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State Dept. Proposes Rule on Exchange Visitor Program for Teachers

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[Proposed Rules]

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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 8308]

RIN 1400-AC60

Exchange Visitor Program--Teachers

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Department is amending existing regulations governing the teacher category of the Exchange Visitor Program. The proposed amendments clarify the duration of program participation; amend eligibility requirements with respect to verifying English proficiency; and reduce the required teaching or related experience from three years to the equivalent of two years full-time teaching experience; introduce a required cultural component; and propose the implementation of a two- year bar for repeat participation to foster the purpose of the Mutual Educational and Cultural Exchange Act of 1961, ("Fulbright-Hays Act"). These proposed

changes will enhance the integrity and programmatic effectiveness of the teacher category.

DATES: The Department will accept comments on the proposed regulation from the public up to July 1, 2013.

ADDRESSES: You may submit comments identified 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/> [3] and searching for the RIN (1400-AC60)

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

Email: JExchanges@state.gov [4]. You must include the RIN (1400-AC60) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street NW., Washington, DC 20522-0505; telephone: (202) 632-2805; fax (202) 632-2701.

SUMMARY: Statement of Need. In recent years, the teacher exchange program has been used by some sponsors in a manner that falls outside the original intent of the program. Occasionally, it has been used to fill a labor need in U.S. public and private schools rather than to further a cultural exchange. The Department has identified issues regarding job placements, wages and hours, and is of the opinion that the program lacks a cultural component necessary for the program to be consistent with the Mutual Educational and Cultural Exchange Act of 1961, as amended. In addition, the substance of this rule has been informed by analysis and implementation of exchange teacher programs, including pilot programs. As a result, the Department is proposing to modify the current teacher regulations set forth at 22 CFR 62.24. The Department seeks to: (i) Reform the teacher exchange program; (ii) ensure that the program better protects the health, safety, and welfare of program participants; and (iii) fortify the program's prestige as a world class U.S. public diplomacy initiative.

Statement of Legal Authority. The Exchange Visitor Program (of which the teacher category is one of 15 categories of program types) is authorized by the Mutual Educational and Cultural Exchange Act of 1961 (Pub. L. 87-256, 75 Stat. 527) (Fulbright-Hays Act or Act) and implemented through 22 CFR 62.24. Enacted by the 87th Congress on September 21, 1961, the Act's stated purpose is "to increase mutual understanding between the people of the United States and the people of 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. . . ." In the half century since the Act's passage, millions of foreign participants, Americans, and friends and families of the participants have benefitted from the mutual understanding and peaceful relations that can be derived from such person-to-person contact. The teacher exchange program embodies and carries forward the stated purpose and intent of the Act.

Reasons for this Notice of Proposed Rulemaking (NPRM). The NPRM makes several

changes, including adding the following requirements:

1. Sponsors must require each exchange teacher to complete a cultural activity component annually through which the exchange teachers can share aspects of their own cultural heritage with their U.S. communities. Moreover, sponsors must ensure that exchange teachers to incorporate cultural heritage lessons or elements into their curriculum, and that they do so. This cultural component is seen as a valuable tool to involve exchange teachers in the communities where they live and teach, to inform their communities about their cultures, and to help U.S. students develop global awareness and an interest in other countries;
2. Teacher applicants must, at a minimum, have a university or college degree in either education or the subject matter they intend to teach;
3. The eligibility requirement for teachers is being changed from "minimum of 3 years of teaching or related professional experience" to "two years of full-time teaching experience, post degree.";
4. Sponsors must verify a teacher applicant's English language proficiency through recognized language tests or in-person interviews, videoconferencing, or telephone interviews;
5. Job placements in the U.S. must be full-time positions located in accredited primary or secondary (K-12) public or private academic institutions in the United States, which excludes pre-kindergarten or daycare institutions;
6. The Department will increase the transparency of the total cost and fees to the program participants; and
7. A repeat participation clause has been added.

