

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

Susan C. Schwab,

United States Trade Representative.

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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 6267]

RIN 1400-AC35

Exchange Visitor Program—College and University Students, Student Interns

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department is hereby revising its regulations regarding College and University Students. The Final Rule creates a new subcategory of the College and University Student category—"Student Interns." Participation in this new sub-category is open to foreign students enrolled and pursuing a degree at post-secondary academic institutions outside the United States. Student interns may participate in a student internship program for up to 12 months at each degree level.

DATES: *Effective Date:* This Final Rule is effective July 21, 2008.

SUPPLEMENTARY INFORMATION: The Department of State (Department) designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act). Under this authority, designated program sponsors facilitate the entry into the United States of more than 350,000 exchange participants each year.

In June 2007, the Department established a new exchange visitor

category—"intern"—by amending existing regulations set forth in 22 CFR 62.22 (72 FR 33669, June 19, 2007). Now, private sector organizations can offer internships to individuals with less training and experience than had been required of "trainee" category participants. To be eligible as an intern in a private sector program, foreign nationals must be currently enrolled in and pursuing studies at an academic institution or a recent graduate (*i.e.*, within 12 months) from such institution. As an intern, the intern program participant enters the United States to pursue a structured and guided work-based internship program in his or her specific academic field. Prior work experience is not an eligibility requirement for participation.

Not wanting to limit the opportunity to offer internships to the private sector only, the Department published a proposed companion rule in the **Federal Register** (72 FR 31008) on June 5, 2007. This rule sought comment on a proposed program that would allow American colleges or universities to conduct internship programs. As noted in the rule, in significant areas the proposed regulations governing the new "student intern" category track the internship regulations already in place for private sector internship program sponsors. The primary difference is that the student internship—as its name implies—is available only to students and not graduates.

To be eligible to participate in the new student intern sub-category, a foreign national must be a student currently enrolled in an accredited post-secondary academic institution outside the United States. A student intern may participate in a student internship program for up to 12 months at each degree level. For example, an exchange visitor could enter the United States to participate in a student internship program while pursuing the equivalent of a baccalaureate degree program. This intern could participate in an internship program in the United States for up to 12 months. This same individual could also participate in yet another student internship program for up to 12 months if he or she later pursues the next higher degree level (*i.e.*, master's degree program). A student who changes majors at the baccalaureate level—and is pursuing a separate degree—may participate in an internship subsequent to an initial internship in the original field of study.

Foreign students may be selected to participate in the new student intern sub-category if they meet the following eligibility criteria: the post-secondary academic institution listed as the

sponsor on the Form DS-2019 has accepted the individual into an internship program; and the student seeks to enter the United States to engage primarily in a student internship program, rather than to engage in employment or provide services to an employer. Furthermore, a student intern must be in good academic standing with the post-secondary academic institution at which he or she is currently enrolled. Finally, the student intern will return to his or her prior academic studies following completion of the student internship program and fulfill his or her degree requirements, thus students that have completed their degree requirements will not be eligible for the student intern program.

These new regulations address the obligations of a sponsor and any third party—either domestic or overseas—with whom the sponsor contracts to assist in the recruiting, selecting, screening, orienting, placing, training, or evaluating of its program participants. Required is a written agreement with third parties outlining the full relationship between the parties on all matters involving the Exchange Visitor Program generally and the student internship specifically. For program integrity, third parties must provide their Dun & Bradstreet identification numbers, which will assist sponsors with their screening and vetting of all third parties with whom they have entered into a required written agreement.

We anticipate that a wide range of U.S. businesses and governmental or non-governmental entities will host foreign students in student internship programs arranged by academic sponsors. These regulations set baseline standards for this activity. Sponsors will be required to ensure that host organizations are legitimate entities, are appropriately registered or licensed to conduct their business, and possess and maintain the ability and resources to provide structured and guided work-based experience according to individualized Training and Internship Placement Plans (T/IPP—Form DS-7002). In some instances, a sponsor may be required to conduct a site visit of a host organization's facility. In vetting a potential host organization, a sponsor must collect sufficient evidence to support its finding that the potential host organization meets the standards necessary for a sponsor to properly place participants with them.

