

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is to be amended as follows:

*Paragraph 6010(b) Alaskan VOR Federal Airways.*

\* \* \* \*

**V-319 [Amended]**

From Yakutat, AK, via Johnstone Point, AK, INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage, AK; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; to Nanwak, AK NDB.

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**V-333 [Amended]**

From Hooper Bay, AK; Nome, AK; to Shishmaref, AK.

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**V-328 [Removed]**

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**V-480 [Amended]**

From Mt. Moffett, AK, NDB, 20 AGL via St. Paul Island, AK, NDB, 20 AGL; Bethel, AK; McGrath, AK; Nenana, AK; to Fairbanks, AK.

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Issued in Washington, DC, on November 25, 2008.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

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**BILLING CODE 4910–13–P**

**DEPARTMENT OF STATE****22 CFR Part 62**

**[Public Notice: 6448]**

**RIN 1400–AC36**

**Exchange Visitor Program**

**AGENCY:** United States Department of State.

**ACTION:** Proposed rule with request for comment.

**SUMMARY:** The Department of State is proposing to amend the General Provisions (Subpart A) of the existing Exchange Visitor Program regulations in order to provide greater specificity regarding program administration, sponsor obligations and participant eligibility in the Exchange Visitor Program. Certain definitions have been added or deleted. New requirements regarding applications for designation and redesignation, health insurance, the collection of employment authorization information on dependants and the successful completion of criminal background checks on all Responsible Officers and Alternate Responsible Officers are proposed. In addition, the requirements set forth in Subpart F (SEVIS reporting requirements) are consolidated into Subpart A.

**DATES:** The Department will accept comments from the public up to 60 days from December 10, 2008.

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

- Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>
- Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Designation, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547.
- E-mail: [jexchanges@state.gov](mailto:jexchanges@state.gov). You must include the Title and RIN in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:**

Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at [jexchanges@state.gov](mailto:jexchanges@state.gov).

**SUPPLEMENTARY INFORMATION:** The Department of State is proposing modifications to § 62.2 through § 62.16 of the Code of Federal Regulations, Title 22: Foreign Relations, Part 62—Exchange Visitor Program (Subpart A—General Provisions). Subpart A has

remained largely unchanged since 1993, when the predecessor agency with oversight of the Exchange Visitor Program, the United States Information Agency (USIA), substantially rewrote all of the regulations governing the Program. (See 58 FR 15196, Mar. 19, 1993, as amended at 59 FR 34761, July 7, 1994, Redesignated at 64 FR 54539, Oct. 7, 1999). In the intervening 15 years, the Department of State has modified regulations governing certain categories of exchange and has added new categories. Significantly, the introduction of the Student and Exchange Visitor Information System (SEVIS) in 2003 required major amendments to the regulations. Proposed modifications to Subpart A are necessary to bring the general regulatory provisions in line with the category-specific sections or simply to update the regulations to reflect generic business changes that have occurred during the past 15 years.

The proposed rule includes a new provision requiring all new applicants for sponsor designation to be subject to “on-site” reviews. Such reviews, conducted by the Department of State or a third party on its behalf, will be required before a new applicant is designated as a sponsor. Site visits of existing sponsors may occur at the discretion of the Department. The applicants and/or sponsors will bear the cost of these reviews.

The Department of State also proposes to require potential Responsible Officers (“RO”) and Alternate Responsible Officers (“ARO”) to undergo a criminal background check. This requirement is reflective of the importance of the role of such individuals within sponsor organizations and their rights of access to and manipulation of data for a controlled Federal Government database. ROs and AROs are the only individuals authorized to issue and sign Form DS–2019, the “Certificate of Eligibility for Exchange Visitor (J–1) Status.” Foreign nationals who participate in the Exchange Visitor Program must obtain Forms DS–2019 in order to apply for a J–visa to gain entry into the United States. Thus, it is of vital importance that the individuals who have access to a secured Federal Government database (SEVIS) be properly vetted. The Department of State introduced without issue, in 2005, a criminal background check requirement for individuals hosting secondary school student participants. Sponsors of these programs routinely conduct over 60,000 criminal background checks each year. The Department of State anticipates that conducting criminal background checks

on ROs and AROs will be equally successful.

The Department of State will not require applicants or sponsors to submit the results of the criminal background check. Rather, a component of the process of obtaining designation or redesignation requires the Chief Executive Officer, President, or other similar official to submit, as supporting documentation to the application package, a certification that the organization's RO and AROs have undergone a criminal background check. The proposed regulation does not set specific requirements for the sponsors to follow with respect to report format, screening company, or assessment of results. The Department does anticipate, however, that a thorough criminal background check would provide management decision makers with sufficient information to determine whether ROs and AROs are citizens of the United States or lawful permanent residents, whether any record of past criminal activity should disqualify them from the positions, and whether there is pertinent information regarding their personal credit-worthiness. These three areas of review are generally examined matter regarding suitability to hold positions that affect national security.

The Department of State recommends, but does not require, that sponsors utilize the services of an accredited background screener. Sponsors who do decide to use a background screener are free to choose among a number of available options. Some entities that can assist sponsors in finding accredited background screeners to conduct their investigations include Intellicorp, Choicepoint, and members of the National Association of Professional Background Screeners (NAPBS). For example, the NAPBS has over 500 members (a list of which is located at <http://www.NAPBS.com>), all of whom are expected to adhere to the NAPBS code of conduct governing background investigations and confidentiality. Use of an accredited background screener does not confirm an individual's suitability to act as an RO or an ARO and is in no way a substitution for the sponsor's judgment in making such decisions.

In July 2007, the Department of State implemented an interim final rule on Trainees and Interns that required sponsors to screen, vet and enter into written agreements with third parties who assist them in recruiting, selecting, screening, orienting, placing, training or evaluating foreign nationals who participate in training and internship programs. This requirement is relevant

to sponsors who rely upon "host organizations" to provide the actual training or intern programs. It also affects foreign agents who play a vital role in the selection of potential exchange visitors. These trainee and intern regulations require all third parties—foreign and domestic alike—to provide Dun & Bradstreet identification numbers. Similarly, this proposed rule requires all applicants for sponsor designation to submit current Dun & Bradstreet Business Information Reports on themselves. A current Dun and Bradstreet Business Information Report is also required of all sponsors with the submission of an application for redesignation. Further, sponsors seeking redesignation will be required to submit a list of all third parties with whom sponsors have executed written agreements to act on their behalf and separate certifications that the sponsors have obtained Dun & Bradstreet Business Information Reports on all of such third parties.

The proposed rule addresses the current levels of health insurance coverage a sponsor must require that its exchange visitor (and spouse and dependants) must maintain during the duration of their program participation. The Department of State proposes no substantive changes to the insurance requirements with the exception of the addition of dental insurance coverage. Instead, the Department is proposing to increase the levels of coverage so they more accurately align with current health and accident costs and industry standards. Over time, the Department has found that sponsors have differing interpretations regarding the period of time for which insurance coverage is required. To eliminate this area of ambiguity, additional language has been added to explain the timeframe of required coverage from "entry to exit".

The Department of State proposes to collect information on the employment of the accompanying spouse and dependants while in the United States. As a security matter, current information on the employment entity and work location of dependants is necessary.

Definitions have been added or modified to clarify or reflect changes. New definitions in this proposed rule clarify SEVIS functions or fields or reflect changes that have occurred since 1993.