SUPPLEMENTARY INFORMATION: Educational and cultural exchanges are the cornerstone of U.S. public diplomacy and an integral component of U.S. foreign policy. The purpose of the teacher category of the Exchange Visitor Program is to promote the interchange of American and foreign teachers in public and private schools; to enhance mutual understanding between the people of the United States and people of other countries; to strengthen international education programs in U.S. schools through the delivery of an international perspective to students; to provide U.S. teachers with an opportunity to expand their international understanding by working alongside foreign colleagues; and to provide opportunities for the development of lasting links between U.S. and foreign schools. These regulations govern exchange visitors who teach full-time in primary and secondary (K-12) accredited public or private academic institutions in the United States. Program participants sharpen their professional skills and foster meaningful relationships through their participation in activities with Americans in schools and communities, and they return home ultimately to share their experiences and increased knowledge of the United States and the U.S. educational system. Such exchanges enable visitors to have a heightened understanding of U.S. culture, society, and teaching practices at the primary and secondary levels, and allow U.S. students who lack opportunities to travel abroad to have early, meaningful relationships with individuals from other cultures.

It is equally important that the public and private schools that host foreign exchange teachers have the responsibility and intent to create a holistic cultural program and contemplate the overall experience that these teachers will take back to their home countries. The Department

supports the use of exchange visitor teachers to help students understand other cultures and comprehend global issues and to promote the study of foreign languages and culture. Native speakers add a vital dimension to foreign language instruction. Speaking another's language promotes understanding, conveys respect, and strengthens the ability to engage foreign peoples and governments. In recent years, the Department has been strengthening the rules throughout the Exchange Visitor Program (22 CFR Part 62) to ensure that this program is consistent with the purpose of Section 109 of the Fulbright-Hays Act, and that this program is not being used for other purposes. On occasion, some sponsors have used the J-1 teacher exchange program to address teacher shortages by filling permanent teaching positions with exchange teachers, who later convert to H-1B visa workers for an extended period of employment. This contravenes the underlying purpose of the Mutual Educational and Cultural Exchange Act, which is ``to increase mutual understanding between the people of the United States and the people of other countries . . . and the contributions being made toward a peaceful and more fruitful life for people throughout the world . . . ''

Consistent with this stated purpose, the teacher exchange program is not to be used to recruit and train foreign teachers for permanent employment in the United States. The teacher category regulations are being amended to clarify that the exchange teacher's participation at a primary or secondary accredited academic institution must be temporary while in the United States on a J-1 visa and that J-1 program participants are expected to return to their home countries following completion of their exchange programs. The Department proposes that sponsors be required to ensure that J-1 teachers are only placed in primary or secondary academic schools that are duly recognized and declared as accredited academic institutions by the appropriate authority of the state in which they are located. The definition of an accredited academic institution is not currently in Section 62.2; however, the Department has proposed a definition of this term in a previous NPRM (see 74 FR 48177, RIN 1400-AC36). The proposed definition of an accredited academic institution is, ``any publicly or privately operated primary, secondary, or post- secondary institution in the United States that offers primarily academic programs and is duly accredited by the appropriate academic accrediting authority of the jurisdiction in which such institution is located. An institution that offers primarily vocational or technical programs does not fall within the purview of an academic institution for this purpose.''

Sponsors must ensure that an exchange teacher's appointment to a position at a primary or secondary accredited academic institution is temporary, even if the teaching position is permanent.

In addition, a foreign national may be admitted to the United States as a J-1 nonimmigrant in the teacher category only for the purpose of full-time teaching as a teacher of record, not as a teacher's assistant/aide, substitute teacher, or other non- instructional position at a primary or secondary accredited academic institution. A full-time teaching position is defined to be employment for a minimum of 32 hours per week.

Transparency of Fees

Various program fees charged to participants by foreign agents, sponsors and U.S. host schools remain a key vulnerability in the Exchange Visitor Program. This vulnerability is propagated by work-related deductions (i.e., meals, housing costs, school materials) taken out of a participant's wages. In many cases, after these deductions, participants' take-home pay is an insufficient amount of money to live on in the United States or to defray the cost associated with their exchange program.

The Department believes that requiring sponsors to provide participants with a comprehensive breakdown of total Program fees (including visa fee, the Student and Exchange Visitor Information System (SEVIS) fee, insurance costs, estimates for housing and transportation costs, foreign agent/partner fee, sponsor fee, expected work-related deductions, and estimates of all other fees) charged for participation in a teacher exchange program would greatly enhance transparency and better ensure that participants fully understand the financial obligation they assume when choosing to participate in an exchange program.