For each student internship, a sponsor must complete and obtain requisite signatures for the T/IPP. Each T/IPP must set forth the goals and objectives of the internship; the student internship

program details (location, contact information, number of hours per week of work and compensation therefore (if any) a description of the supervision the intern will receive, and the dates of the student internship program); a description of how the student internship program will enhance the student intern's educational program at his or her home institution; and a determination as to whether and to what extent the student intern has previously taken part in a student internship program in the United States. Finally, to ensure program quality, a sponsor must take necessary steps to ensure that they are compliant with these regulations and that the student intern's program was effective, appropriate, and achieved its stated goals and objectives.

The Final Rule permits a student intern to engage in full-time employment during the internship program as outlined on the T/IPP, with or without wages or other compensation. Employment is not required for participation in the program. A student intern may be employed, however, only with the approval of the responsible officer and the student's home institution's dean or academic advisor.

These regulations prohibit a sponsor from placing a student intern in an unskilled or casual labor position, in a position that requires or involves child care or elder care, in a position in the field of aviation, or in any kind of position that involves patient care or contact. Finally, a sponsor must not place a student intern in a position that involves more than 20 per cent clerical work.

Comment Analysis

Twelve (12) parties submitted comments to the Department on the Proposed Rule. Four commenting parties opined that the internship should not be required to be in the student's field of study. Upon reconsideration, the Department agrees that this requirement would be too restrictive, and has therefore eliminated it. Otherwise, a prospective participant who was pursuing a degree in fields such as the liberal arts would be excluded from participating in a student internship program. The fact that a student intern must fulfill a degree requirement will eliminate the chance of a student using this category for employment purposes.

Many commenting parties criticized the Proposed Rule's requirement that a student intern be enrolled in and pursuing full-time studies at a post-secondary academic institution outside the United States and that the

internship be tied to a degree requirement. Specifically, seven commenting parties opposed the enrollment requirement and six opposed the degree requirement. The Department believes that such criticisms are without merit and conflict with programs sponsored by academic institutions. The Department believes that it is reasonable to require a sponsor to obtain evidence from a student's foreign institution certifying that the student is currently enrolled in and pursuing a degree at such institution.

Eight commenting parties opined that the exclusion of numerated positions was too restrictive for an internship sponsored by a college or university. These exclusions, however, mirror those in the training and intern category and are consistent with the Exchange Visitor Program's historical exclusion of clinical training. Accordingly, the Department retains the requirement that a student intern not be placed in an unskilled or casual labor position, a position that requires or involves child care or elder care, a position in the field of aviation, or in clinical positions or engaging in any other kind of work that involves patient care or contact, including any work that would require a student intern to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education).

One commenting party requested to be able to conduct interviews with applicants over the telephone. The Department has agreed to permit the use of telephone interviews, when necessary.

Under the Proposed Rule, a current college and university sponsor wishing to provide student internships was required to apply for designation in the new intern subcategory. Six commenting parties opposed this requirement. Accordingly, the student intern will be established as a subcategory of the college and university category, and current academic sponsors will automatically be allowed to provide student internships once the final rule is published and the updates are implemented in SEVIS.

Seven commenting parties voiced concerns regarding the Training/Internship Placement Plan (T/IPP—Form DS-7002). The Department will address modifications to Form DS-7002 in a future **Federal Register** Notice.

Two commenting parties opined that a student intern should be allowed to have multiple internships during each degree level. The Department

respectfully disagrees, noting that the regulations do allow a student who is pursuing an additional degree at the same level to participate in an additional internship program.

Two commenting parties opined that the requirements for the Fair Labor Standards Act and the MSAWPA are not appropriate for college and university offered internships. They believe that these requirements were solely meant for internships offered within the private sector. The Department respectfully disagrees and retains these requirements.

Regulatory Analysis

Administrative Procedure Act

The Department has determined that this Final Rule involves a foreign affairs function of the United States and is consequently exempt from the procedures required by 5 U.S.C. 553 pursuant to 5 U.S.C. 553(a)(1).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Since this rulemaking is exempt from 5 U.S.C. 553, and no other law requires the Department to give notice of proposed rulemaking, this rulemaking also is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

Executive Order 12866, as Amended

The Department of State does not consider this Final Rule to be a "significant regulatory action" under Executive Order 12866, as amended, § 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the Final Rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this Final Rule in light of §§ 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The provisions of Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this rulemaking (Form DS-7002) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, under OMB Control Number 1405-0170, expiration date: 07/31/2009.

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

■ 1. The authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; 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.

■ 2. Section 62.23 is revised to read as follows:

§ 62.23 College and university students.

