation of exchange visitors;
 - (iii) To facilitate program transfers;
 - (iv) To replace lost, stolen, or damaged Forms DS–2019;
 - (v) To facilitate the re-entry into the United States of exchange visitors and accompanying spouses and dependents, if any, who travel outside the United States during exchange visitors' programs;
 - (vi) To facilitate changes of category;
 - (vii) To update information when significant changes take place in regard to exchange visitors' programs (e.g., substantial changes in funding, change in primary sites of activity, or changes in actual and current U.S. address);
 - (viii) To facilitate the correction of a minor or technical infraction; or

(ix) To facilitate a “reinstatement” or a “reinstatement update SEVIS status.

(b) *Verification.* (1) Prior to issuing Forms DS–2019, sponsors must verify that prospective exchange visitors:

(i) Are eligible and qualified for, and accepted into, the programs in which they will participate;

(ii) Possess adequate financial resources to participate in and complete their exchange visitor programs; and

(iii) Possess adequate financial resources to support accompanying spouses and dependents, if any.

(2) Sponsors must ensure that:

(i) Only Responsible Officers or Alternate Responsible Officers who are physically present in the United States or in a U.S. territory may print and/or sign Forms DS–2019;

(ii) Only Responsible Officers or Alternate Responsible Officers whose names are printed on Forms DS–2019 are permitted to sign the forms; and

(iii) Responsible Officers or Alternate Responsible Officers sign paper Forms DS–2019 in ink or sign Forms DS–2019 using digital signatures.

(c) *Transmission of Forms DS–2019.* Sponsors may transmit Forms DS–2019 either electronically (e.g., via email) or by mailing them (e.g., via postal or delivery service) to only the following individuals or entities: exchange visitors; accompanying spouses and dependents, if any; legal guardians of minor exchange visitors; sponsor staff; Fulbright Commissions and their staff; and Federal, State, or local government agencies or departments. In addition, sponsors may mail signed paper Forms DS–2019 via postal or delivery service to foreign third parties acting on their behalf for distribution to prospective exchange visitors.

(d) *Allotment requests*—(1) *Annual Form DS–2019 allotment.* Sponsors must submit an electronic request via SEVIS to the Department of State for an annual allotment of Forms DS–2019 based on the annual reporting cycle (e.g., academic, calendar, or fiscal year) stated in their letter of designation or redesignation. The Department of State has sole discretion to determine the number of Forms DS–2019 it will issue to sponsors.

(2) *Expansion of program.* Requests for program expansion must include information such as, but not limited to, the justification for and source of program growth, staff increases, confirmation of adequately trained employees, noted programmatic successes, current financial information, additional overseas affiliates, additional third-party entities, explanations of how the sponsor will accommodate the anticipated program growth, and any

other information the Department of State may request. The Department of State will take into consideration the current size of sponsors programs and the projected expansion of their programs in the next 12 months and may consult with the Responsible Officer and/or Alternate Responsible Officers prior to determining the number of Forms DS–2019 it will issue.

(e) *Safeguards and controls.* (1) Responsible Officers and Alternate Responsible Officers must always secure their SEVIS User Names and passwords (i.e., not share User Names and passwords with any other person or to permit access to and use of SEVIS by any person).

(2) Sponsors may transmit Forms D–2019 only to the parties listed in paragraph (c) of this section. However, sponsors must transmit Forms DS–2019 to the Department of State or the Department of Homeland Security upon request.

(3) Sponsors must use the reprint function in SEVIS when exchange visitors’ Forms DS–2019 are lost, stolen, or damaged, regardless of whether they are transmitting forms electronically or mailing them.

(4) Sponsors must destroy any damaged and/or unusable Forms DS–2019 (e.g., forms with errors or forms damaged by a printer).

Karen Ward,

Director, Office of Private Sector Exchange Designation, Bureau of Educational and Cultural Affairs, U.S. Department of State.

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DEPARTMENT OF STATE

22 CFR Chapter I

[Public Notice 11985]

RIN 1400–ZA27

Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras

AGENCY: Department of State.

ACTION: Interpretation of certain statutory provisions.

SUMMARY: The Department of State (“Department”) is issuing this document to state its interpretation of certain provisions in the Immigration and Nationality Act (INA) regarding the availability of immigrant visa numbers in categories subject to an annual numerical limit. To ensure that Department practice is consistent with these INA provisions, future *Visa*

Bulletins, beginning with the April 2023 *Visa Bulletin*, will reflect this interpretation with respect to the availability of employment-based preference visas for applicants from the Northern Central American countries of El Salvador, Guatemala, and Honduras (“NCA Countries”).

DATES: March 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Andrea Lage, Acting Senior Regulatory Coordinator, Visa Services, Bureau of Consular Affairs, 600 19th Street NW, Washington, DC 20522, 202–485–7586, VisaRegs@state.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Applicants for immigrant visas subject to numerical limitations prescribed in sections 201–203 of the INA, 8 U.S.C. 1151–1153, are generally chargeable to their country of birth. INA 203(e), 8 U.S.C. 1153(e), governs the order in which immigrant visas in the family-sponsored and employment-based preference categories under INA 203(a)–(b), 8 U.S.C. 1153(a)–(b), respectively, are allocated, and requires that visas in these categories be made available in the order in which the associated petition is filed.

INA 202(a)(2), 8 U.S.C. 1152(a)(2), imposes a “per country” limit of seven (7) percent of the total number of available family-sponsored and employment-based preference immigrant visas each fiscal year to nationals of individual foreign states. If the Department determines that preference visa issuances to nationals of a particular country will exceed the per-country limit, that country is identified in the *Visa Bulletin* as “oversubscribed” and INA 202(e), 8 U.S.C. 1152(e), requires that visas in each preference category must be pro-rated to ensure distribution across all preference categories. Individual family-sponsored and employment-based preference categories are also deemed “oversubscribed” when worldwide demand exceeds the number of immigrant visas available in those categories. Final action dates are listed in the *Visa Bulletin* when countries and visa categories are oversubscribed, and immigrant visas in categories with final action dates are available only to applicants with priority dates earlier than the listed final action date.

The EB–4 category consists of special immigrants as defined in the INA, including certain religious workers, certain current and former U.S. Government employees abroad, certain officers and employees of international organizations, and certain special