The Department accordingly suggests that sponsors and foreign agents post on their Web sites and make known during the teacher application process a comprehensive breakdown of those total program fees listed above. This requirement would allow all parties involved or interested in the Exchange Visitor Program to understand when sponsor and foreign agents add extra fees or charge excessive rates. The Department seeks comment on whether these proposed requirements would make program fees transparent and better ensure that exchange teachers understand the cost of an exchange program.

Cultural Activity Component

To fulfill the cultural goals of the Exchange Visitor Program, this rule also proposes to add a mandatory annual cultural component through which the exchange teachers can share aspects of their cultural heritage with their American communities, set forth at Sec. 62.24(g). This cultural component is a valuable tool to involve exchange teachers in the communities where they live and teach, to inform their communities about their cultures, and to help students develop global awareness and interest in learning more about or visiting other countries. The Department proposes that the sponsor, host school and exchange teacher work together to develop a creative cultural component. One example of this component could be to have exchange teachers make annual presentations in public settings (e.g., schools, museums, civic organizations, businesses associations) where there is direct interaction with the school or larger communities and in which they could share aspects of their home countries (e.g., history, traditions, heritage, music, dance, art, economy, educational system). In addition, the Department is proposing that exchange teachers foster cross-cultural learning experiences for students by maintaining, and involving U.S. students in, a virtual exchange component to complement the in-person exchange. The objective for the virtual exchange component, defined as technology-enabled, sustained, people-to-people cross-cultural education programs, is to supplement the goals of the in-person exchange and to integrate global knowledge, cultural awareness and/or foreign language into the classroom. Exchange teachers may develop dialogues or other virtual activities with schools or students in their home countries. The Department expects that the use of virtual means may not be possible in every situation and in those instances, would accept dialogue facilitated through other means.

Exchange teachers will be required to submit an annual report to their program sponsors detailing this component of their exchange visitor programs. The report does not have to be in a specific format, but must contain specific fields of information as identified in these

regulations (i.e., date or dates, teacher name, program sponsor name, location, topic, number of individuals in attendance, and a general overview of the project and its impact). Sponsors must retain the reports as part of each participant's documentation for a period of three years following the completion of the teacher's exchange program, as required by the Exchange Visitor Program regulations (22 CFR 62.10). The Department encourages sponsors to share examples of such cultural activities with the Department as best practices and positive program models.

Teacher Eligibility

Current regulations state that foreign teachers are expected to have "a minimum of three years of teaching or related professional experience." It is critical to the success of this exchange program that foreign teachers have the necessary skills and teaching experience to benefit from exchange opportunities and to achieve the intended goals of this professional exchange program. Exchange teachers must be able to make an immediate impact in the classroom and share some of their teaching methods with American teachers while developing or enhancing their own professional skills. While new teachers or recent college graduates may have a strong interest in the cultural opportunities offered through the Exchange Visitor Program, they do not have the essential teaching experience (including experience in classroom control, student discipline, or parental involvement) to meet the goals of the Exchange Visitor Program. Therefore, this rule proposes that exchange teachers have the equivalent of a U.S. Bachelor's degree in either education or in the subject matter (or related subjects) they intend to teach; the equivalent of two years of post-degree full-time teaching experience; and be employed as a teacher at the time of application for the program. Further, the Department proposes to reduce the number of years of teaching experience necessary to qualify for program participation from three to two years. The Department received comments in the past from several larger teacher sponsors regarding this reduction and believes that two years of teaching experience is sufficient combined with the U.S. Bachelor's degree or equivalent requirement. Specific comments on this proposal are requested.

The Department is of the opinion that all reasonable measures should be taken to ensure the safety of students placed in the classroom of exchange teachers. U.S. teachers are required to have undergone a criminal background check before being hired, and many state-level Departments of Education and local schools and school districts require the same screening for exchange teachers being placed in a U.S. classroom. Sponsors must be aware and comply with all state-level Departments of Education and local school or school district requirements regarding security and criminal background checks. The security checks are often completed in separate phases, such as prior to program acceptance and visa issuance, and upon arrival in the United States and before the beginning of their exchange program.

