



May 17, 2012

Guidance Directive 2012-03

Summer Work Travel: Program Exclusions

This Guidance Directive is issued to all sponsors conducting Summer Work Travel programs to provide guidance on the list of program exclusions (i.e., prohibited jobs) set forth at 22 CFR §62.32(h) and expanded in the 2012 Interim Final Rule (2012 IFR) published May 11, 2012, in the Federal Register at 77 FR 27593-27612.

This Guidance Directive is not intended to be comprehensive. It identifies examples of positions that are prohibited and clarifies that certain positions in prohibited industries are permitted. Except as noted (i.e., the adult entertainment industry), ancillary positions (e.g., clerk, waitress) within the prohibited job categories are permitted, so long as they are temporary and seasonal and comply with all other applicable Exchange Visitor Program regulations. Sponsors with questions about positions not discussed herein are encouraged to submit questions to SWTSponsors@state.gov.

1. ***In positions that could bring notoriety or disrepute to the Exchange Visitor Program.*** The 2012 IFR made no changes to this prohibition.
2. ***In sales positions that require participants to purchase inventory that they must sell in order to support themselves.*** The 2012 IFR made no changes to this prohibition.
3. ***In domestic help positions in private homes (e.g., child care, elder care, gardener, chauffeur).*** The 2012 IFR made no changes to this prohibition.
4. ***As pedicab or rolling chair drivers or operators.*** The 2012 IFR made no changes to this prohibition, but the Department interprets the terms “pedicab” and “rolling chair” broadly to include any human-powered vehicle regardless of its design or name.

5. ***As operators or drivers of vehicles or vessels for which drivers' licenses are required regardless of whether they carry passengers or not.*** The 2012 IFR expanded this prohibition so that participants may not be placed in jobs driving or operating vehicles or vessels, regardless of whether there are passengers in the vehicles or vessels. The following examples identify some of the vehicles or vessels covered by this category: cars, trucks, boats, heavy machinery, trams, horse-drawn carriages, moving trucks, and delivery trucks/cars/vans (e.g., household goods, pizza, ice cream).
6. ***In positions related to clinical care that involves patient contact.*** The 2012 IFR made no changes to this prohibition.
7. ***In any position in the adult entertainment industry (including, but not limited to jobs with escort services, adult book/video stores, and strip clubs).*** The 2012 IFR added examples to this prohibition to clarify that the adult entertainment industry should be broadly interpreted to include *all* businesses that deal with nudity or matters of a sexual nature. Participants may not be placed in *any* jobs with such businesses, e.g., as bartenders at gentlemen's clubs or accountants at escort services.
8. ***In positions requiring work hours that fall predominantly between 10:00 pm and 6:00 am.*** Participants may be placed in jobs during these hours so long as they do not work more than four hours during this time period.
9. ***In positions declared hazardous to youth by the Secretary of Labor at Subpart E of 29 CFR part 570.*** For a complete listing, refer to the following website: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr570_main_02.tpl. Such prohibitions include (but are not limited to) forestry services; poultry and meat processing; work involving heavy construction machinery, commercial bakery equipment (with exceptions for portable counter top mixes and certain pizza-dough rollers), balers, compactors, certain saws, chippers, and abrasive cutting disks.
10. ***In positions that require sustained physical contact with other people and/or adherence to the Centers for Disease Control and Prevention's Universal Blood and Body Fluid Precautions Guidelines (CDC Guidelines) (e.g., body piercing, tattooing, massage, manicure).*** The 2012 IFR prohibits placements in positions such as cosmetology (e.g., shampoo technician, manicurist, esthetician, nail technician, electrologist, hair stylist, hair colorist, makeup

artist) that require sustained physical contact. It also prohibits placements in positions that require adherence to these CDC Guidelines and expands the prohibition against placements in positions related to clinical care to include *all* positions that require sustained physical contact. Universal precautions apply to blood, semen, and vaginal secretions. They also apply to the following body fluids if they contain visible blood: feces, nasal secretions, sputum, sweat, tears, urine, and vomitus. For a complete listing, refer to the following website: <http://wonder.cdc.gov/wonder/prevguid/p0000255/p0000255.asp>. The Department clarifies that this prohibition does not apply to hotel housekeeping positions if the participants use general purpose utility gloves, i.e., rubber household gloves.

