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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 5360]
RIN 1400-AC13

Rule Title: Secondary School Student Exchange Programs

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department adopts as final certain proposed amendments to existing regulations set forth at 22 CFR 62.25. These amendments require program sponsors to complete criminal background checks for officers, employees, agents, representatives and volunteers acting on their behalf and require monthly contact with host families and students. Also adopted as final is a requirement that all adult members of a host family household undergo a criminal background check. A requirement to report any allegation of sexual misconduct to both the Department and local law enforcement authorities is also adopted.

DATES: Effective Date: This rule is effective May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at jexchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department of State designates 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. Under this authority, some 1,450 program sponsors facilitate the entry of more than 275,000 exchange participants each year. Secondary school students have been a vital component of these private sector exchange activities since 1956 and serve to inform the opinion of foreign youth of the United States and its people.

The safety and security of these participants are of paramount importance to the Department. Although participants are generally 17 to 18 years of age, some participants are as young as 15 and often away from home for the first time. Given the vulnerable status of such a population, the Department proposed certain amendments to existing

regulation through publication of a proposed rule on August 12, 2005 (70 FR 47152-55), with minor correction on August 24, 2005 (70 FR 49595-16). Of the 81 comments received regarding criminal background checks, almost all expressed strong support of the proposal regarding criminal background or sex offender checks. Accordingly, all officers, employees, representatives, agents, and volunteers acting on the sponsors' behalf must not only be adequately trained and supervised but, if they have direct personal contact with exchange students, must also pass a criminal background check. This change is consistent with requirements that have been adopted nationwide for volunteers and employees of organizations serving youth populations. The Department concludes that a sufficient network of local and state mechanisms is now in place to provide for the convenient and cost effective vetting of these individuals.

As a related issue, the Department adopts a requirement that all adult members of a prospective host family also undergo a criminal background check. The Department proposed that host family members be vetted through a sex offender registry maintained by the state in which the host family resides. These registries have been established over the last few years and are now available in 48 of the 50 states. Although the registries are easily accessed and require only the name and zip code of the individual being vetted, commenters pointed out that this information would also be contained in a criminal background report. Such a report would be more comprehensive and would also provide information regarding violent acts or crimes of moral turpitude. The Department is persuaded by the logic of this position and adopts a criminal background report rather than sex offender registry requirement. To further protect student participants, the Department adopts a requirement that sponsors provide written information to each participant regarding the reporting of sexual abuse or exploitation. The Department concludes that such information is well advised given the youth of the participants and cross cultural differences that may contribute to a reluctance to speak out regarding such matters.

To provide greater clarity regarding program eligibility, the Department proposed amendment of existing regulations set forth at 62.25(e) to require that student participants be bona fide students not more than 18 years and six months of age as of the program start date. Numerous comments questioned the utility of this change and pointed out that some countries have

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educational systems that make it impractical for students to participate in an exchange until they have completed their studies in the home country. To accommodate this small population of potential participants the Department will deem as eligible those students who are not more than 18 and a half years of age as of their program start date regardless of their having completed secondary studies in their home country. This fact must be disclosed to the appropriate school officials of the prospective school placement who may accept or decline their enrollment.

As the oversight and monitoring of students is central to successful administration of these programs, the Department proposed to limit the responsibility of area representatives. Currently this limitation is based on a geographical radius of not more than 150 miles. The Department proposed to amend this requirement by

substituting a two-hour driving time limitation. Of the eighteen comments received on this proposal, all were negative and suggested that a geographical limitation be maintained. The Department agrees with these comments and adopts a 120-mile geographical radius based upon the realities of both rural and urban student placements.

Analysis of Comments

The Department received a total of 208 comments on the proposed secondary school student regulations set forth at 22 CFR 62.25. The following is a breakdown of the related sections:

Section 62.25(d)(1) received 81 comments of which 67 were favorable;

Section 62.25(d)(2) received 18 comments of which all were opposed to the change and recommended that the Department stay with a mileage distance instead of a time frame.

Section 62.25(d)(4) received 4 comments of which all were favorable.

Section 62.25(e)(1) & (2) received 143 comments each of which all were opposed to the change.

Section 62.25(f)(1) received 23 comments of which all but one were opposed to the change.