The term "accredited educational institution" has been changed to "accredited academic institution." In the proposed definition, the Department of State clarifies that educational institutions that offer primarily vocational or technical courses of study

are not considered academic. The addition of the "technical" distinction parallels the Department of Education's replacement of regulations governing purely "vocational" studies with a new "vocational/technical" classification that acknowledges the new information technology curricula that are neither vocational nor academic.

Three SEVIS-related definitions have been added to the proposed regulations: "actual and current U.S. address," "site of activity," and "validation." The first two definitions are critical as they relate to the physical location of the exchange visitor. Simply put, sponsors must maintain current and accurate data in these SEVIS fields so that foreign nationals may be located at the site of activity (location where the program will take place) or at the actual and current U.S. address (residence). Maintaining this information is a matter of national security. The SEVIS function of validating a record is similarly important. When an exchange visitor enters the United States and reports to his or her exchange program, the sponsor must note this occurrence in SEVIS through the validation process, thereby demonstrating that an exchange visitor is currently present in the United States and participating in the exchange visitor program identified on the Form DS-2019.

The term "Certificate of Good Standing" has been added and, for clarity, the definition for "Citizen of the United States" has been split into two: one that pertains to individuals and another that relates to legal entities.

This rule reflects changes in technology, and it moves requirements previously in Subpart F to Subpart A. The change from paper numbered forms to electronically generated Forms DS-2019 requires two fundamental alterations to the regulations. First, any requirements relating to the physical storage of unused forms are obsolete. Second, matters of national security require that circulating Forms DS-2019 (i.e., those not kept internally in a sponsor's files) must be originals. All Forms DS-2019 must be generated through SEVIS. The proposed regulations prohibit the use of scanned, copied, or electronic versions of Forms DS-2019 except in response to a request from the Department of State or the Department of Homeland Security or for maintenance of complete exchange visitor records by sponsors. The proposed rule also requires sponsors to request that potential program participants return unused Forms DS-2019, and that such forms be destroyed.

The proposed rule also clarifies those actions a sponsor must undertake to

update an exchange visitor's SEVIS record (or the record of any accompanying spouse and dependants, if any) when the exchange visitor's program participation is ended early (e.g., concluded successfully or terminated as a result of violation of program rules, regulations or U.S. law). The Department of State is reducing from 21 to ten (10) days the time a sponsor has following notification of an exchange visitor's change of circumstance to update the exchange visitor's SEVIS record (or the records of a spouse or dependants).

Finally, as a recordkeeping and administrative oversight matter, sponsors will be required to maintain current information in SEVIS on its exchange visitor program, address, telephone numbers, facsimile numbers, or email addresses. All Department communication to sponsors related to program oversight, policy, redesignation, etc. sent to ROs and AROs are generated from information contained in SEVIS. The Department will not recognize non-receipt of notification as grounds for appeal if a sponsor does not respond to a request. Sponsors are required to ensure that their spam filters do not block reception of SEVIS or Department notices. The term, "in writing" is expanded to include the option for electronic signatures to support movement toward a paperless environment.

The data collection required for management audit templates is within the scope of existing data collections (see OMB 1405–0147, Form DS–7000, Catalog of Information Collection Requirements under 22 CFR Part 62, the Exchange Visitor Program (SEVIS)).

**Note:** Current § 62.17 remains unchanged.

## Regulatory Analysis

### Administrative Procedure Act

The Department of State has determined that this Proposed 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). Nonetheless, because of its importance to the public, the Department has elected to solicit comments during a 60-day comment period.

### Small Business Regulatory Enforcement Fairness Act of 1996

The Proposed 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 Proposed Rule is exempt from 5 U.S.C 553, and no other law requires the Department of State to give notice of proposed rulemaking, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, § 3(b).

### Executive Order 12866, as Amended

The Department of State does not consider this proposed rule to be a "significant regulatory action" under Executive Order 12866, as amended, § 3(f), Regulatory Planning and Review. In addition, the Department of State 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 proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

### Executive Order 12988

The Department of State has reviewed this proposed 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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 64, 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 § 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. Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities, does not apply to this regulation.

### Paperwork Reduction Act

The information collection requirements contained in this proposed rulemaking (criminal background screening of Responsible Officers ("ROs") and Alternate Responsible Officers ("AROs") are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Specifically OMB Control Number 1405–0147, expiration date: 09/30/2010, applies: *Form DS–3037—Update of Information on Exchange Visitor Program Sponsor, Form DS–7000—Catalog of Information Collection Requirements Under 22 CFR Part 62, the Exchange Visitor Program (SEVIS)*.

### 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 continues to read as follows:

**Authority:** 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.*; Foreign Affairs Reform and Restructuring Act of 1998, Public Law 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, Public Law 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), Public Law 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543.

2. Sections 62.2—62.16 are revised as follows:

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Sec.				
62.2	Definitions.			
62.3	Sponsor eligibility.			
62.4	Categories of participant eligibility.			
62.5	Application procedure.			
62.6	Designation.			
62.7	Redesignation.			
62.8	General program requirements.			
62.9	General obligations of sponsors.			
62.10	Program administration.			
62.11	Duties of Responsible Officers and Alternate Responsible Officers.			
62.12	Control of Forms DS–2019.			
62.13	Notification requirements.			
62.14	Insurance.			
62.15	Reporting requirements.			
62.16	Employment.			
*	*	*	*	*

**§ 62.2 Definitions.**

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

*Accredited academic institution.* 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 State in which such institution is located; provided, however, that in addition, all post-secondary institutions must also be accredited by a nationally recognized accrediting agency or association as recognized by the Secretary of Education. An institution that offers primarily vocational or technical programs does not fall within the purview of an academic institution for this purpose.

*Act.* The Mutual Educational and Cultural Exchange Act of 1961, as amended.

*Actual and current U.S. address.* The physical, geographic location at which an exchange visitor resides while participating in an exchange program.

*Alternate Responsible Officer ("ARO").* An employee or officer of a designated sponsor who has been nominated by the sponsor, and approved by the Department of State to assist the Responsible Officer in carrying out the responsibilities outlined in § 62.11. An ARO must be a citizen of the United States or a legal permanent resident.

*Certificate of Good Standing.* A document issued by an official of the Department of State in the State where the organization resides. A Certificate of Good Standing confirms that a corporation, partnership or other legal entity is in existence or authorized to transact business. A Certificate of Good Standing is also known as a Certificate of Authorization or a Certificate of Existence.

*Citizen of the United States (individual).* A person who:

- (1) Is a citizen of the United States or any of its territories or possessions; or
- (2) Has been lawfully admitted for permanent residence, within the meaning of § 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101).

*Citizen of the United States (entity).*

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

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

(ii) The majority of its partners, and in instances where the partnership is additionally governed by a Board, the majority of its officers are citizens of the United States; or

(2) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any state, the District of Columbia, or a territory or possession of the United States, whose principal place of business is located in the United States, and

(i) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or

(ii) A majority of whose officers, a majority of whose shareholders, and a majority of the members of its Board of Directors are citizens of the United States and collectively hold a majority of the shares or stock (i.e., the controlling interest); or

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

(i) Which is qualified with the Internal Revenue Service as a tax-exempt organization pursuant to § 501(c)(3) of the Internal Revenue Code; and

(ii) Whose principal place of business is located in the United States; and

(iii) A majority of whose officers and a majority of whose members of its Board of Directors, Board of Trustees or other like body vested with its management are citizens of the United States; or

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

(5) An agency of the United States, or of any State or local government, the District of Columbia, or any territory or possession of the United States.

