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DOS Publishes Interim Final Rule And Comment Request On Summer Work Travel

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DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400-AC79
[Public Notice 7427]

Exchange Visitor Program--Summer Work Travel

AGENCY: Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department is amending current regulations governing the Summer Work Travel category of the Exchange Visitor Program. The amendments clarify existing policies and implement new procedures to ensure that the Summer Work Travel program continues to foster the objectives of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act). These changes will enhance the integrity and programmatic effectiveness of Summer Work Travel exchanges.

The Department has examined the potential risks and harms related to the Summer Work Travel program and believe that the current regulations do not sufficiently protect national security interests; the Department's reputation; and the health, safety, and welfare of Summer Work Travel program participants. Accordingly, and for reasons discussed more fully below, this rule modifies the Summer Work Travel regulations by establishing different employment placement requirements based on the aliens' countries of citizenship and by requiring sponsors to fully vet the job placements of all program participants. It also clarifies that only vetted U.S. host employers and vetted third party overseas agents or partners (i.e., foreign entities) with whom sponsors have contractual agreements may assist sponsors in the administration of the core functions of their exchange programs. Sponsor monitoring, reporting, and information dissemination requirements are also strengthened.

DATES: The interim final rule will become effective July 15, 2011. The Department will accept comments on the interim final rule from the public up June 27, 2011.

ADDRESSES: You may submit comments by any of the following methods:

Online: Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm> [2].

Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Designation, SA-5, Floor 5, 2200 C Street, NW., Washington, DC 20522-0505.

E-mail: JExchanges@state.gov [3]. You must include the RIN (1400-AC79) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street, NW., Washington, DC 20522-0505; fax (202) 632-2701.

SUPPLEMENTARY INFORMATION: Summer Work Travel exchange programs have been a cornerstone of U.S. public diplomacy efforts for nearly 50 years, providing an estimated two million foreign college and university students the opportunity to work and travel in the United States during their summer vacations. The popularity of this program arises from its participants' ability to enjoy true cultural exchange experiences by being able to underwrite the cost of their travel through temporary employment in the United States.

Though popular, the program is not without problems. Inadequacies in U.S. sponsors' vetting and monitoring procedures contribute to potentially dangerous or unwelcomed situations for these participants. This past summer, the Department received a significantly increased number of complaints from foreign governments, program participants, their families, concerned American citizens, the media, law enforcement agencies, other federal and local agencies, and the Congress regarding fraudulent job offers, inappropriate jobs, job cancellations on

arrival, insufficient number of work hours, and housing and transportation problems. Moreover, the Department of Homeland Security has reported an increase in incidents involving criminal conduct (e.g., money laundering, identity theft, prostitution) in several non-immigrant visa categories. To minimize the risk J-1 visa holders may become victims of these types of crimes (or actively involved in such conduct) the Department must immediately modify existing regulations. When the health, safety, and welfare of Exchange Visitor Program participants are at risk, the Exchange Visitor Program's usefulness as a public diplomacy tool is jeopardized.

Of particular concern is the criminal nature of some of the complaints associated with aliens travelling to the United States under some non-immigrant visa categories. The Department has been advised by sister law enforcement agencies of numerous documented reports of aliens either knowingly engaging in or becoming hapless victims of and accessories to criminal activities, including money laundering, money mule schemes, and Medicare fraud. Further, the young age and limited sophistication of some Exchange Visitor Program participants underlie a potential vulnerability for trafficking initiatives and criminal schemes targeted at them.

By preventing the deleterious effect that such unchecked risk can have on program participants, the interim final rule can have an immediate effect on the participants' cumulative positive opinions of the United States, thereby meeting the fundamental objective of the Exchange Visitor Program.

To address the problems noted above, the Department has taken a number of steps to improve the integrity of the program. First, in early 2010, the

Department assembled a working group of interested parties, which included representatives from the Department's Office of the Inspector General, the Bureaus of Consular Affairs and Diplomatic Security, and the Office to Monitor and Combat Trafficking in Persons. In October, we invited all Summer Work Travel program sponsors to meet with the Department to discuss the need for new regulations to strengthen the program. In November, we sought and reviewed comments from these sponsors on a number of anticipated regulatory changes and the possible need for a pilot program to strengthen requirements for aliens from certain countries who face greater risks when participating in the program. The Department also reviewed sponsor white papers and engaged the federal law enforcement community and our sister agencies in wide-ranging discussions regarding a workable approach to addressing the identified problems.

