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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 9421]

RIN: 1400-AC60

Exchange Visitor Program – Teachers

AGENCY: U.S. Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final the Department’s proposed rule published on May 2, 2013. The Department, with this rule, amends its existing regulations governing the Teacher category of the Exchange Visitor Program. This final rule permits program participation of teachers teaching full-time at accredited public or private primary and secondary schools (K-12), including pre-kindergarten teachers in “language immersion” programs offered as regular courses of study by accredited primary schools; requires exchange teachers to have two years of full-time teaching experience; clarifies that the duration of program participation by exchange teachers is three years, with an extension permitted for one or two additional years of participation based on school need and exchange teacher performance during the exchange; permits participation by otherwise qualified teachers who are not currently working, but who are returning to teaching after successfully pursuing an advanced degree beyond the equivalent of a U.S. bachelor’s degree; introduces a required cross-cultural activity component; requires program sponsors to disclose fees and costs to foreign teachers at the time of both recruitment and selection into the program; and implements a requirement that exchange teachers not be

eligible for repeat participation unless they reside outside the United States for two years following their teacher exchange program. In amending the Teacher category regulations, the Department: reforms the teacher exchange program; strengthens provisions designed to protect the health, safety, and welfare of exchange teachers; and reinforces the program's prestige as a world-class U.S. public diplomacy initiative. The rule applies to all J-Nonimmigrant exchange teachers, except when the teacher's program is covered by a separate agreement between the United States and the relevant foreign government as permitted under Department regulations.

DATES: This rule is effective on [insert date 30 days from of date of publication.]

ADDRESSES: Persons with access to the Internet also may view this rule by going to the regulations.gov website at: <http://www.regulations.gov/index.cfm>. For further information, contact Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA-5, Floor 5, 2200 C Street, N.W., Washington, D.C. 20522-0505; fax: (202) 632-2701; e-mail: JExchanges@state.gov.

SUPPLEMENTARY INFORMATION:

The Exchange Visitor Program (of which the Teacher category is one of fifteen categories of program types) is authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended, 22 U.S.C. 2451 *et seq.* (also known as the Fulbright-Hays Act and hereinafter referred to as "the Act"), and implemented through 22 CFR Part 62 (22 CFR 62.24 pertains to the Teacher category in particular). The Act's stated purpose is "to increase mutual understanding between the people of the United States and

the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world....” In the fifty years since the Act’s passage, millions of foreign exchange visitors, Americans with whom they interact, and friends and families of the exchange visitors with whom they share their experiences upon returning home, have benefited from the mutual understanding and peaceful relations that can derive from such person-to-person contact. The Teacher exchange program embodies and carries forward the stated purpose and intent of the Act by benefiting teachers, students, host schools, and surrounding communities.

Educational and cultural exchanges are a cornerstone of U.S. public diplomacy and an integral component of U.S. foreign policy. The purpose of the Teacher category of the Exchange Visitor Program is to promote interchange of American and foreign teachers in public and private schools; enhance mutual understanding between the people of the United States and people of other countries; allow U.S. students who lack opportunities to travel abroad to have early and meaningful relationships with individuals from other cultures; provide visiting teachers an opportunity to expand their understanding of U.S. education, culture and society; provide U.S. teachers with a greater understanding of international teaching practices by their working alongside foreign colleagues; and create opportunities to develop lasting links between U.S. and foreign schools and communities.

These regulations govern exchange teachers who teach full-time in accredited primary and secondary public and private schools in the United States (including pre-kindergarten level “language immersion” programs offered as a regular course of study by accredited primary schools). Exchange teachers have the opportunity to broaden their pedagogical knowledge while in the United States and foster meaningful relationships with American citizens through their participation in U.S. schools and communities, returning home within a defined time-period to share their experiences in their own country’s educational system.