*Clerical work.* Routine administrative work generally performed in an office or office-like setting, such as data entry, filing, typing, mail sorting and

distribution, and other general administrative or support office tasks.

*Consortium.* A not-for-profit corporation, partnership, joint venture or other association formed by two or more accredited academic institutions for the purpose of sharing educational resources, conducting research, and/or developing new programs to enrich or expand the opportunities offered by its members. An academic institution in the United States that participates in a consortium is not barred from having separate exchange visitor program designations of its own.

*Country of nationality or last legal permanent residence.* The country of which the exchange visitor is a national at the time status as an exchange visitor was acquired or the last foreign country in which the visitor had a legal permanent residence before acquiring status as an exchange visitor.

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

*Department of State.* The United States Department of State.

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

*Employee.* An individual who provides services or labor for an employer for wages or other remuneration. A third party, as defined in this section, or an independent contractor, as defined in 8 CFR 274a.1(j), is not an employee.

*Exchange visitor.* A foreign national who is in the United States temporarily on a non-immigrant J-1 visa to participate in an exchange visitor program. The term does not include the accompanying spouse and dependants of the exchange visitor.

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

*Exchange visitor's government.* The government of the exchange visitor's country of nationality or last legal permanent residence.

*Financed directly.* Financed in whole or in part by the U.S. Government or the exchange visitor's government with funds contributed directly to the exchange visitor in connection with his

or her participation in an exchange visitor program.

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

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

*Foreign Medical Graduate.* A foreign national that

(1) Is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and entering the United States for the purpose of seeking to pursue graduate medical education or training at accredited schools of medicine or scientific institutions; or, for the purposes of observation, consultation, teaching, or research; or,

(2) Has passed Parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), has competency in oral and written English, will be able to adapt to the educational and cultural environment in which he or she will be receiving his/her education or training, and has adequate prior education and training to participate satisfactorily in the program for which he/she is coming to the United States.

*Form DS-2019. A Certificate of Eligibility for Exchange Visitor (J-1) Status,* a controlled document of the Department of State.

*Form DS-3036. Exchange Visitor Program Application,* a controlled document of the Department of State.

*Form DS-3037. Update of Information on a Sponsor's Exchange Visitor Program.* A controlled document of the Department of State.

*Form DS-7002. Training/Internship Placement Plan (T/IPP).* A controlled document of the Department of State. This Form is for use in connection with the Trainee, Intern and Student Intern categories only.

*Full course of study.* Full-time enrollment in an academic program of classroom participation and study and/or doctoral thesis research at an accredited academic institution as follows:

(1) Secondary school students must satisfy the attendance and course requirements of the State in which the school they attend are located; and

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

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

*Home-country physical presence requirement.* The requirement that an exchange visitor (J visa) who is within the purview of section 212(e) of the Immigration and Nationality Act and Public Law 94-484 (substantially quoted in 22 CFR 41.63) must reside and be physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years following departure from the United States before the exchange visitor is eligible to apply for an immigrant visa or permanent residence, a non-immigrant H visa as a temporary worker or trainee, or a non-immigrant L visa as an intracompany transferee, or a non-immigrant H or L visa as the spouse or minor child of a person who is a temporary worker or trainee or an intercompany transferee. Section 101(a)(15)(H) or section 101(a)(15)(L) of the Immigration and Nationality Act, as amended.

*Host organization.* A third party in the United States that conducts training and internship programs on behalf of a designated sponsor pursuant to an executed written agreement between the two parties.

*Internship program.* A structured and guided work-based learning program as set forth in an individualized T/IPP that reinforces an intern's academic study; recognizes the need for work-based experience; provides on-the-job exposure to American techniques, methodologies, and technologies; and enhances the intern's knowledge of American culture and society.

*J visa.* A non-immigrant visa issued pursuant to 8 U.S.C. 1101(a)(15)(J). A J-1 visa is issued to an exchange visitor. A J-2 visa is issued to the exchange visitor's accompanying non-immigrant immediate family, spouse and minor dependant children.

*Office of Designation.* The Department of State office to which the Secretary of

State delegated the authority to administer the Exchange Visitor Program.

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

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

*Reciprocity.* The participation of a U.S. citizen in an educational and cultural program in a foreign country in exchange for the participation of a foreign national in the Exchange Visitor Program. Where used herein, "reciprocity" will be interpreted broadly; unless otherwise specified, reciprocity does not require a one-for-one exchange or that exchange visitors be engaged in the same activity.

*Responsible Officer ("RO").* An employee or officer of a designated sponsor who has been nominated by the sponsor, and approved by the Department of State to carry out the duties outlined in § 62.11. An RO must be a citizen of the United States or a legal permanent resident.

*Secretary of State.* The Secretary of State or an employee of the U.S. Department of State acting under a delegation of authority from the Secretary of State.

*SEVIS (Student and Exchange Visitor Information System).* The statutorily mandated system designed to collect information on non-immigrant students (F and M visa), exchange visitors (J visa), and their spouses and dependants (F-2, M-2, and J-2). SEVIS enables schools and program sponsors to electronically transmit information and event notifications, via the Internet, to the Department of Homeland Security and the Department of State throughout a student's or exchange visitor's stay in the United States.

*Site of activity.* The physical, geographic location(s) where an exchange visitor participates in his or her exchange program. If a program takes place at more than one location, the sponsor must list all locations in SEVIS and indicate as "primary" the one at which the exchange visitor is currently located.

*Sponsor.* A legal entity designated by the Secretary of State to conduct an exchange visitor program.

*Staffing/employment agency.* A U.S. business that hires individuals for the express purpose of supplying workers to

other businesses. Typically, the other businesses where workers are placed pay an hourly fee per employee to the staffing/employment agency, of which the worker receives a percentage.

**Student internship program.** A structured and guided work-based learning program as set forth in an individualized Form DS-7002 that fulfills a student's academic degree requirements, recognizes the need for work-based experience, provides on-the-job exposure to American techniques, methodologies, and technologies, and enhances a student intern's knowledge of American culture and society.

**Third party.** A person or legal entity with whom a sponsor has executed a written agreement for the person or entity to act on behalf of the sponsor in the conduct of the sponsor's exchange visitor program. A third party under contract with a sponsor may not subcontract or delegate its Exchange Visitor Program obligations to another party. Sponsors are required to take all reasonable steps to ensure that third parties know and comply with all applicable provisions of these regulations. The Department of State imputes to sponsors all actions a third party takes in acting on their behalf.

**Training program.** A structured and guided work-based learning program, as set forth in Form DS-7002, that develops new and advanced skills in a trainee's occupational field through exposure to American techniques, methodologies, and technologies; and enhances a trainee's understanding of American culture and society.

**Validation.** The process by which a Responsible Officer or Alternate Responsible Officer updates a SEVIS record of an exchange visitor to show that the prospective exchange visitor entered the United States, reported to his or her sponsor, and is participating in the exchange visitor program, at the site of activity identified on the Form DS-2019.

### § 62.3 Sponsor eligibility.

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

(1) U.S. local, State and Federal Government agencies; and government agencies of any U.S. territories and possessions; and government agencies of the District of Columbia;

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

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

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

(1) Demonstrate, to the Department of State's satisfaction, its ability to comply and remain in continual compliance with all applicable provisions of 22 CFR part 62;

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

(3) Demonstrate that the organization or its proposed RO has no fewer than three years experience in international exchange; and

(4) Has successfully completed an "on-site" inspection conducted by the Department of State or its agent, the cost for which will be born by the applicant.