English Language Screening

The proposed rule retains the long-standing practice that sponsors may develop their own business practice to interview potential participants and document such interviews in order to 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, the Department proposes that sponsors may either (i) obtain English language test scores from recognized language skills tests administered by academic institutions or English language schools, or (ii) evaluate applicants' language skills during documented sponsor interviews. The proposed rule affords a third option for additional flexibility for meeting this requirement by

allowing sponsors the option to video-conference applicant interviews, rather than conducting them only in person. The final option consists of conducting an interview by telephone if an in-person or videoconferencing interview is not a viable option. Although foreign entities may assist sponsors in this recruiting function, sponsors are responsible for the final selection of their program participants. Sponsors shall document proof of English proficiency in each teacher's file and provide such proof of English proficiency to the Department upon request during site visits or investigations of complaints.

Program Dates

The proposed rule includes a new requirement set forth at Sec. 62.24(e)(2) that program dates should coincide with the academic year cycle (July 1-June 30) to ensure a smooth transition as exchange teachers arrive and depart, unless specifically requested in writing and permitted by the school. This provision will result in less disruption to the schools. A school may submit a written waiver of this requirement to the sponsor if a teacher is requested and the program will be sufficiently supported outside the normal beginning dates of an academic year.

Program Extensions

The Department recognizes that in some circumstances program extensions beyond the maximum duration may be necessary when a participant is unable to complete the exchange due to extenuating circumstances (i.e., accident, medical reasons). However, such extension requests should be rare as sponsors of teacher exchange programs are expected to develop an exchange visitor program that can be completed within three years. Justifications such as wishing not to interrupt an ongoing program or heavy reliance on a specific exchange teacher are not reconcilable with the Department's requirement that the maximum period of program duration for a teacher should not exceed three years.

Teacher Compensation

The proposed regulations also clarify that exchange teachers are to be paid (or compensated) directly by the schools or school districts in which they are placed, unless they are supported by foreign government funding or through continued support from their home schools. Participants must be under the direct supervision and guidance of schools, and are not employees of sponsor organizations. SEVIS records should exactly reflect the funding situation for each participant. Teaching positions, including duties/responsibilities and hours of employment, must be consistent with similarly situated teachers in the district or school where an exchange teacher is assigned to teach.

Repeat Participation

Since 1949, a three-year period of program duration has been afforded to teacher participants. To date, the Department has been unable to identify a compelling public diplomacy reason to abandon the long-standing three-year limitation governing the teacher program. The regulations have been amended, however, to permit exchange teachers who have successfully completed their teacher exchange programs to participate again as exchange teachers in the Exchange Visitor Program. To be eligible to repeat the program, exchange teachers must have resided outside the United States for at least two years following completion of their programs and must continue to meet all other eligibility and regulatory requirements for this category. This amendment set forth at Sec. 62.24(j) is

proposed to ensure that the reciprocal exchange objectives underlying the Exchange Visitor Program are met and that the Program is not misused for long-term employment purposes.

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). The U.S. Government policy and longstanding practice has been for the Department of State to oversee foreign nationals who come to the United States as participants in exchange visitor programs, either directly or through private sector program sponsors or grantee organizations. 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 rule is to protect the health, safety, and welfare of foreign nationals 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 upon completion of their programs. The Department of State is of the opinion that the failure to protect the health, safety, and welfare of these foreign nationals will have direct and substantial adverse effects on the foreign affairs of the United States. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department nevertheless is publishing this rule as a proposed 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed 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 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 proposed rule 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.

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

The Department has determined that this proposed 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 Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above in the APA discussion, the Department is of the opinion that this proposed rule is exempt from the provisions of 5 U.S.C. 553, and no other law requires the Department of State to give notice of a proposed rulemaking. Accordingly, the Department is of the opinion that this proposed rule 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 this rule, the Department notes that the proposed rule will affect the operations of 59 sponsors designated by the Department to conduct Teacher Programs. Approximately 1,200 new teachers begin exchange programs annually, and as the program allows a duration of up to three years, there are approximately 2,500 active teachers in the United States annually.