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

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

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

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

- (i) The United States Government;
- (ii) The government of the student's home country; or
- (iii) An international organization of which the United States is a member by treaty or statute;

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

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

- (i) American and foreign academic institutions;

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

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

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

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

(d) *Admissions requirement.* In addition to satisfying the requirements

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

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

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

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

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

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

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

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

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

(2) *Conditions.* A student, other than a student intern described in paragraph (i) of this section, may be authorized to

participate in an academic training program for wages or other remuneration:

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) How the academic training relates to the student's major field of study; and
(D) Why it is an integral or critical part of the academic program of the student.

(ii) The responsible officer must:

(A) Determine if and to what extent the student has previously participated in academic training as a student, in order to ensure the student does not exceed the period permitted in paragraph (f) of this section;

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

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

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

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

(1) The student employment:

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

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

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

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

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

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

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

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

(h) *Duration of participation.* (1) Degree student. A student who is in a

degree program may be authorized to participate in the Exchange Visitor Program as long as he or she is either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

documentation from an academic institution or English language school.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) *Use of third parties.* A sponsor may engage a third party (including, but not limited to a host organization, partner, local business, governmental entity, academic institution, or any other foreign or domestic agent) to assist it in the conduct of its designated student internship program. Such a third party must have an executed written agreement with the sponsor to

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

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

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

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

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

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

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

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

(8) *Program exclusions.* A sponsor designated by the Department to administer a student internship program must:

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

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

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

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

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

Dated: June 7, 2008.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

State and Local Assistance

CFR Correction

In title 40 of the Code of Federal Regulations, parts 1 to 49, revised as of July 1, 2007, on page 540, in § 35.939, in paragraph (g)(2)(ii), remove the remainder of the paragraph following "in good faith.", and reinstate paragraphs (h) through (l) to read as follows:

§ 35.939 Protests.

* * * * *

(h) *Deferral of procurement action.* Upon receipt of a protest under paragraph (d) of this section, the grantee must defer the protested procurement action (for example, defer the issuance of solicitations, contract award, or issuance of notice to proceed under a contract) until 10 days after delivery of its determination to the participating parties. (The grantee may receive or open bids at its own risk, if it considers this to be in its best interest; and see § 35.938-4(h)(5).) Where the Regional Administrator has received a written protest under paragraph (e) of this section, he must notify the grantee promptly to defer its protested procurement action until notified of the formal or informal resolution of the protest.

(i) *Enforcement.* (1) Noncompliance with the procurement provisions of this subchapter by the grantee shall be cause for enforcement action in accordance with one or more of the provisions of § 35.965 of this subpart.

(2) If the Regional Administrator determines that a protest prosecuted pursuant to this section is frivolous, he may determine the party which prosecuted such protest to be nonresponsible and ineligible for future contract award (see also paragraph (k) of this section).

(j) *Limitation.* A protest may not be filed under this section with respect to the following:

(1) Issues not arising under the procurement provisions of this subchapter; or

(2) Issues relating to the selection of a consulting engineer, provided that a protest may be filed only with respect to the mandatory procedural requirements of §§ 35.937 through 35.937-9;

(3) Issues primarily determined by State or local law or ordinances and as to which the Regional Administrator, upon review, determines that there is no

contravening Federal requirement and that the grantee's action has a rational basis (see paragraph (e)(4) of this section).

(4) Provisions of Federal regulations applicable to direct Federal contracts, unless such provisions are explicitly referred to or incorporated in this subpart;

(5) Basic project design determinations (for example, the selection of incineration versus other methods of disposal of sludge);

(6) Award of subcontracts or issuance of purchase orders under a formally advertised, competitively bid, lump-sum construction contract. However, protest may be made with respect to alleged violation of the following:

(i) Specification requirements of § 35.936-13; or

(ii) Provisions of this subpart applicable to the procurement procedures, negotiation or award of subcontracts or issuance of purchase orders under §§ 35.937-12 (subcontracts under subagreements for architectural or engineering services) or § 35.938-9 (subcontracts under construction contracts).

(k) *Summary disposition.* The Regional Administrator may summarily dismiss a protest, without proceedings under paragraph (d) or (e) of this section, if he determines that the protest is untimely, frivolous or without merit—for example, that the protested action of the grantee primarily involves issues of State or local law. Any such determination shall refer briefly to the facts substantiating the basis for the determination.

(l) *Index.* The EPA General Counsel will publish periodically as a notice document in the Federal Register an index of Regional Administrator protest determinations. (See, e.g., 43 FR 29085, July 5, 1978.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2008-0342; FRL-8581-7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve Missouri's request to revise the State Implementation Plan