### § 62.4 Categories of participant eligibility.

Sponsors select foreign nationals to participate in exchange visitor program(s) in the United States. Participation is limited to foreign nationals who meet the following criteria for each of the following categories:

(a) *Student.* A foreign national who is:

(1) Studying in the United States and:

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

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

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

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

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

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

(3) Engaged in English language training at:

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

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

(4) Engaged full-time in a student internship program conducted by a post-secondary accredited educational institution.

(b) *Short-term scholar.* A foreign national who is a professor, research scholar, or person with similar education or accomplishments who enters the United States for a short-term visit for the purpose of lecturing,

observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions.

(c) *Trainee.* A foreign national participating in a structured and guided work-based training program in his or her specific occupational field and who has either:

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

(2) Five years of work experience in his or her occupational field acquired outside the United States. Training is limited to the occupational category or categories for which a sponsor has obtained designation.

(d) *Teacher.* A foreign national with a minimum of three years of teaching experience for the purpose of teaching full-time in a primary or secondary accredited academic institution.

(e) *Professor.* A foreign national whose primary purpose is teaching, lecturing, observing, or consulting at post-secondary accredited academic institutions, museums, libraries, or similar types of institution. A professor may also conduct research, unless prohibited by the sponsor.

(f) *Research scholar.* A foreign national whose primary purpose is conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions. A research scholar may also lecture, unless prohibited by the sponsor.

(g) *Specialist.* A foreign national who is an expert in a field of specialized knowledge or skills who enters the United States for the purpose of observing, consulting, or demonstrating special knowledge or skills.

(h) *Other person of similar description.* A foreign national of description similar to those set forth in paragraphs (a) through (g) of this section coming to the United States as a participant in an exchange visitor program designated by the Department of State under this category, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. The programs designated by the Department of State in this category consist of:

(1) *Alien physician.* A foreign national who is a graduate of a school of medicine who is coming to the United States under a program in which he or she will receive graduate medical education or training conducted by accredited U.S. schools of medicine or scientific institutions.

(2) *International visitor.* A foreign national who is a recognized or potential leader, selected by the Department of State for the purpose of consulting, observing, conducting research, training, or demonstrating special skills in the United States.

(3) *Government visitor.* A foreign national who is an influential or distinguished person, selected by a U.S. Federal, State, or local government agency for the purpose of consulting, observing, training, or demonstrating special skills in the United States.

(4) *Camp counselor.* A foreign national selected to be a counselor in a summer camp in the United States (e.g., during the U.S. summer months).

(5) *Au pair.* A foreign national who comes to the United States for a period of one year for the purpose of residing with an American host family and participate directly in their home life, while providing limited childcare services, and fulfilling an educational requirement.

(6) *Summer Work and Travel.* A foreign national who is a bona fide foreign post-secondary student currently enrolled in and actively pursuing a degree or a full-time course of study at a foreign accredited post-secondary academic institution whose purpose is work and travel in the United States for up to four months during his or her summer vacation.

(7) *Intern.* A foreign national participating in a structured and guided work-based internship program in his or her specific academic field and who is either:

(i) Currently enrolled full time in and actively pursuing studies at a degree-or certificate-granting post-secondary academic institution outside the United States; or

(ii) Graduated from such an institution no more than 12 months prior to the exchange visitor program begin date reflected on the Form DS-2019.

#### **§ 62.5 Application procedure.**

(a) An entity meeting the eligibility requirements set forth in § 62.3 may apply to the Department of State for designation as an Exchange Visitor Program sponsor. Designation will not be considered if an applicant cannot meet the eligibility requirements set forth in § 62.3. An applicant must first

complete and submit Form DS-3036 in SEVIS. The complete application must consist of:

(1) A completed copy of Form DS-3036 signed by the applicant's Chief Executive Officer, President, or equivalent;

(2) Required supporting documentation and certifications as set forth herein; and

(3) Confirmation of payment of the required fee through pay.gov as set forth in § 62.17.

Applicants should also refer to the Department of State's website for further guidance on the application process.

(b) The complete application must set forth, in detail, the applicant's proposed exchange program activity and must demonstrate, to the Department of State's sole satisfaction, the applicant's ability to meet the designation requirements set forth in § 62.3 and the sponsor obligations set forth in § 62.9.

(c) Applications must be accompanied by the following supporting documents:

(1) Evidence of legal status of the applicant as a U.S. corporation, partnership, or other legal entity (e.g., charter, proof of incorporation, partnership agreement, as applicable) as set forth in § 62.3(a);

(2) Evidence of experience in operating a successful business, including a minimum of three years of experience in international exchange by the organization or by the proposed RO;

(3) Evidence of the applicant's financial viability as set forth in § 62.9(e) and any supplemental or explanatory financial information the Department of State may request.

(i) An established organization must present a current audit report with audit notes prepared by an independent certified public accounting firm.

(ii) A newly formed organization must present a compilation (a balance sheet, statement of cash flows and all disclosures, revenues, expenditures, and notes to financial statements) prepared by an independent certified public accounting firm demonstrating that the organization has been capitalized with sufficient funds to cover general operating expenses and costs associated with an exchange;

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

(4) A current Certificate of Good Standing or Certificate of Existence;

(5) A current Business Information Report on the applicant organization from Dun & Bradstreet;

(6) Evidence of current accreditation if the applicant is a secondary or post-secondary academic institution;

(7) Evidence of current licensure, if required by local, state, or Federal law, to carry out the activity for which it is seeking designation;

(8) A statement signed by the Chief Executive Officer, President, or equivalent certifying that:

(i) The applicant is a citizen of the United States as defined in § 62.2,

(ii) The proposed RO and all proposed ARO(s) are United States citizens or legal permanent residents.

(iii) The sponsor has completed a criminal background check on the potential RO and all ARO(s) and has determined their suitability for these positions;

(iv) The RO will be provided sufficient staff and resources to fulfill his or her duties and obligations on behalf of the applicant;

(9) Evidence that the proposed RO and ARO(s) are citizens of the United States or legal permanent residents (e.g., passport, birth certificate);

(10) A completed SEVIS generated Citizenship Certification for the proposed RO and all proposed ARO(s);

(11) An organizational chart which identifies the staff in place to administer the proposed exchange visitor program. If the applicant is currently designated as a sponsor in another category of exchange and the staff is involved with the administration of other exchange programs, identify the staff person, their position/role and the percentage of time spent on each exchange program;

(12) A copy of an on-site inspection report; and

(13) Such additional information or documentation that the Department of State may deem necessary to evaluate the application.

#### **§ 62.6 Designation.**

(a) Upon its favorable determination that an applicant meets all statutory and regulatory requirements, the Department of State may, in its sole discretion, designate the applicant as an Exchange Visitor Program sponsor. Initial designations are effective for one or two years at the sole discretion of the Department. The initial designation period for a newly formed organization will be limited to one year.

(b) Designation will confer upon a sponsor the authority to engage in one or more activities specified in § 62.4. A sponsor may engage only in the activity or activities specifically authorized in its written letter of designation.



(c) Designations are not transferable or assignable.

#### **§ 62.7 Redesignation.**

(a) A sponsor must file for redesignation no more than six months and no fewer than three months before the designation expiration date as set forth in the sponsor's letter of designation or its most recent letter of redesignation. Failure to apply for redesignation according to this schedule is cause for termination pursuant to § 62.60(g).