It is equally important that public and private schools hosting foreign exchange teachers have the responsibility and intent to create a holistic cultural program and contemplate the overall experience that these teachers will take back to their home countries. The Department supports the hosting of exchange teachers to help U.S. students understand other cultures and comprehend global issues, as well as to promote study of foreign languages and culture. Native speakers add a vital dimension to foreign language instruction. Speaking another language promotes understanding, conveys respect for other cultures, and strengthens the ability to engage foreign peoples and governments.

In recent years, the Department has been strengthening the regulations throughout the Exchange Visitor Program to require sponsors to ensure, among other things, that their individual exchange visitor programs are consistent with the purpose of the Act. The Teacher exchange program is not to be used to recruit and train foreign teachers for permanent employment in the United States. The amended Teacher category regulations

make clear that exchange teachers are expected to work on a temporary basis at the host school. Because the Exchange Visitor Program is an educational and cultural program, sponsors must ensure that an exchange teacher's appointment at the host school is temporary, even if the teaching position is permanent.

The Department requires sponsors to ensure that exchange teachers, including pre-kindergarten "language immersion" teachers, are placed only in accredited primary and secondary schools. In addition, a foreign national may be admitted to the United States as a J-1 nonimmigrant in the Teacher category only for the purpose of full-time teaching as a teacher of record, not as a teacher's assistant/aide, substitute teacher, or other non-instructional position, at an accredited primary or secondary school.

Analysis of comments

The Department published a Notice of Proposed Rulemaking with a request for comment on May 2, 2013 (RIN 1400-AC60; see 78 FR 25669). The Department received 60 comments in response to the proposed rule. Many of those commenting discussed multiple topics. Following a review of these comments, the Department has decided to adopt the proposed rule with some modifications prompted by the comments.

Program disclosures: The proposed rule required sponsors to provide prospective exchange teachers with a listing of all fees and costs associated with the exchange program at two points, first, a general listing while advertising the program, and second, a more specific listing for those teachers accepted into the program. The Department received four comments, all expressing concern that the proposed requirements for both sponsors and host schools were overly time consuming, would result in an over-

abundance of paperwork, and would result in unnecessary duplication of information from host school websites.

The Department believes that the benefits of fee and cost transparency outweigh any possible duplication or additional activities required to gather fee and cost estimates and provide them to potential exchange visitors. When sponsors and host schools rely upon exchange visitors to conduct independent research on websites to locate key information about their exchange program and conditions of their host placement, these sponsors and schools cannot be sure that the information exchange visitors find through their research is accurate or comprehensive. In requiring the sponsor and host school to provide a summary of significant program components, fees, and other costs during the advertising phase and also prior to the exchange teacher's signing of his or her contract with the host school, the Department ensures that the exchange teacher has received from the program sponsor at two crucial points a basic summary (and understanding) of the main programmatic and financial obligations and responsibilities he or she undertakes by participating in an exchange. These requirements also will allow all parties involved or interested in the Exchange Visitor Program to ascertain in advance if fees and costs seem excessive or if additional costs will be charged to the teacher.

The Department is of the view that various program fees, deductions from wages, and costs charged to exchange teachers by sponsors, third parties, partners, and host schools, if not fully disclosed, could make exchange teachers vulnerable to unexpected program costs. The Department, through its regular communications with sponsors, participating exchange teachers, and host schools during the course of its formal program monitoring

efforts, has been made aware of many cases where, after expenses and deductions, exchange teachers' take-home pay, contrary to what those teachers originally expected, was an insufficient amount of money on which to live in the United States or to defray the cost associated with the exchange. Moreover, because the Department works with program sponsors on an ongoing basis, it is aware that program recruitment and placement fees may vary widely depending upon the exchange teacher's country of origin. In addition, the cost of living, including housing and local transportation costs, varies in the different U.S. host communities where an exchange teacher may be placed.