Also discussed with the sponsor community and sister agencies was the growing trend among sponsors of exchange visitor programs to outsource the core programmatic functions inherent in the administration of their programs (i.e., screening, selection, orientation, placement, monitoring, and the promotion of mutual understanding). To become designated sponsors, entities are required to demonstrate their experience in international exchange and their

ability to provide the core programmatic functions. When they outsource these functions, the Department has no assurance that the third parties who perform these tasks are qualified to take on the required roles of the sponsors. When taken to the extreme, this results in the entities whose resources and experience the Department evaluated prior to designating them as program sponsors becoming mere purveyors of J-visas, leaving the actual program administration to third parties over which the Department and sponsors have diminished degrees of control. Thus, one objective of this interim final rule is to redirect program administration back to sponsors by requiring them, among other things, to more closely scrutinize the reputations of the third parties with whom they do business (i.e., U.S. host employers and foreign entities) and independently vet and confirm all program participants' jobs. This clarification of the sponsors' responsibilities will facilitate the Department's monitoring of sponsor program activities and assist it in the future assessment of underlying causes of problems that may arise in the Summer Work Travel program.

Based on information from the sources identified above and our own trend analysis, the Department has concluded that the risk to the participants' health, safety, and welfare and to U.S. public diplomacy and foreign affairs initiatives warrants immediate changes to the Summer Work Travel regulatory model. Accordingly, the Department is establishing a new Summer Work Travel framework that recognizes potential underlying risks associated historically with participant's countries of origin as well as implementing changes to general program administration that will strengthen the program.

To this end the Department has adopted a pilot program for aliens from Belarus, Bulgaria, Moldova, Romania, Russia, and the Ukraine (the "Pilot Program Countries"), countries that, according to law enforcement agencies are known sources of the types of criminal activity that the Department wishes to avoid. The second step to safeguarding and strengthening the Summer Work Travel program is adoption of the pilot program concept(s) as the model for these amended Summer Work Travel Program regulations. Finally, the Department will closely monitor this exchange activity and intends to perform on-site reviews this year of the largest Summer Work Travel program sponsors (accounting for at least 75% of all aliens participating in this category of exchange) to assess category-wide regulatory compliance and to consult with sponsors about implementation of this interim final rule. Taken together, initial discussions with the sponsor community, sponsor comments in response to this interim final rule, the Department's assessment of the impact of the Pilot Program during the 2011 summer, and feed-back from these on-site reviews, will inform the Department's overall assessment of the success of the new Summer Work Travel program framework and the need for any changes to this interim final rule.

The Department adopts four major changes (and several minor changes) to the Summer Work Travel regulations in order to strengthen sponsors' oversight of both their program participants and the third parties who are allowed to assist them in the administration of the

core functions of their programs. We believe that these changes will minimize the risk that program participants will be subjected to abuse or less than satisfactory program experiences. First, only aliens from countries that participate in the Visa Waiver Program can enter the country without pre-placed jobs (though if they do obtain pre-placed jobs, sponsors must vet such job offers as they would those of participants from all other countries). Second, sponsors are required to fully vet the third parties (i.e., U.S. host employers and foreign entities) whom they engage to assist in performing the core functions inherent with the program administration of the Exchange Visitor Program (i.e., screening, selection, orientation, placement, monitoring, and the promotion of mutual understanding). Third, sponsors are required to fully vet all job offers, regardless of whether they, the participants, or foreign entities arrange the placements and regardless of whether the offers are arranged prior to their departure to or following their arrival in the United States. Finally, sponsors will be required to contact active program participants on a monthly basis to monitor both their welfare and their whereabouts. A summary of these and other Summer Work Travel program modifications follows:

Pre-Placement

Under the current regulations, no more than half of a sponsor's program participants may enter the United States without pre-arranged job placements. Because consular officials evaluate eligibility on a case-by-case basis, it was impossible for them to know whether sponsors were complying with this requirement. The interim final rule now links the pre-placement requirement directly to the underlying risk factor (i.e., country of origin). Thus, the interim final rule allows such officers to discern directly from applicants' paperwork whether they are required to be pre-placed.