(b) A sponsor seeking redesignation as an Exchange Visitor Program sponsor must first complete and submit Form DS-3036 in SEVIS. The complete application must consist of:

(1) A completed copy of Form DS-3036, signed by the sponsor's Chief Financial Officer, President or equivalent;

(2) Required supporting documentation and certifications as set forth herein; and

(3) Confirmation of payment of the required non-refundable fee through pay.gov as set forth in § 62.17.

(c) The complete application must include the following supporting documentation and certifications:

(1) A copy of the sponsor's most recent "on-site" inspection, if required by the Department of State;

(2) A current Business Information Report from Dun & Bradstreet on the sponsor;

(3) A list of all third parties (foreign and domestic) with whom the sponsor has executed a written agreement for the person or entity to act on behalf of the sponsor in the conduct of the sponsor's exchange visitor program and, if requested by the Department of State, a separate certification that the sponsor has obtained a Dun & Bradstreet Business Information Report for each third party. The list should include the name of the third party organization, address of the third party organization, purpose for agreement, and contact information;

(4) A copy of the most recent year-end financial statements;

(5) A copy of the most recent letter of accreditation if the sponsor is a secondary or post-secondary academic institution;

(6) A list of the names, addresses and citizenship of the current members of its Board of Directors or the Board of Trustees or other like body, vested with the management of the organization or partnership, and/or the percentage of stocks/shares held, as applicable;

(7) For a non-profit organization, a signed copy of the sponsor's most recent Form 990 filed with the Internal Revenue Service; and

(8) Such additional information or documentation that the Department of State may request.

(9) A statement signed by the Chief Executive Officer, President, or equivalent certifying that the sponsor has completed a criminal background check on the RO and all AROs and has determined their suitability for these positions;

(10) Such additional information or documentation that the Department of State may deem necessary to evaluate the application.

(d) Upon its favorable determination that a sponsor meets all statutory and regulatory requirements, the Department of State may, in its sole discretion, redesignate the organization as an Exchange Visitor Program sponsor for one or two years.

#### **§ 62.8 General program requirements.**

(a) *Size of program.* A sponsor, other than a Federal Government agency, must have no fewer than five actively participating exchange visitors during the annual reporting cycle (e.g., academic, calendar or fiscal) as stated in its letter of designation or redesignation. The Department of State may, in its sole discretion and for good cause shown, waive this requirement.

(b) *Minimum duration of program.* A sponsor, other than a Federal Government agency, must provide each exchange visitor, except those sponsored in the short-term scholar category, with a minimum period of participation in the United States of no less than three weeks.

(c) *Reciprocity.* In conducting its exchange visitor program, a sponsor must make a good faith effort to develop and implement, to the fullest extent possible, a reciprocal exchange of persons.

(d) *Cross-cultural activities.* A sponsor must:

(1) Offer or make available to exchange visitors and the accompanying spouse and dependants, if any, a variety of appropriate cross-cultural activities. The extent and type of the cross-cultural activities will be determined by the needs and interests of the particular category of exchange visitor. A sponsor will be responsible for determining the appropriate type and number of such cross-cultural programs. The Department of State encourages sponsors to give their exchange visitors the broadest exposure to American society, culture and institutions; and

(2) Encourage exchange visitors to participate voluntarily in activities that are for the purpose of sharing the language, culture, or history of their home country with Americans,

provided such activities do not delay the completion of the exchange visitors' program.

#### **§ 62.9 General obligations of sponsors.**

(a) *Adherence to Department of State regulations.* A sponsor is required to adhere to all regulations set forth in this part. A sponsor who willfully or negligently fails to comply will be subject to the sanctions set forth in § 62.50 or termination as set forth in § 62.60.

(b) *Legal status.* A sponsor must maintain legal status or its designation will terminate pursuant to § 62.60(e). A sponsor's change in legal status (e.g., from partnership to corporation, non-profit to for-profit) requires the submission of a new application for designation of the successor legal entity within 45 days of the change in legal status.

(c) *Accreditation and licensure.* A sponsor must remain in compliance with all local, State, and Federal laws, and professional requirements necessary to carry out the activities for which it is designated, including accreditation and licensure, if applicable.

(d) *Representations and disclosures.* A sponsor must:

(1) Provide accurate and complete information, to the extent lawfully permitted, to the Department of State and the Department of Homeland Security regarding its exchange visitor program, exchange visitors, and accompanying spouse and dependants (if any);

(2) Provide accurate information to the public when advertising its exchange visitor program(s) or responding to public inquiries;

(3) Provide informational materials to prospective exchange visitors, and host families, if applicable, that clearly explain the activities, costs, conditions, and restrictions of its exchange visitor program(s);

(4) Not use the program number(s) assigned by the Department of State at time of designation on any advertising materials or publications intended for general circulation, including sponsor Web sites; and

(5) Not represent that its exchange visitor program is endorsed, sponsored, or supported by the Department of State or the U.S. Government, except for U.S. Government sponsors or exchange visitor programs financed directly by the U.S. Government to promote international educational exchanges. A sponsor may, however, represent that it is designated by the Department of State as a sponsor of an exchange visitor program.



(e) *Financial responsibility.* (1) A sponsor must maintain the financial capability to meet at all times its financial obligations and responsibilities attendant to successful sponsorship of its exchange visitor program.

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

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

(f) *Staffing and support services.* A sponsor must ensure that:

(1) Adequate staffing and sufficient support services are provided to administer its exchange visitor program; and

(2) Its employees, officers, agents, independent contractors, third parties, volunteers or other individuals associated with the administration of its exchange visitor program are adequately qualified, appropriately trained, and comply with the Exchange Visitor Program regulations and immigration laws pertaining to the administration of its exchange visitor program(s).

(g) *Appointment of Responsible Officers and Alternate Responsible Officers.* (1) A sponsor must appoint a RO and a minimum of one (1) or a maximum of ten (10) AROs to assist the RO in performing the duties set forth at § 62.11. A sponsor must ensure that the potential RO and AROs have undergone a criminal background check to determine their suitability for these positions. ROs and AROs must be citizens of the United States or legal permanent residents.

(2) ROs and AROs must be employees or officers of the designated sponsor. Upon written sponsor request, the Department of State may, in its sole discretion, authorize the appointment of an individual who is not an employee or officer to serve as an ARO.

(3) In the event of the departure of a RO or ARO, the sponsor must file a request for the approval of a replacement in SEVIS and forward the required documentation to the Department of State within ten (10) calendar days from the date of the RO's or ARO's departure.

(4) Requests to replace the RO or add an ARO must be submitted in SEVIS and a signed Form DS-3037 mailed to the Department of State with the required completed Citizenship Certification, along with certification that the individual has undergone a criminal background check.

(5) The Department of State reserves the right, in its sole discretion, to deny the appointment of an RO or ARO.

#### **§ 62.10 Program administration.**

A sponsor is responsible for the effective administration of its exchange visitor program(s). These responsibilities include:

(a) *Selection of exchange visitors.* A sponsor must establish and utilize a method to screen and select prospective exchange visitors to ensure that they are eligible for program participation, and that:

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

(2) The exchange visitor possesses sufficient proficiency in the English language as measured by an objective measurement of English language proficiency to participate successfully in his or her exchange visitor program.