Numbers of Small Businesses

Of the 59 currently designated Teacher Program sponsors, 19 are corporate, academic, and tax-exempt program sponsors with annual revenues of less than \$7 million. These 19 small program sponsors accounted for 569, or approximately 23%, of the active 2,500 Teacher Program participants in 2012.

Teacher Selection

The proposed rule expands sponsor screening requirements to include verification of each potential exchange teacher's English proficiency and verification of a U.S. Bachelor's degree equivalent in education or in the subject he or she will teach as a participant. The Department estimates these additional requirements annually will cost \$24,000 (one burden hour at \$20 for each of the 1,200 new participants annually).

Teaching Position

The proposed rule more precisely defines exchange teacher positions by requiring sponsors to ensure that potential exchange teachers have accepted written offers of full-time teaching positions; program dates coincide with the academic year cycle; exchange teachers are in compliance with any applicable collective bargaining agreement; exchange teachers are appointed in temporary positions at primary or secondary accredited academic institutions; and exchange teachers' duties/responsibilities and hours of employment are consistent with similarly situated teachers in an exchange teacher's district or school. The Department estimates the cost of the additional administrative burden caused by the new requirements to be \$5,690 (0.5 burden hours at \$20 for each of the 569 participants) annually.

Program Disclosure

The proposed rule requires sponsors to provide exchange teachers with the following information before their program begins: the length of program participation; the name and location of the school where the exchange teacher will be placed; a brief description of the school; residential accommodation arrangements (including cost implications); transportation arrangements to and from the exchange teacher's residence and school (including cost implications); licensing procedures; terms and conditions of compensation (including deductions for tax, health insurance, etc. from the gross salary); any provisions affecting the ability of the exchange teacher to be accompanied abroad by a spouse or dependents (including any assistance and allowances offered therewith); a summary of the significant

components of the program (including a statement of the teaching requirements and related professional obligations, including the required cultural activity and cultural heritage curriculum components); transparency in fees; and a written statement that clearly identifies the compensation, if any, to be paid to each exchange teacher and any other financial arrangements concerning the exchange visitor program. The Department estimates these additional requirements will cost \$11,380 (1 burden hour at \$20 for each of the 569 participants) annually.

Cultural Activity Component

The proposed rule requires sponsors to collect teachers' annual reports detailing their cultural activity component. The Department estimates that the collection of these reports will annually cost \$2,845.00 (0.5 burden hours at \$10 for each of the 569 teachers).

Collectively, the proposed rule will impose new costs of no more than \$43,915 in total to the 19 small program sponsors. The additional burden cost of this proposed rule per exchange teacher is approximately \$70. The 19 small businesses vary in the number of exchange teachers they sponsor annually. Ten of the 19 small businesses bring in no more than the five required participants annually, which means a new burden of \$350. Three small businesses bring in approximately 30 teachers annually, one small business sponsored 75 exchange teachers in 2012, one sponsored 150 and one sponsored 200 exchange teachers. For the small business that recruited the most teachers (200 teachers) in 2012, the cost of this proposed rule will be \$14,000. The Department therefore does not believe that these regulatory changes will have a significant economic impact on a substantial number of small entities.

Executive Order 12866 and 13563

The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866 and 13563. The Department has nevertheless reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders.

The teacher exchange program regulations have not been amended since March 19, 1993. Although the teacher exchange program is a fairly small program of approximately 1,200 new teachers annually, the Department is aware of the impact these exchange teachers have on local schools and school districts. First, to ensure that both the exchange teachers and the Americans with whom they work and teach are receiving the full benefit of this program, the Department proposes to increase the screening and vetting of potential exchange teachers. Specifically, a sponsor (or sponsor representative) must conduct an interview in-person or by videoconferencing during the application process to ensure sufficient English proficiency. In the case where either in-person or videoconferencing is not an option, telephone interviews may be used. The Department identifies the potential costs associated with the additional screening requirements as minimal. Screening applicants and ensuring English proficiency is a current business practice of sponsors.