11. ***In positions that are substantially commission-based and thus do not guarantee that participants will be paid minimum wage in accordance with federal and state standards.*** The Department clarifies that this does not include positions for which there is a base salary supplemented by gratuities.
12. ***In positions involved in gaming and gambling that include direct participation in wagering and/or betting.*** Examples of positions that include such direct participation include dealers, bookies, croupiers, and lottery ticket sellers. Ancillary jobs in casinos, however, are permitted (e.g., waitress, gift shop attendee, porter).
13. ***In positions in chemical pest control, warehousing, catalogue/online order distribution centers.*** The Department interprets these prohibitions broadly, to include similar activities that do not allow participants to interact with U.S. workers.
14. ***In positions with travelling fairs or itinerant concessionaires.*** The Department interprets these prohibitions broadly, to include similar activities that do not allow participants to have permanent addresses.
15. ***In positions for which there is another specific J category (e.g., camp counselor, intern, trainee).*** For example, a participant in the Summer Work Travel category could not serve as a camp counselor at a summer camp.
16. ***After November 1, 2012, in positions in the North American Industry Classification System's (NAICS) Goods-Producing Industries occupational categories industry sectors 11, 21, 23, 31-33 numbers (set forth at http://www.bls.gov/iag/tgs/iag_index_naics.htm).*** The prohibited

supersectors/sectors are defined as follows and described with text taken from the referenced website:

Agriculture, Forestry, Fishing, and Hunting (NAICS 11): The Agriculture, Forestry, Fishing and Hunting sector comprises establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitats. The establishments in this sector are often described as farms, ranches, dairies, greenhouses, nurseries, orchards, or hatcheries.

Mining (NAICS 21): The Mining sector comprises establishments that extract naturally occurring mineral solids, such as coal and ores; liquid minerals, such as crude petroleum; and gases, such as natural gas.

Construction (NAICS 23): The construction sector comprises establishments primarily engaged in the construction of buildings or engineering projects (e.g., highways and utility systems). Establishments primarily engaged in the preparation of sites for new construction and establishments primarily engaged in subdividing land for sale as building sites also are included in this sector.

Food Manufacturing, Beverage and Tobacco Product Manufacturing, Textile Mills, Textile Product Mills, Apparel Manufacturing, Leather and Allied Product Manufacturing (NAICS 31XX): Industries in the Food Manufacturing subsector transform livestock and agricultural products into products for intermediate or final consumption. The industry groups are distinguished by the raw materials (generally of animal or vegetable origin) processed into food products. The food products manufactured in these establishments are typically sold to wholesalers or retailers for distribution to consumers, but establishments primarily engaged in retailing bakery and candy products made on the premises not for immediate consumption are included.

Wood Product Manufacturing, Paper Manufacturing, Printing and Related Support Activities, Petroleum and Coal Products Manufacturing, Chemical Manufacturing, Plastics and Rubber Products Manufacturing, Nonmetallic Mineral Product Manufacturing (NAICS 32XX):

Primary Metal Manufacturing, Fabricated Metal Product Manufacturing, Machinery Manufacturing, Computer and Electronic Product Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, Transportation Equipment Manufacturing, Furniture and Related Product Manufacturing, Miscellaneous Manufacturing (NAICS 33XX): Industries in the Miscellaneous Manufacturing subsector make a wide range of products that

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cannot readily be classified in specific NAICS subsectors in manufacturing. Processes used by these establishments vary significantly, both among and within industries. For example, a variety of manufacturing processes are used in manufacturing sporting and athletic goods that include products such as tennis racquets and golf balls. The processes for these products differ from each other, and the processes differ significantly from the fabrication processes used in making dolls or toys, the melting and shaping of precious metals to make jewelry, and the bending, forming, and assembly used in making medical products.

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Please submit additional questions about this Guidance Directive or the 2012 IFR to SWTSponsors@state.gov.

A handwritten signature in black ink that reads "Robin J. Lerner". The signature is written in a cursive, slightly slanted style.

Robin J. Lerner
Deputy Assistant Secretary
for Private Sector Exchange