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

(1) The purpose of the Exchange Visitor Program;

(2) The home-country physical presence requirement (e.g., section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182, set forth substantially at 22 CFR 41.63);

(3) Travel and entry into the United States (e.g., procedures to be followed by exchange visitors and accompanying spouse and dependants, if any, in obtaining a visa for entry to the United States, paying the SEVIS fee, procedures for obtaining a visa including the information/documentation needed for the interview; travel arrangements to the United States, what to expect at the port of entry, including the necessity of having and presenting their travel documents at the port of entry);

(4) Housing;

(5) A breakdown of all fees to be paid by potential exchange visitors (i.e., paid to the sponsor or a third party);

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

(7) Health care and insurance requirements for exchange visitors and their accompanying spouse and dependants, as applicable; and

(8) Arrival notification requirements. Procedures exchange visitors, spouses and dependants are to follow upon entry into the United States in reporting their arrival to the sponsor and reporting to the location of their program.

(9) Other information that will assist exchange visitors to prepare for their stay in the United States (e.g., how and when to apply for a social security number, if applicable; how to apply for a driver's license; how to open a bank account; how to remain in lawful non-immigrant status).

(c) *Orientation.* A sponsor must offer an appropriate orientation for all exchange visitors. Sponsors are encouraged to provide orientation for the exchange visitor's immediate family, especially for those exchange visitors who are expected to be in the United States for more than one year.

Orientation must include, but is not limited to, information concerning:

(1) Life and customs in the United States;

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

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

(4) A description of the exchange visitor program in which the exchange visitor is participating (e.g., information on the length and location of the program, a summary of the significant components of the program, and any stipend (payment or wage) an exchange visitor will receive);

(5) Sponsor rules that the exchange visitors are required to follow while participating in their exchange visitor program;

(6) Name and address of the sponsor and the name, e-mail address and telephone number of the RO and ARO(s);

(7) The Department of State's Office of Designation's address, telephone number, facsimile number, Web site and e-mail address, and a copy of the Exchange Visitor Program brochure or other Department materials as appropriate or required; and

(8) The requirement that an exchange visitor must promptly report to the sponsor or sponsor designee any changes in his or her telephone number, email address, actual and current U.S. address, and site of activity (if permitted to change without sponsor authorization).

(d) *Monitoring of exchange visitors.* A sponsor must monitor, through its employees, officers, agents, or third

parties, the exchange visitor's participation in its exchange visitor program(s). A sponsor must:

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

(2) Monitor the physical location (site of activity), and the progress and welfare of the exchange visitor to the extent appropriate for the category;

(3) Require that exchange visitors report to the sponsor within ten (10) calendar days, any changes in their telephone numbers, e-mail addresses, actual and current U.S. addresses (e.g., physical residence), and site(s) of activity address (if permitted to change without sponsor authorization);

(4) Report in SEVIS within ten (10) calendar days of notification by an exchange visitor any change in the exchange visitor's actual and current U.S. address, telephone number, email addresses, and/or primary site of activity (if the exchange visitor is permitted) to make such change without prior sponsor authorization;

(5) Report the actual and current U.S. address and email address for each accompanying spouse and dependants.

(6) Report Employment Authorization Document (EAD) information in SEVIS for the accompanying spouse and each dependant, if applicable, by entering the EAD number, validation and expiration dates as issued by the Department of Homeland Security.

(e) *Requests by the Department of State.* A sponsor must, to the extent lawfully permitted, furnish the Department within a reasonable time all information, reports, documents, books, files, and other records or information requested by the Department on all matters related to its exchange visitor program. All submissions relative to a request must contain the sponsor's program number.

(f) *Inquiries and investigations.* A sponsor must cooperate with any inquiry or investigation that may be undertaken by the Department of State or the Department of Homeland Security.

(g) *Retention of records.* A sponsor must retain all records related to its exchange visitor program and its participants (to include accompanying spouse and dependants, if any) for a minimum of three years following the completion of each participant's exchange visitor program.

#### **§ 62.11 Duties of Responsible Officers and Alternate Responsible Officers.**

The RO must train and supervise AROs and ensure that these officials are

in compliance with the Exchange Visitor Program regulations. ROs and AROs must:

(a) Be thoroughly familiar with the Exchange Visitor Program regulations, relevant immigration laws and all Federal and State regulations pertaining to the administration of its exchange visitor program(s), including the Department of State's and the Department of Homeland Security's policies, manuals, instructions, guidance and SEVIS operations relevant to the Exchange Visitor Program;

(b) Ensure that the exchange visitor obtains sufficient advice and assistance to facilitate the successful completion of his or her exchange visitor program;

(c) Conduct all official communications relating to their sponsor's exchange visitor program with the Department of State and the Department of Homeland Security. A sponsor must include its exchange visitor program number on all correspondence submitted to the Department of State and to the Department of Homeland Security;

(d) Ensure that sponsor spam filters do not block reception of SEVIS or Department of State and Department of Homeland Security notices; and

(e) Control and issue Forms DS-2019 as set forth in § 62.12.

#### **§ 62.12 Control of Forms DS-2019.**

(a) *Issuance of Forms DS-2019.* A sponsor must:

(1) Ensure that only the RO and AROs have access to SEVIS;

(2) Ensure that information input into SEVIS is accurate, current, and updated pursuant to regulations herein; and

(3) Issue Forms DS-2019 only for the following authorized purposes:

(i) To facilitate the initial entry of the exchange visitor and accompanying spouse and dependants, if any, into the United States;

(ii) To extend the duration of participation of an exchange visitor, when permitted by the regulations;

(iii) To facilitate program transfers, when permitted by the regulations and/or authorized in writing by the Department of State;

(iv) To replace lost, stolen, or damaged Forms DS-2019;

(v) To facilitate the re-entry of an exchange visitor and accompanying spouse and dependants, if any, who travel outside the United States during the exchange visitor's program;

(vi) To facilitate a change of category, when permitted by the Department of State;

(vii) To update information when significant changes take place in regard to the exchange visitor's program (e.g.,

a substantial change in funding or a change in the primary site of activity or actual and current U.S. address);

(viii) To facilitate the correction of a minor or technical infraction; or

(ix) To facilitate a "reinstatement" or a "reinstatement update SEVIS status" when permitted by the Department of State.

(b) *Verification.* (1) Prior to issuing Forms DS-2019, a sponsor must verify that each prospective exchange visitor:

(i) Is eligible, qualified, and accepted for the program in which he or she will participate (e.g., has an offer letter from a camp, a written acceptance from a secondary school);

(ii) Possesses adequate financial resources to participate in and complete his or her exchange visitor program; and

(iii) Possesses adequate financial resources to support an accompanying spouse and dependants, if any.

(2) The sponsor must ensure that:

(i) Only the RO or ARO who is physically present in the United States or in a U.S. territory may print and sign Forms DS-2019; and

(ii) Only the RO or ARO whose name is printed on the Form DS-2019, is permitted to sign the document. The Form DS-2019 must be signed in blue ink to denote that it is the original document.

(iii) Sponsors for whom the RO or AROs have been found to have violated the requirements of this section will be subject to sanctions as set forth in § 62.50(a)(2).

(c) *Distribution of Forms DS-2019.*

The sponsor must ensure that completed Forms DS-2019 are distributed directly to the exchange visitor and accompanying spouse and dependants, if any, (or to an individual designated by the exchange visitor) only via the sponsor's employees, officers, agents, independent contractors, third parties, volunteers, or other individuals acting on behalf of the sponsor in the administration of its exchange visitor program.