The proposed rule also includes a requirement for sponsors to provide full transparency on all fees associated with teacher exchanges. The Department believes that requiring sponsors to provide participants with a comprehensive breakdown of total program fees (including visa fee, SEVIS fee, estimates for food, housing and transportation costs, foreign agent/partner

fee, sponsor fee, expected work-related deductions, and estimates of all other fees) would greatly enhance transparency and better ensure that participants fully understand the financial obligation they assume when choosing to participate in the Exchange Visitor Program. The Department accordingly believes that sponsors and foreign agents should post on their Web sites or through recruiting measures a comprehensive breakdown of those total program fees listed above. The Department believes that sponsors already prepare the comprehensive breakdown information as a business practice. The cost of this requirement will come from adding a summary to the existing sponsor application and orientation materials and is estimated at an additional \$1.00 per exchange teacher for a total of \$1,200.00 annually.

Finally, to ensure that this program remains an educational and cultural exchange program, the Department proposes the submission of an annual cultural activity to be reported by all exchange teachers to their sponsors. The average cost of these reports per exchange teacher is estimated at \$50.00 per person. These costs would derive from travel expenses and materials required for presentations and reporting requirements. The Department recognizes that the sponsor may need additional resources or staff to review and store the reports. The Department estimates that the collection of these reports will annually cost \$12,500.00 (0.5 burden hours at \$10 for 2500 teachers).

Teacher exchange programs conducted under the authorities of the Exchange Visitor Program promote mutual understanding by providing foreign teachers the opportunity to teach in American schools and participate in daily educational curricula in the United States. Teacher program participants gain an understanding of and an appreciation for the similarities and differences between their culture and that of the United States. Upon their return home, these teachers enrich their schools and communities with their fresh perspectives of U.S. culture and events. Teacher exchanges also foster enduring relationships and lifelong friendships that help build longstanding ties between the people of the United States and other countries. In reciprocal fashion, American school teachers and students are provided opportunities to increase their knowledge and understanding of the world through these friendships. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this proposed rule.

Executive Order 12988

The Department of State has reviewed this proposed 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

Acknowledging that the administration of schools is primarily a state function, the Department finds that this proposed rule will not have substantial direct effect on the states, on the relationships 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 proposed 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

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. See Public Law 104-13, 109 Stat. 163 (May 22, 1995). This proposed rule requires new collection of information by sponsors and is covered under the PRA. The Department has submitted an information collection request to OMB for review and approval under the PRA.

The information collection requirements contained in this proposed rule are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405-0147, Form DS-7000, which requires collection of additional information for the Exchange Visitor Program. As part of this rulemaking, the Department is seeking comment on the administrative burden associated with modifying the collection of information in three areas. Additional collections are being proposed under the teacher selection, teaching position, program disclosure and cultural activity component sections.

First, sponsors would be required to provide additional information for the teacher, including information on the length of program participation; the name and location of the school where the teacher will be placed; a description of the school; residential accommodation arrangements; transportation options from the teacher's residence to his or her site of activity (the school) and return; licensing procedures; terms and conditions of compensation; and a summary of the significant components of the program, as set forth in proposed Section 62.24(f). Also, sponsors would be required to collect each year a report on the cultural activity component of the teacher's program, as set forth in proposed Section 62.24(g).

(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 public comment, including comments from teacher exchange program sponsors and other persons directly involved in the administration of teacher exchanges.

(5) Change to information collected by the Department of State: The Department is proposing changes to both reporting and recordkeeping requirements. In addition to current collections, the Department proposes that sponsors will now be required to provide the following to exchange teachers in advance of their arrival in the United States:

1. the name of the specific school where the teacher will be placed;
2. a brief description of the school;
3. residential accommodation arrangements (including cost implications);

4. transportation arrangements to and from the exchange teacher's residence and school (including cost implications);
5. fees associated with the teacher exchange program;
6. licensing procedures;
7. terms and conditions of compensation (including deductions for taxes, health insurance, etc. from the gross salary);
8. any provisions affecting the ability of the teacher to be accompanied abroad by a spouse or dependents (including any assistance and allowances offered therewith); and
9. a summary of the required cultural activity component.

The Department proposes that program participants will now be required to provide the following documents to the sponsors:

1. cultural requirement annual report;
2. proof of educational requirements; and
3. proof of English proficiency.