The new Summer Work Travel regulatory model reflects different risk assessments for aliens, depending on their countries of origin. The Department recognized that a country's participation in the Visa Waiver Program could provide a means of identifying program participants who would experience lower levels of risk while visiting the United States. Governments of participating Visa Waiver Program countries must meet specific security and other requirements, such as timely reporting of incidents and enhanced law enforcement and security-related data sharing with the United States. In addition, countries are designated for inclusion in the Visa Waiver Program only if the Secretary of the Department of Homeland Security, in consultation

with the Secretary of State, establishes that the designation will not compromise security and law enforcement interests of the United States, and that the country satisfies high U.S. border control and document security standards (see http://travel.state.gov/visa/temp/without/without_1990.html#countries ^[4] for a current list of these countries.) Accordingly, this interim final rule recognizes that there is less risk for aliens from Visa Waiver Program countries being brought to the

United States under false pretenses or stranded here without jobs or resources if allowed to enter the United States without pre-arranged job placements. If, however, they do secure job placements prior to departure for the United States, sponsors must vet (i.e., confirm the terms, conditions, and viability of) those placements prior to their departure. Aliens from countries other than the Visa Waiver Program countries will be able to enter the United States only after they or their sponsors have secured firm job offers, and their sponsors have similarly vetted them.

Although Public Law 105-277 specifically authorized Summer Work Travel program to operate "without regard to pre-placement requirements," the Department has long required sponsors to find job placements for at least 50 percent (50%) of program participants before they departed their home countries. The interim final rule eliminates this arbitrary percentage and specifically and appropriately links the increased risk to the heightened regulatory requirements. Of the approximately 120,000 Summer Work Travel program participants entering the United States in 2010, however, 13 percent (13%) were from 29 of the 36 Visa Waiver Program countries. If such country-of-origin entry trends continue, implementation of the new approach will result in approximately 87% of all Summer Work Travel participants entering the United States with pre-arranged and vetted jobs. Accordingly, requiring participants from non-Visa Waiver Program countries (including participants from the Pilot Program Countries) to be pre-placed with a vetted job offer will help to ensure that most Summer Work Travel participants will not be stranded in the United States without jobs and resources or be engaged in inappropriate or problematic placements.

Job and Employee Vetting

The interim final rule also requires sponsors to vet U.S. host employers by utilizing publicly available information to confirm that potential host employers are ongoing and viable business entities. Sponsors must obtain and verify host employers' Employer Identification Numbers and verify that host employers meet state-specific workers' compensation requirements. Sponsors and foreign entities acting on their behalf are also prohibited from paying or otherwise providing any incentives to host employers to induce them to provide placements for their participants. Further, the interim final rule requires sponsors to vet all foreign entities (i.e., overseas agents or partners) that assist them in fulfilling the core programmatic functions that may be conducted outside the United States (i.e., screening, selection, and orientation) and maintain current listings of such parties in a new "Foreign Entity Report." The information in this Report is provided to Consular Officials as a means to verify that the foreign entity is a bona fide partner/agent of a US sponsor. The contents of this report have been submitted for OMB approval as a collection and will be required upon approval. Until such approval is received, we encourage sponsors to submit this information voluntarily.