(d) *Allotment requests.* (1) Annual Form DS-2019 allotment. A sponsor must submit an electronic request via SEVIS to the Department of State for an annual allotment of Forms DS-2019 based on the annual reporting cycle (e.g., academic, calendar or fiscal year) stated in its letter of designation or redesignation. A sponsor should allow up to four weeks for the processing of the allotment request. The Department has the sole discretion to determine the number of Forms DS-2019 to be issued to a sponsor.

(2) Expansion of Program. A request for program expansion must include information such as, but not limited to,

the source of program growth, staff increases, confirmation of adequately trained employees, current financial information, additional overseas affiliates, and explanations of how the sponsor will accommodate the anticipated program growth. The Department of State will take into consideration the current size of a sponsor's program and the projected expansion of the program in the coming 12 months and may consult with the RO and/or ARO prior to determining the number of Forms DS-2019 to issue to a sponsor.

(e) *Safeguards and controls.* (1) ROs and AROs must secure their SEVIS logon Identification Numbers (IDs) and passwords at all times (*i.e.*, not share IDs and passwords with any other person). Sponsors whose ROs or AROs have been found to have willfully or negligently violated the requirements of this section will be subject to sanctions as set forth in § 62.50(a).

(2) A sponsor, its employees, officers, agents, or other third parties acting on behalf of the sponsor, may not forward to any unauthorized party (via facsimile or other electronic means) copies or Portable Document Formats (PDFs) of signed or unsigned Forms DS-2019. However, a sponsor must forward such copies and/or PDFs to the Department of State or the Department of Homeland Security upon request.

(3) A sponsor must use the reprint function in SEVIS in the event the exchange visitor's Form DS-2019 has been lost or stolen.

(4) Destroy damaged and unusable Form DS-2019 on the sponsor's premises after making a record of such forms (*e.g.*, forms with errors or forms damaged by a printer).

(5) Request exchange visitors and prospective exchange visitors to return any unused Form DS-2019 sent to them.

#### **§ 62.13 Notification requirements.**

(a) *Valid program status of exchange visitor.* A sponsor must notify the Department of State via SEVIS of the following:

(1) Validation of program participation. A sponsor must promptly validate an exchange visitor's participation in his or her program. This will change the status of the exchange visitor's SEVIS record from "Initial" to "Active." SEVIS records with program durations of 30 days or more (*e.g.*, the period between the "Program Begin Date" to "Program End Date") must be validated within 30 days following the "Program Begin Date" identified in SEVIS. SEVIS records with program durations that are less than 30 days must be validated prior to the "Program

End Date" reflected in SEVIS. Prior to validation, a sponsor may amend the program start date and must update the SEVIS record to reflect the actual and current U.S. address and site of activity in SEVIS. The status of SEVIS records that are not validated according to this schedule will automatically change to "Invalid" or "No Show".

(2) Failure of exchange visitor to begin program. A sponsor must report in SEVIS, no later than 30 calendar days after the "Program Begin Date" listed in SEVIS, the failure of an exchange visitor to report to his or her sponsor upon entry in the United States (*i.e.*, failure of exchange visitor to begin an exchange visitor program as scheduled). This will change the status of the exchange visitor's SEVIS record from "Initial" to "No Show".

(3) End of exchange visitor's program. A sponsor must report in SEVIS any withdrawal from or early completion of an exchange visitor's program that occurs prior to the "Program End Date" listed in SEVIS on the exchange visitor's Form DS-2019. The sponsor must not alter the "Program End Date" field, but should enter the date of program completion in the "Effective Date of Completion" field. This will change the status of the exchange visitor's SEVIS record from "Active" to "Inactive." Such notification in SEVIS ends a sponsor's programmatic obligations to the exchange visitor and/or his or her accompanying spouse and dependants.

(4) Accompanying spouse and dependant records. A sponsor must report in SEVIS if an accompanying spouse and/or dependants depart from the United States prior to the exchange visitor's departure date.

(5) Termination of an exchange visitor's program. A sponsor must promptly report in SEVIS the involuntary termination of an exchange visitor's program. The sponsor must not alter the "Program End Date" field, but should enter the date of program termination in the "Effective Date of Termination" field. This will change the status of the SEVIS record from "Active" to "Terminated". Such notification in SEVIS ends a sponsor's programmatic obligation to the exchange visitor and spouse and dependants, if any, and prevents the sponsor from thereafter extending the exchange visitor's duration of participation, transferring the exchange visitor to another program, or changing the exchange visitor's category. Sponsors must not terminate the program of an exchange visitor who voluntarily ends his or her program.

(b) *Change of circumstance of an exchange visitor.* A sponsor must

promptly notify the Department of State via SEVIS of any of the following circumstances:

(1) Change in the actual and current U.S. address. A sponsor must ensure that the actual and current U.S. addresses of an exchange visitor are reported in SEVIS:

(i) A sponsor must update the actual and current U.S. address information in SEVIS for an exchange visitor within 10 days of being notified by an exchange visitor of a change in address. A sponsor who is responsible for the placement or housing of such exchange visitors must promptly update a change in the actual and current U.S. address in SEVIS;

(ii) A sponsor must report the U.S. mailing address (*i.e.*, provide a P.O. Box number) in SEVIS in those limited cases where mail cannot be delivered to the exchange visitor's actual and current U.S. address (*e.g.*, the exchange visitor resides in a campus setting);

(iii) If a U.S. mailing address is reported to SEVIS, a sponsor must also maintain records in SEVIS of actual and current U.S. addresses (*e.g.*, dormitory, building and room number) for such exchange visitors; and

(iv) Failure to update the actual and current U.S. addresses of their exchange visitors as required, may be grounds for revocation of a sponsor's exchange visitor program designation, as set forth in § 62.50(a).

(2) Change in site of activity. A sponsor must report in SEVIS any change to an exchange visitor's site of activity by entering the new site within ten (10) calendar days of notification of such a change where sponsor rules or regulations permit such a change. A sponsor must promptly enter any change in the site of activity in those instances where the sponsor is responsible for the placement. A sponsor must identify the "primary" site of activity of an exchange visitor if multiple sites of activity are reported in SEVIS.

(c) *Change in sponsor's circumstance.* A sponsor must report within ten (10) days in SEVIS or directly to the Department of State, if appropriate, any material changes to its exchange visitor program as follows:

(1) Change of business and/or mailing address, telephone number, facsimile number, or e-mail address;

(2) Change in the composition of the sponsor organization that affects its U.S. citizenship status as defined in § 62.2;

(3) Change of RO or ARO;

(4) Major change of ownership or control of the sponsor's organization as defined in § 62.60(e);

(5) Change of the sponsor's principal place of business to a location outside the United States;

(6) Change in financial circumstances that may render the sponsor unable to comply with its obligations as set forth in § 62.9(e);

(7) Loss of licensure or accreditation;

(8) Loss or theft of Forms DS-2019, in which case a sponsor must notify the Department of State promptly by telephone (confirmed promptly in writing by facsimile or e-mail) of the SEVIS identification numbers of such Forms DS-2019 that have been lost or stolen;

(9) Any litigation related to a sponsor's exchange visitor program, in which the sponsor or an exchange visitor is a named party;

(10) A decision by the sponsor to voluntarily cancel (withdraw) its exchange visitor program designation; or,

(11) Any other material facts or events that may have an impact on the sponsor's ability to properly administer or conduct its exchange visitor program.