This regulation will require sponsors, first, to post a general summary of fees and other costs teachers can expect to pay while they are on exchange in one visible location on their main websites and in their recruiting materials, in order to ensure fee and cost transparency at the time of exchange teacher recruitment. This general summary of fees and other costs at the time of recruitment must include, at a minimum, sponsor fees; placement fees; visa fees; Student and Exchange Visitor Information System (SEVIS) fees; insurance costs based on the requirements of 22 CFR 62.14; estimates (ranges) for food, housing and local transportation costs; foreign and domestic third party fees; expected work-related deductions (e.g., federal and state income tax withholding, Federal Insurance Contributions Act (FICA) deductions, work related materials, required memberships); and estimates of all other fees charged for, and significant other costs related to, participation in the Teacher category of exchange. If these fees and costs vary by country, the sponsor should note this in its fee and cost listing, or list a range of costs to encompass all of the countries that sponsor serves. The Department does not require

sponsors to list airline ticket costs in the general summary of fees and costs that they must post to their website or list in their recruitment materials.

Second, at the time the official selection letter is sent to the teacher, sponsors must themselves, or must ensure that host schools, provide, in either the teacher's contract and/or through supplemental information, each individual exchange teacher with the name, location, and a brief description of the host school; the terms and conditions of compensation (with estimated deductions from gross salary); any provisions affecting the ability of the teacher to be accompanied abroad by a spouse or dependents (including any related assistance and allowances); a summary of the significant components of the program (including a statement of the teaching requirements, related professional obligations and required cross-cultural activity component); specific information on the fees and costs that the exchange teacher will be responsible for while on exchange in that school district; anticipated housing options and cost implications; specific local transportation options between the exchange teacher's residence and the host school and their estimated costs; insurance costs for accident and illness coverage, repatriation of remains, and medical evacuation as required by 22 CFR 62.14; estimated costs for initial personal expenses the exchange teacher may incur upon arrival in the United States prior to receiving his or her first paycheck; certification or licensure procedures and costs at the host school; administrative fees; and any placement fees. All of the information noted above must be provided to exchange teachers selected for the program before they sign their host school contract, in order to ensure that all exchange teachers fully understand

the financial obligations they assume when signing the contract and agreeing to participate in an exchange program.

As set forth at 22 CFR 62.24(f)(5), unless an exchange teacher is on a program where the Department is the sponsor, he or she must be employed by and under the direct supervision and guidance of his or her host school and, where applicable, the host school district. As set forth at 22 CFR 62.24(g)(2), unless the exchange teacher is supported through government funding, through continued support from the exchange teacher's home school, or through a combination of the exchange teacher's home and host school, compensation must be paid directly by the host school(s) or host school district in which the exchange teacher is placed. For example, unless the sponsor is also the host school, a sponsor cannot receive the exchange teacher's salary from a host school or host school district and then pay it on to the exchange teacher (often with deductions for previously undisclosed fees and costs), as may be the practice currently in some teacher exchange programs.

Cross-cultural activity component: The proposed rule required completion of a mandatory annual cross-cultural activity component through which exchange teachers would be required to share aspects of their cultural heritage with their U.S. communities, including conducting international dialogue or other activities through virtual exchange or other means, with schools or students in another country, preferably their home school (as set forth in the final rule at 22 CFR 62.24(h)). The Department received 11 comments regarding the cross-cultural component aspect of the proposed rule. Many comments received were from faculty or administrators at international schools who expressed the

view that a required cross-cultural activity component was unnecessary because their schools are living examples for students of international cultural exchange and that a mandated cross-cultural activity component would be an artificial intercultural activity by comparison.