Recordkeeping: Sponsors will now be required to retain additional records as a result of these changes. The additional recordkeeping requirements are the results of the cultural component requirement annual reports. The school information, teaching position, and compensation are already collected. Additional information collection or retention burdens are discussed 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> [3].

Email: 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 (DS-7000), information collection title, and OMB control number (1405-0147) 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 Department, including whether the information will have practical utility;

The accuracy of the Department'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 for the teacher selection, teacher position and program disclosure sections remains at an estimated 59 organizations designated by the Department to conduct teacher exchange program activities. The number of respondents for the annual cultural activity component reporting requirement is estimated to be 2,500 active exchange teachers annually. The recordkeeping burden on the 59 sponsors as a result of retaining the annual cultural activity reports is estimated to be \$12,500.00 (0.5 burden hours at \$10 for 2500 active teachers). However, it is estimated that the burden on the 2500 active teachers to complete the cultural activity component will be approximately two hours. Of those 2,500 active teachers, 1,200 teachers who are in their first year of the program will be required to provide English language test scores as part of the teacher selection process.

(9) An estimate of the total annual public burden (in hours) associated with the collection: The additional burden hours for the additional teacher selection requirements for the 59 program sponsors will be approximately 1.5 hours for each of the 1,200 new teacher applicants annually, for a total additional burden of 1,800 hours (1,200 responses x 1.5 burden hours). The Department calculates that the new annual reporting requirements for the cultural component may require up to two additional hours of work for each exchange teacher to complete the activity and a half hour per placement for the 59 program sponsors. The Department estimates that for 2,500 active exchange teachers, the burden hours will total 5,000 hours (2,500 responses x 2 hours) annually and 1,200 hours for all sponsors (2,500 responses x 0.5 hours). Under the current collection, program disclosures are already estimated at 0.5 burden hours. The Department is increasing the estimated burden by .5 hour for an estimated total 1,200 burden hours (1,200 responses x 1.0 burden hour).

List of Subjects in 22 CFR Part 62

Cultural exchange programs, reporting and recordkeeping requirements.

Accordingly, 22 CFR part 62 is proposed to be 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. Sec. 1431 et seq.; 22 U.S.C. 2451 et seq. (Fulbright-Hays Act); 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, Sec. 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. Section 62.24 is revised to read as follows:

Sec. 62.24 Teachers

(a) Purpose. These regulations govern exchange visitors who teach full-time in primary and secondary (K-12) accredited, public or private academic institutions in the United States. Programs in this category promote the interchange of American and foreign teachers and enhance the mutual understanding between people of the United States and other countries. Program participants sharpen their professional skills and participate in cross-cultural activities with Americans in schools and communities, and they return home ultimately to share their experiences and increased knowledge of the United States and the U.S. educational system. Such exchanges enable exchange teachers to better understand American culture, society, and teaching practices at the primary and secondary levels and enhance Americans' 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 paragraph (a) of this section as exchange visitor programs in the teacher category.

(c) Visitor eligibility. Foreign nationals are eligible to participate in exchange visitor programs as full-time teachers if, at the time of application to the sponsor, the individual demonstrates to the satisfaction of the sponsor that they:

(1) Meet the qualifications for teaching in primary or secondary schools in their country of nationality or last legal permanent residence, and are working as teachers at the time of application;

(2) At a minimum have a degree equivalent to a U.S. Bachelor's degree in either education or the subject matter they intend to teach;

(3) Have, at a minimum, the equivalent of two years of full-time teaching experience, post-degree;

(4) Satisfy the teaching eligibility standards of the U.S. state in which they will teach;

(5) Are of good reputation and character; and

(6) Agree to come to the United States temporarily for the purpose of full-time teaching as the teacher of record in a primary or secondary (K-12) accredited public or private academic institution in the United States.