Section 62.25(g)(1) received 13 comments of which 11 were favorable.

Section 62.25(j)(1) received 8 comments of which all were favorable.

Section 62.25(j)(7) received 52 comments of which 34 were favorable.

Section 62.25(m)(1) received 23 comments of which 8 were favorable and several other accepted with modification.

In addition, 21 additional comments were received regarding miscellaneous suggestions and comments.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a final rule, after it was published as a proposed rule on August 12, 2005.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601-612, and Executive Order 13272, section 3(b).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a ``significant regulatory action'' under Executive Order 12866, section 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 regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

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

Executive Orders 12372 and 13132

This regulation will not have substantial direct 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 regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange programs.

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Accordingly, 22 CFR part 62 is to be amended as follows:

PART 62--EXCHANGE VISITOR PROGRAM

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

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431-1442, 2451-2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, 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.

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2. Section 62.25 is revised to read as follows:

Sec. 62.25 Secondary school students.

(a) Introduction. This section governs Department of State designated exchange visitor programs under which foreign national secondary school students are afforded the opportunity for up to one year of study in a United States accredited public or private secondary school, while living with an American host family or residing at an accredited U.S. boarding school.

(b) Program sponsor eligibility. Eligibility for designation as a secondary school student exchange visitor program sponsor is limited to organizations:

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(1) With tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(2) Which are United States citizens as such terms are defined in Sec. 62.2.

(c) Program eligibility. Secondary school student exchange visitor programs designated by the Department of State must:

(1) Require all participants to be enrolled and participating in a full course of study at an accredited educational institution;

(2) Allow entry of participants for not less than one academic semester (or quarter equivalency) nor more than two academic semesters (or quarter equivalency) duration; and

(3) Be conducted on a U.S. academic calendar year basis, except for students from countries whose academic year is opposite that of the United States. Exchange students may begin in the second semester of a U.S. academic year if specifically permitted to do so, in writing, by the school in which the exchange visitor is enrolled. Both the host family and school must be notified prior to the exchange student's arrival in the United States that the placement is for either an academic semester or year, or calendar year program.

(d) Program administration. Sponsors must ensure that all officers, employees, representatives, agents, and volunteers acting on their behalf:

(1) Are adequately trained and supervised and that any such person in direct personal contact with exchange students has been vetted through a criminal background check ;

(2) Make no student placement beyond 120 miles of the home of a local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from an exchange

student's participation in the exchange visitor program;

(3) Ensure that no organizational representative act as both host family and area supervisor for any exchange student participant;

(4) Maintain, at minimum, a monthly schedule of personal contact with the student and host family, and ensure that the school has contact information for the local organizational representative and the program sponsor's main office; and

(5) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions governing program administration that the Department may from time to time impose.

(e) Student selection. In addition to satisfying the requirements of Sec. 62.10(a), sponsors must ensure that all participants in a designated secondary school student exchange visitor program:

(1) Are secondary school students in their home country who have not completed more than eleven years of primary and secondary study, exclusive of kindergarten; or are at least 15 years of age but not more than 18 years and six months of age as of the program start date;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States or attended school in the United States in either F-1 or J-1 visa status.

(f) Student enrollment. (1) Sponsors must secure prior written acceptance for the enrollment of any exchange student participant in a United States public or private secondary school

Such prior acceptance must:

(i) Be secured from the school principal or other authorized school administrator of the school or school system that the exchange student participant will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Under no circumstance may a sponsor facilitate the entry into the United States of an exchange student for whom a written school placement has not been secured.

(3) Sponsors must maintain copies of all written acceptances and make such documents available for Department of State inspection upon request.

(4) Sponsors must provide the school with a translated ``written English language summary'' of the exchange student's complete academic course work prior to commencement of school, in addition to any additional documents the school may require. Sponsors must inform the prospective host school of any student who has completed secondary school in his/her home country.

(5) Sponsors may not facilitate the enrollment of more than five exchange students in one school unless the school itself has requested, in writing, the placement of more than five students.

(6) Upon issuance of Form DS-2019 to a prospective participant, the sponsor accepts full responsibility for placing the student, except in cases of voluntary student withdraw or visa denial.