To assist in the recruiting, screening, selection, and orientation

of Summer Work Travel participants, sponsors can engage only those vetted foreign entities with whom they have executed written agreements that explain their relationships and identify their respective obligations and who are included in the Foreign Entity Report. These agreements must include annually updated price lists for the Summer Work Travel programs such third parties market on behalf of the sponsors and provisions confirming that they will not: (1) Outsource any of the core programmatic functions covered by the agreement (i.e., screening, selection, and orientation) to any other third party, including staffing or employment agencies; or (2) pay or otherwise provide any incentives to host employers to induce them to provide placements for the participants of the sponsors whose interests they represent. Sponsors must obtain proof that potential foreign entities are bona fide business entities that are appropriately licensed and/or registered to conduct business in the venue(s) where they operate. They must obtain notarized statements from recognized financial entities in such venues that demonstrate the business solvency of potential foreign entities. Such foreign entities must disclose to the sponsors any previous bankruptcy proceedings and any pending legal actions; they must obtain written references from three current business associates; and they must provide summaries of any previous experience with the Exchange Visitor Program. Further, all owners and officers of such foreign entities must be vetted by criminal background checks and provide sponsors with copies of the reports in both the original language and translated into English.

Under the interim final rule, sponsors must vet all jobs (e.g., verify the terms and conditions of such employment and fully vet the identified U.S. host employers) for all participants before they can (in the case of participants from the non-Visa Waiver Program countries) enter the United States or (in the case of participants from Visa Waiver Program countries who do not have jobs upon entry) start work.

Participants may obtain self-placed jobs, whereby they (through a foreign entity or other source) identify their own job placements. Alternatively, they may elect for direct-placed jobs, in which cases, sponsors have contracted with host employers and arranged the employment of Summer Work Travel participants for specified periods, number of hours, and at specified wages. For such direct-placed jobs, the Department recognizes that sponsors and participants enter into quasi or actual contracts regarding the terms of the placements. In such cases, the sponsors have assumed an affirmative obligation to arrange suitable employment for the participants under the terms specified in the agreements. We seek specific comment on this point.

To ensure that Summer Work Travel participants do not work in unsafe or unseemly jobs, the Department has expanded the enumerated list of excluded positions program participants may not fill. Also, to ensure that sponsors maintain sufficient control to effectively administer their exchange programs, the interim final rule clarifies that sponsors may enlist the assistance of only host employers in fulfilling the core programmatic functions that are generally conducted

within the United States (i.e., orientation and monitoring). Thus, sponsors may not engage third parties other than host employers--and host employers may not engage any third parties to assist in fulfilling these functions. The Department specifically requests comment on this matter.

Program Administration

All participants must contact their sponsors upon arrival in the United States to inform their sponsors of their current U.S. addresses. Participants without pre-arranged employment may contact their sponsors for job search

assistance and must contact their sponsors upon obtaining job offers. Only once the sponsors vet the job placement can the participant start to work.

This interim final rule further clarifies that applicants must be bona fide students enrolled and participating full time at accredited post-secondary academic institutions located outside the United States at the time of application. Participants must have completed at least one semester (or the quarter or trimester equivalent) in order to qualify to participate. Final year students who apply for the Summer Work Travel program while still in school may participate in the Summer Work Travel program during the school's major academic break that follows their graduation. This rule also limits all students' program participation to the shorter of four months or the length of the long break between academic years at the schools they attend. Whether this break occurs during the winter or summer months in the United States or lasts two, three, or four months is determined in one of two ways. In most countries, consular officials have established country-wide program start and end dates that correspond with typical academic calendars. In other countries, the period of program duration may be tied to specific school calendars.

The new regulations retain the long-standing requirement that sponsors interview potential participants and ensure that selected applicants have sufficient English language skills to travel in the United States and function successfully in their work environments. To make this determination, sponsors may either obtain English language test scores from recognized language skills tests administered by academic institutions or English language schools, or evaluate applicants' language skills during documented sponsor interviews. A new regulatory requirement has been added to document such interviews. The new regulations afford additional flexibility for meeting this requirement by allowing sponsors the option of video-conferencing applicant interviews, rather than conducting them only in person and ensures that the conduct of an interview has been documented. Although foreign entities may assist sponsors in this recruiting function, sponsors are responsible for the final selection of their program participants.