(d) Teacher selection. Sponsors must adequately screen foreign teachers prior to acceptance in the program. In addition to the requirements of Sec. 62.10(a) and all security checks required by State Departments of Education and host schools, sponsor screening must include:

(1) Evaluating the qualifications of the foreign teachers to determine whether they satisfy the criteria set forth in paragraph (c) of this section;

(2) Securing references from one colleague and one current or former employer of the foreign teachers, attesting to the teachers' good reputations, character, and teaching skills; and

(3) Ensuring that foreign teachers possess sufficient proficiency in the English language to function in American classrooms on a day-to-day basis. Sponsors must verify applicants' English language proficiency through one of the following:

(i) A recognized English language test;

(ii) Signed documentation from academic institutions or English language schools;

(iii) Documented interviews conducted by the sponsors in-person or through videoconferencing; or

(iv) A telephone interview if an in-person interview or videoconferencing is not a viable option.

(e) Teaching position. Sponsors must ensure:

(1) Forms DS-2019 are not issued until potential exchange teachers have received and accepted written offers of full-time teaching positions of not less than 32 hours per week from the primary or secondary (K-12) accredited academic institutions in which they will teach;

(2) Program dates coincide with the academic year cycle to ensure a smooth transition as exchange teachers arrive and depart, unless otherwise requested in writing by the school;

(3) Exchange teachers are in compliance with any applicable collective bargaining agreement where one exists;

(4) Exchange teacher appointments to positions at primary or secondary accredited academic institutions must be temporary, even if the teaching positions are permanent, and may not lead to tenure; and

(5) Teaching positions, including duties/responsibilities and hours of employment, must be consistent and commensurate with the pay and benefits with similarly situated teachers in the district or school where an exchange teacher is assigned to teach.

(f) Program disclosure. Before programs begin and prior to finalization of any contracts, sponsors must provide each exchange teacher, in addition to the requirements set forth in Sec. 62.10(b), with the following information in writing:

(1) The length of program participation; the name and location of the school where the teacher will be placed; a brief description of the school; any residential accommodation arrangements (including cost implications); transportation arrangements to and from the exchange teacher's residence and school (including cost implications); licensing procedures; terms and conditions of compensation (including deductions for tax, health insurance, etc. from the gross salary); any provisions affecting the ability of the teacher to be accompanied abroad by a spouse or dependents (including any assistance and allowances offered therewith); and a summary of the significant components of the program (including a statement of the teaching requirements and related professional obligations, including the required cultural activity component, as set

forth in paragraph (g) of this section);

(2) A written statement that clearly identifies the compensation to be paid to each exchange teacher and any other financial arrangements concerning the Exchange Visitor Program. Teacher salaries, unless provided directly to the participants through government funding or through continued support from their home school, must come directly from the schools or school districts in which the teachers are placed; and

(3) A full listing of all fees associated with the exchange program (i.e., sponsor and third party fees, insurance, housing, transportation, visa fees)

(g) Cultural activity component. (1) Sponsors must require and should assist exchange teachers to:

(i) Complete a cultural activity component each academic year of program participation (e.g., making a presentation in a public setting where there is direct interaction with the school community or the American public, designed to give an overview of the history, traditions, heritage, music, dance, art, economy, educational system and/or other attributes of their home country); and

(ii) Maintain and involve U.S. students in dialogue or other activities with schools or students in another country through virtual exchange or other means, in order to supplement the goals of the in-person exchange and to integrate global knowledge, cultural awareness and/or foreign language into the classroom.

(2) Sponsors must require exchange teachers to submit annual reports detailing the cultural activity components of their exchange programs. The reports do not have to be in a specific format, but must contain the following information:

(i) Date(s) of the activity;

(ii) Teacher's full name;

(iii) Program sponsor's name; and

(iv) Location, attendance, topic, impact and general overview of the activity.

(h) Location of the exchange. Exchange teachers must participate in exchange visitor programs at the primary or secondary accredited academic institution(s) listed on their Forms DS-2019 or at location(s) where the institutions are involved in official school activities (e.g., school field trips, teacher development programs).

(i) Duration of participation. Exchange teachers may be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which may not exceed three years.

(j) Repeat participation. Foreign nationals who have successfully completed teacher exchange programs are eligible to participate in additional teacher exchange programs, that they have resided outside the United States for at least two years following the completion of their most recent teacher exchange program, and provided they continue to meet the eligibility requirements set forth in paragraph (c) of this section.

Dated: April 26, 2013.

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