(g) Student orientation. In addition to the orientation requirements set forth at Sec. 62.10, all sponsors must provide exchange students, prior to their departure from the home country, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program along with a detailed summary of travel arrangements;

(2) Age and language appropriate information on how to identify and report sexual abuse or exploitation;

(3) A detailed profile of the host family in which the exchange student is placed. The profile must state whether the host family is either a permanent placement or a temporary arrival family;

(4) A detailed profile of the school and community in which the exchange student is placed; and

(5) An identification card, which lists the exchange student's name, United States host family placement address and telephone number, and a telephone number which affords immediate contact with both the program sponsor, the program sponsor's organizational representative, and Department of State in case of emergency. Such cards may be provided in advance of home country departure or immediately upon entry into the United States.

(h) Student extra-curricular activities. Exchange students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) Authorized by the local school district in which the student is enrolled; and

(2) Authorized by the State authority responsible for determination of athletic eligibility, if applicable.

(i) Student employment. Exchange students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) Host family selection. Sponsors must adequately screen and select all potential host families and at a minimum must:

(1) Provide potential host families with a detailed summary of the exchange visitor program and the parameters of their participation, duties, and obligations;

(2) Utilize a standard application form that must be signed and dated by all potential host family applicants which provides a detailed summary and profile of the host family, the physical home environment, family composition, and community environment. Exchange students are not permitted to reside with relatives.

(3) Conduct an in-person interview with all family members residing in the home;

(4) Ensure that the host family is capable of providing a comfortable and nurturing home environment;

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(5) Ensure that the host family has a good reputation and character by securing two personal references for each host family from the school or community, attesting to the host family's good reputation and character;

(6) Ensure that the host family has adequate financial resources to undertake hosting obligations;

(7) Verify that each member of the host family household eighteen years of age and older has undergone a criminal background check; and

(8) Maintain a record of all documentation, including but not limited to application forms, background checks, evaluations, and interviews, for all selected host families for a period of three years.

(k) Host family orientation. In addition to the orientation requirements set forth in Sec. 62.10, sponsors must:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange visitor program;

(2) Provide all selected host families with a copy of Department of

State-promulgated Exchange Visitor Program regulations; and

(3) Advise all selected host families of strategies for cross-cultural interaction and conduct workshops which will familiarize the host family with cultural differences and practices.

(1) Host family placement. (1) Sponsors must secure, prior to the student's departure from his or her home country, a permanent or arrival host family placement for each exchange student participant. Sponsors may not:

(i) Facilitate the entry into the United States for an exchange student for whom a host family placement has not been secured;

(ii) Place more than one exchange student with a host family without the express prior written consent of the Department of State. Under no circumstance may more than two exchange students may be placed with one host family.

(2) Sponsors must advise both the exchange student and host family, in writing, of the respective family compositions and backgrounds of each, whether the host family placement is a permanent or temporary placement, and facilitate and encourage the exchange of correspondence between the two prior to the student's departure from the home country.

(3) In the event of unforeseen circumstances which necessitate a change of host family placement, the sponsor must document the reason(s) necessitating such change and provide the Department of State with an annual statistical summary reflecting the number and reason(s) for such change in host family placement in the program's annual report.

(m) Reporting requirements. Along with the annual report required by regulations set forth at Sec. 62.15, sponsors must file with the Department of State the following information:

(1) Sponsors must immediately report to the Department any incident or allegation involving the actual or alleged sexual exploitation or abuse of an exchange student participant. Sponsors must also report such allegations as required by local or state statute or regulation. Failure to report such incidents to the Department and, as required by state law or regulation, to local law enforcement authorities shall be grounds for the summary suspension and termination of the sponsor's Exchange Visitor Program designation.

(2) A summation of all situations which resulted in the placement of exchange student participants with more than one host family or school placement; and

(3) Provide a report of all final academic year and semester program participant placements by August 31 for the upcoming academic year or January 15 for the Spring semester and calendar year. The report must provide at a minimum, the exchange visitor student's full name, Form DS-2019 number (SEVIS ID), host family placement (current U.S. address), and school (site of activity) address.

Dated: March 23, 2006.

Stanley S. Colvin,
Director, Bureau of Educational and Cultural Affairs, Department of State.

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