The interim final rule also requires sponsors to provide the

following orientation materials to all participants (in addition to the currently required information) prior to departing for the United States: (1) A copy of the Department's Summer Work Travel Participant Letter; (2) a copy of the Department's Summer Work Travel Brochure; (3) the telephone number for the Department's 24/7 toll-free help line; and (4) the telephone numbers for the sponsors' 24/7 immediate contact line. Sponsors are also required to inform participants of their obligations to report their U.S. addresses to their sponsors upon their arrival in the United States as well as any changes in their employment or residence throughout the duration of their programs. As a point of clarification of existing regulations, sponsors are obligated to end the exchange programs of participants who do not report their arrival within ten days following the program start date or who do not report changes in their U.S. addresses or sites of activity within ten days of such moves. Sponsors would generally learn that an unreported move had occurred when they attempt to make monthly contact and cannot reach the participants for ten days. In addition, sponsors continue to be required to inform pre-placed participants of the name and address of their employer, and to disclose any contractual obligations (e.g., the hourly wage, how many hours per week they will work, whether the host employer has arranged housing) related to their acceptance of such paid employment.

The interim final rule retains the requirement that sponsors provide participants from Visa Waiver Countries who do not have pre-arranged and vetted jobs prior to departing from their home countries with information that explains how to seek employment and secure lodging in the United States. Sponsors must also continue to provide rosters of bona fide job opportunities to such participants and undertake reasonable efforts to help them secure placements after their arrival. Sponsors are required to ensure that non-pre-placed participants have sufficient financial resources to support themselves while they are searching for employment. The interim final rule also retains the requirement that sponsors make reasonable efforts to secure job placements for these participants if they have not obtained employment within one week after arriving in the United States.

Monitoring

The interim final rule expands the current obligations of sponsors to monitor their program participants. In addition to providing the currently required emergency assistance, sponsors must now make personal contact with each participant on a monthly basis. Sponsors must document such monthly contacts, which can be in-person, by telephone, or via e-mail. Such routine contact between sponsors and participants is required to ensure that participants are safe, the conditions of employment are being met, and participants are informing their sponsors of their current U.S. addresses.

The interim final rule also adds a new section on host employer obligations. First, host employers are expected to provide program participants with the approximate number of hours of paid employment

per week that they agreed to when the sponsors vetted the jobs. Second, they are required to pay participants for any overtime work, in accordance with state-specific and federal employment laws. Further, to assist sponsors in maintaining current and accurate SEVIS records, host employers must promptly notify sponsors when participants start their jobs. Host employers must also notify sponsors in case of any changes in employment conditions, any issues related to the welfare of the participants, or if the participants are not meeting their obligations to the host employers. Sponsors must ensure that participants are placed only with host employers that materially comply with all applicable federal, state, and local occupational health and safety laws; and adhere to Exchange Visitor Program regulations and sponsor program rules, as set forth at Sec. 62.9.

Current regulations allow sponsors either to submit to the Department semi-annual placement reports or list the names and addresses of participants' pre-arranged host employers on Forms DS-2019. The interim final rule requires all sponsors to submit semi-annual placement reports according to a Department-provided format upon OMB approval of the collection. For all participants for whom pre-placement is obtained (i.e., all participants from non-Visa Waiver Program countries and participants from Visa Waiver Program countries who are pre-placed), sponsors may not issue Forms DS-2019 unless they include the vetted host employers' names (i.e., business names), the work addresses (i.e., sites of activity), and the job title of the participants.

The Department had intended to publish the interim final rule in time to be effective when the bulk of program participants entered the country for the summer 2011 season. Discussions with the industry, however, determined that sponsors would not be able to make major changes to their business operations (i.e., vet foreign entities, renegotiate contracts with them, and increase their capacity for securing jobs

prior to the aliens' arrival in the United States) in time to apply these aspects of the regulations to program participants entering the United States from countries other than the Pilot Program Countries. However, there are key monitoring and reporting components of the new regulations that can be implemented immediately. These monitoring provisions will apply to all Summer Work Travel participants who are in the United States on July 15, 2011, the date that sponsors recommended as the effective date of the interim final rule. There are no administrative barriers that should delay the implementation of these important safety-and security-related monitoring provisions. By maintaining monthly contacts with their participants, sponsors will take a more active role in tracking their geographical whereabouts and offering participants on-going support and assistance with any program-related problems during the upcoming summer season. As sponsors often issue Forms DS-2019 as far as four months in advance of a program start date, the interim final rule affords sufficient lead time to allow sponsors issuing Forms DS-2019 after the effective date of this interim

final rule (i.e., for participants entering the United States during the 2011-2012 "winter season" and thereafter) to follow the job placement, job vetting, and third party vetting requirements as well.