(d) *Serious problem or controversy.* A sponsor must inform the Department of State on or before the next business day by telephone (confirmed promptly in writing by facsimile or e-mail) of any serious problem or controversy which could be expected to bring the Department, the Exchange Visitor Program or the sponsor's exchange visitor program into notoriety or disrepute.

#### § 62.14 Insurance.

(a) A sponsor must require that all exchange visitors and their spouse and dependants, if any, have insurance in effect that covers the exchange visitors for sickness or accidents during the period of time that they participate in the sponsor's exchange visitor program. A sponsor may offer insurance, but is not required, to ensure that exchange visitors have "entry to exit" coverage. The period of required coverage is the actual duration of the exchange visitor's participation in the sponsor's exchange visitor program. Minimum coverage must provide:

(1) Medical benefits of at least \$200,000 per accident or illness;

(2) Repatriation of remains in the amount of \$25,000;

(3) Expenses associated with the medical evacuation of exchange visitors to his or her home country in the amount of \$50,000;

(4) Deductibles not to exceed \$500 per accident or illness; and

(5) Dental insurance in the amount of \$10,000.

(b) Insurance policies secured to fulfill the requirements of this section:

(1) May require a waiting period for pre-existing conditions that is reasonable as determined by current industry standards;

(2) May include provisions for co-insurance under the terms of which the exchange visitor may be required to pay up to 25% of the covered benefits per accident or illness; and

(3) Must not unreasonably exclude coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.

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

(1) Underwritten by an insurance corporation having an A.M. Best rating of "A-" or above; an Insurance Solvency International, Ltd. (ISI) rating of "A-i" or above; a Standard & Poor's Claims-paying Ability rating of "A-" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as the Department of State may from time to time specify; or

(2) Backed by the full faith and credit of the government of the exchange visitor's home country; or

(3) Part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or

(4) Offered through or underwritten by a federally qualified Health Maintenance Organization or eligible Competitive Medical Plan as determined by the Health Care Financing Administration of the U.S. Department of Health and Human Services.

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

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

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

(g) An accompanying spouse and/or dependant is required to be covered by insurance in the amounts set forth in paragraph (a) of this section. A sponsor

must inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States.

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

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

#### § 62.15 Reporting requirements.

Sponsors must submit an annual report to the Department of State which is to be generated through SEVIS. Such report must be filed on an academic, calendar or fiscal year basis, as directed the Department of State, and must contain the following:

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

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

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

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

(e) *Certification.* All annual reports must include the following certification:

"I have reviewed this report of my organization's operation of a Department of State designated exchange visitor program and hereby certify that adequate staff and resources are devoted to the administration and oversight of this program and that internal controls adequate to ensure regulatory compliance are in place."

(1) For exchange visitor programs classified as "Government Programs," this certification will be signed by RO.

(2) For exchange visitor programs classified as P-1 or P-2 "Academic Programs," this certification will be signed by the institution's Chief Financial Officer.

(3) For exchange visitor programs classified as P-3 and P-4 "Private Sector Programs," this certification will be signed by the organization's Chief

Financial Officer. In addition to the Annual Report required above, all P-3 and P-4 "Private Sector" programs must file a program specific management audit (in a format approved by the Department of State).

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

#### **§ 62.16 Employment.**

(a) An exchange visitor may receive compensation from the sponsor or the sponsor's appropriate designee for employment when such activities are part of the exchange visitor's program.

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

(c) The acceptance of employment by an accompanying spouse or dependant of an exchange visitor is governed by Department of Homeland Security regulations. An exchange visitor must report to his or her sponsor the Employment Authorization Document (EAD) number and the validation and expiration dates of the authorized period of employment for any accompanying spouse and each dependant. As required by 62.10(d)(6), sponsors must report accompanying spouse and dependant EAD information in SEVIS.

Dated: December 4, 2008.

**Stanley S. Colvin,**

*Deputy Assistant Secretary, Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E8-29213 Filed 12-9-08; 8:45 am]

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **42 CFR Part 84**

**RIN 0920-AA10**

#### **Approval Tests and Standards for Closed-Circuit Escape Respirators; Notice of Proposed Rulemaking**

**AGENCY:** Centers for Disease Control and Prevention (CDC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes updated requirements that the Department of Health and Human Service's (HHS), Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health

(NIOSH) would employ to test and approve closed-circuit respirators used for escaping atmospheres considered to be immediately dangerous to life and health, including such respirators required by the Mine Safety and Health Administration (MSHA) for use in underground mines. NIOSH and MSHA jointly review and approve this type of respirator used for mine emergencies under 42 CFR pt. 84, Approval of Respiratory Protective Devices. NIOSH also approves these respirators used in other work environments where escape equipment may be provided to workers, such as vessels operated by U.S. Navy and Coast Guard personnel. The proposed rule would replace only those technical requirements in 42 CFR Part 84—Subpart H that are uniquely applicable to closed-circuit escape respirators (CCERs), a subset of the variety of escape respirators presently covered by Subpart H. All other applicable requirements of 42 CFR Part 84 would remain unchanged. The purpose of these updated requirements is to enable NIOSH and MSHA to more effectively ensure the performance, reliability, and safety of CCERs.

**DATES:** CDC invites comments on this proposed rule from interested parties. Comments must be received by February 9, 2009.

**ADDRESSES:** You may submit comments, identified by RIN: 0920-AA10, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [niocindocket@cdc.gov](mailto:niocindocket@cdc.gov). Include "RIN: 0920-AA10" and "42 CFR pt. 84" in the subject line of the message.

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, RIN: 0920-AA10. All comments received will be posted without change at the NIOSH docket Web page: <http://www.cdc.gov/niosh/docket>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Background information on this rulemaking is available at the NIOSH Web page: <http://www.cdc.gov/niosh/npptl>.

**FOR FURTHER INFORMATION CONTACT:** Tim Rehak, NIOSH National Personal Protective Technology Laboratory (NPPTL), Pittsburgh, PA, (412) 386-6866 (this is not a toll-free number). Information requests can also be submitted by e-mail to [niocindocket@cdc.gov](mailto:niocindocket@cdc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this proposal.

Comments submitted by e-mail or mail should be titled "Docket #005 Public Comments", addressed to the "NIOSH Docket Officer", and identify the author(s), return address, and a phone number, in case clarification is needed. Comments can be submitted by e-mail to [niocindocket@cdc.gov](mailto:niocindocket@cdc.gov) as e-mail text or as a Word or Word Perfect file attachment. Printed comments can be sent to the NIOSH Docket Office at the address above. All communications received on or before the closing date for comments will be fully considered by CDC.

All comments submitted will be available for examination in the rule docket (a publicly available repository of the documents associated with the rulemaking) both before and after the closing date for comments. A complete electronic docket containing all comments submitted will be available after the closing date at <http://www.cdc.gov/niosh/docket>. Comments will also be made available in writing upon request. NIOSH includes all comments received without change in the docket, including any personal information provided.

##### **II. Background**

###### **A. Introduction**

A closed-circuit escape respirator (CCER) technically defined as a closed-circuit, self-contained breathing apparatus (SCBA) used for escape, is used in certain industrial and other work settings during emergencies to enable users to escape from atmospheres that can be immediately dangerous to life and health. The CCER, known in the mining industry as a self-contained self-rescuer (SCSR), is primarily used by miners to escape dangerous atmospheres in mines. It is also used by certain Navy personnel, such as crews working below decks on vessels, to escape dangerous atmospheres. To a lesser extent, it is also used by other industries involved in working