Taken together, these regulatory modifications, enhancements, and changes are intended to create a new Summer Work Travel paradigm by addressing emerging problems and concerns. By developing better ways to ensure the health, safety, and welfare of its program participants, this interim final rule enhances the integrity of the Summer Work Travel program and continues to build global goodwill through this important public diplomacy initiative.

Regulatory Analysis

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from Sec. 553 (Rulemaking) and Sec. 554 (Adjudications) of the Administrative Procedure Act (APA). Pursuant to U.S. Government policy and longstanding practice, the Department of State has supervised either directly or through private sector program sponsors or grantee organizations, those foreign nationals who come to the United States as participants in exchange visitor programs. When problems occur, the U.S. Government is often held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems. The purpose of this interim final rule is to protect the health, safety and welfare of aliens entering the United States (often on programs funded by the U.S. Government) for a finite period of time and with a view that they will return to their countries of nationality or last legal permanent residence upon completion of their programs. The Department of State represents that failure to protect the health, safety and welfare of these program participants will have direct and substantial adverse effects on the foreign affairs of the United States. Although the Department is of the opinion that this interim final rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as an interim final rule, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function. Moreover, and as discussed above, the Department has been engaged in a lengthy dialogue with the sponsors of Summer Work Travel exchanges, keeping them fully apprised of its vision for reshaping the Summer Work Travel program. The sponsor community, therefore, has had the opportunity to participate in and influence agency decision making at an early stage.

In addition, under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.) a general notice of proposed rulemaking is required unless an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. As discussed in the preamble to this rule, the Department has concluded that the national security, program

administration and participant health, safety and welfare considerations would make public comment impracticable and contrary to the public interest. Further, the Department has determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed. For the foregoing reasons, the Department determines that good cause exists to implement this rule as an interim rule under the Administrative Procedure Act, 5 U.S.C. 553(b) and accordingly, adopts this rule on this basis.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801-808). This interim final rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local and 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.

Executive Order 13175--Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Since this interim final rule is exempt from 5 U.S.C 553, and no other law requires the Department of State to give notice of such rulemaking, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and Executive Order 13272, Sec. 3(b). However, to better inform the public as to the costs and burdens of the Rule upon designated program sponsors, the Department notes that this Rule will affect the operations of 53 corporate, academic, and tax-exempt entities designated by the Department to conduct Summer Work Travel

program activities. The Department calculates that these new requirements may require up to three additional hours of work per placement and therefore with 120,000 placements, that 360,000 additional hours of work will be required by program sponsors. At an estimated cost of \$20 per hour, the Department projects that these

enhanced selection, screening, vetting, placement, monitoring and evaluation requirements represent an aggregate cost of \$7.2 million to the collective Summer Work Travel sponsor community. Of the 53 entities sponsoring SWT placements, 34 have annual revenues of less than 7 million dollars. These 34 entities account for approximately 15,000 of the 120,000 annual SWT exchange participants. Thus an estimated 12% (\$864,000) of the additional costs will fall upon small entities. These costs will range from an additional estimated \$120 for one small entity having two participants up to an estimated additional \$540,000 for a small entity conducting an exchange program with 900 participants. The Department has been advised by both large and small entity sponsors that the additional \$60 cost of these security and programmatic safeguards will be passed along either to the foreign national applicant or foreign entity that assists the U.S. entity in arranging these exchange activities. The Department has no reason to believe that this additional \$60 program cost to participants will result in a reduction in the number of program participants and notes that this cost increase would represent a 3% increase in the average cost of a participant's program.

The Department has also examined the additional costs associated with employer reporting and job vetting requirements and concludes that these requirements are no different than the existing business practices of designated sponsors currently placing approximately 90% of these student participants with U.S. employers and that, accordingly, there is not additional burden upon employers. The Department estimates that the vetting and reporting requirements require no more than 1 man hour per participant and thus for the 10% of placements where job vetting and reporting requirements are not the current practice and there will be an additional burden of 12,000 man hours spread across an indeterminate number of large and small entities, government and academic employers who will collectively bear an additional financial burden of some \$240,000.00 (12,000 hours x \$20 per hour). The Department thus certifies that it does not believe that these regulatory changes will have a significant impact upon small businesses.

Executive Order 13563 and Executive Order 12866

The Department of State does not consider this interim final rule to be a "significant regulatory action" under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, as amended by Executive Order 13563. The Department has reviewed the interim final rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders.

Executive Order 12988

The Department of State has reviewed this interim final rule in light of Sec. 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Sec. 6 of Executive Order 13132, it is determined that this interim final rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this interim final rule are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405-0147, Form DS-7000. As part of this rulemaking, the Department is seeking comment regarding the additional administrative burden associated with the collection of information for a new Foreign Entity Report, the documentation of interviews and monthly contact with participants, and the modification of existing semi-annual reporting requirements for the Summer Work Travel Program.

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62.

(3) Agency form number: DS-7000.

(4) Affected public: This is an expansion and continuation of an existing information collection utilized by the Bureau of Educational and Cultural Affairs in its administration and program oversight of the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The Department seeks comment from Summer Work Travel Program sponsors and other persons directly involved in the administration of the Summer Work Travel

Program.

(5) Change to information collected by the Department of State: The existing Placement Report data collection is a current collection required by all Summer Work Travel sponsors and doesn't impose any further record keeping burden. Further, the Department anticipates that the electronic spreadsheet template that will be provided to sponsors for reporting purposes will reduce sponsors' recordkeeping burden and will eliminate their need to submit semi-annual placement reports in a paper report format. A planned Foreign Entity Report is expected to place a minimal additional administrative burden on the 53 currently designated Summer Work Travel program sponsors. The Department believes that the requested information is currently collected by sponsors in their routine administration of their programs. The additional regulatory requirements for documenting interviews and monthly contact with participants are already a standard business practice for some sponsors. The Department outlines the increased cost and burden hours associated with this collection requirement and discussed it fully in the Regulatory Flexibility Act/Executive Order 13272: Small Business section above and also below.

(6) You may submit comments by any of the following methods:

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm> [2].

E-mail: JExchanges@State.gov [5].

Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, ECA/EC/D, SA-5, Floor 5, 2200 C Street, NW., Washington, DC 20522-0505, Attn: Federal Register Notice Response.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

(7) The Department seeks public comment on:

Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

The quality, utility, and clarity of the information to be collected; and

How to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(8) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The total number of respondents is estimated to be those 53 organizations designated by the Department to conduct the Summer Work Travel Program activities.

(9) An estimate of the total annual public burden (in hours) associated with the collection: The Department calculates that these new requirements may require up to three additional hours of work per placement for those program sponsors that are not currently documenting participant interviews or actively maintaining monthly contact with their program participants. The Foreign Entity Report is estimated at one burden hour, documenting participant interviews as 30 minutes, and the documentation of monthly contacts at 20 minutes per month. Under the current collection, the semi-annual placement report already is estimated at 4 burden hours under the current paper format. This burden is expected to be reduced based on the new electronic template that will be provided to all Summer Work Travel sponsors. The Department estimates that for 60,000 of the 120,000 annual Summer Work Travel placements, no additional burden will be imposed to the given current business practices of some sponsors. Thus, for the remaining 60,000 participant placements an additional 180,000 hours of work will be imposed on those sponsors not currently maintaining monthly contact with their participants or properly documenting participant interviews.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR Part 62 is amended as follows:

PART 62--EXCHANGE VISITOR PROGRAM

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1. The authority citation for Part 62 continues to read as follows:

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 (IIRIRA) 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.

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2. Sec. 62.32 is revised to read as follows:

Sec. 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 Sec. 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 Sec. 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 Sec. 62.32(l).

(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 Sec. 62.32(l); 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 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).

(l) 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.

(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 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.

Dated: April 21, 2011.

Stanley S. Colvin,
Deputy Assistant Secretary for Private Sector Exchange, Bureau of
Educational and Cultural Affairs, Department of State.
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