The mission of the Bureau of Educational and Cultural Affairs, which oversees the Exchange Visitor Program under the Fulbright-Hays Act, is to increase mutual understanding between the people of the United States and the people of other countries through educational and cultural exchanges that support the development of peaceful relations. In keeping with this authority, the Department wishes to ensure that its visiting teachers come in contact with and convey knowledge to large numbers of U.S. students and community members. The Department is of the view that a dialogue of ideas should ensue from the Teacher exchange program and that, regardless of where in the United States a teacher is placed, a mandatory cross-cultural activity component will help students in the exchange teacher's classroom, and in the broader host school and its community, develop global awareness and interest in learning more about other countries. Moreover, not all exchange teachers participating in the program are placed in schools that already have an overall international focus.

Other comments supported mandating a cross-cultural activity component in order for communities to learn more about the unique contributions of the exchange teacher. The Department agrees that required cross-cultural activity components are valuable tools not only to engage exchange teachers in their host communities—both inside and outside of their schools—but also to inform their host communities about their cultures.

Whatever the placement setting, the sponsor, host school and exchange teacher should work together to develop creative cross-cultural activity components, whether it be in the teacher's individual classroom, within the larger host school, or in the host school district or community. One example of developing a creative cross-cultural activity for the host school district or community could be to have exchange teachers make a presentation in a public forum (e.g., at a school assembly, museum, civic organization, or businesses association) where there is direct interaction with the educational or larger community and in which they could share an aspect of their home countries (e.g., history, traditions, heritage, dance, art, music, economy, educational system). In addition, the Department strongly encourages sponsors who place exchange teachers in international schools to urge their exchange teachers to conduct at least one cross-cultural activity per year outside their host school in a setting where there is less direct opportunity for students or community members to engage in international learning. For example, a foreign teacher placed in a school where he or she is teaching his or her native language might give a presentation in English about a home country topic to a school in the same district that does not have an international or language immersion focus or to a community group in the area where the host school is located. Sponsors and the Department will take the exchange teacher's record of cross-cultural activities into account when considering one- or two-year extensions for exchange teachers, including those placed at schools with an international or language immersion focus.

In order to ensure meaningful accountability on the part of exchange teachers, sponsors must require exchange teachers to submit an annual report, one element of which should detail the cross-cultural activity component of their exchange program. The report does not have to be in a specific format, but must contain specific fields of information as identified in these regulations (i.e., date or dates of cross-cultural activities, teacher name, program sponsor name, location, number of individuals in attendance, topic, and a general overview of the activity and its overall impact within the larger community where the school is located). Sponsors will not be required to submit copies of these reports routinely to the Department, but they must retain such reports as part of each exchange teacher's documentation for a period of three years following completion of the teacher's exchange program, as required by 22 CFR 62.10(g). Sponsors are encouraged to share with the Department, as best practices, examples of activities that exchange teachers conduct as part of their cross-cultural activity component.

Teacher eligibility: The Department received four comments on eligibility, evenly split on whether the criteria for eligibility should be changed to two years of teaching experience prior to program participation from the current requirement of three years, or whether three years should remain the requirement. It is critical to the success of this exchange program that foreign teachers have the necessary skills and teaching experience to benefit from exchange opportunities and achieve the intended goals of this professional exchange program. Exchange teachers must be able to make an immediate impact in the

classroom and share some of their teaching methods with American teachers, while learning firsthand about U.S. culture and teaching methodologies.

The Department recognizes, as some comments pointed out, that exchange teachers come to the United States from foreign countries that prepare their teachers in educational systems that are different from that of the United States, with some systems having very different time periods that it takes teacher candidates to receive a degree. The Department believes that two years of teaching experience, combined with a degree equivalent to a U.S. bachelor's degree (which may be proven by the applicant, for example, through use of a credential evaluation service), would be sufficient requirements for program participation. This teaching experience must not be as a student teacher, but as a teacher of record in a foreign school; however, the two years of experience may be non-consecutive. All U.S. states currently require their teachers to have a bachelor's degree, and while the Department recognizes differences in teacher education systems around the world and, therefore, does not require its foreign teachers to have a bachelor's degree, it is of the view that requiring foreign teachers to have the equivalent of a bachelor's degree from their own educational system will ensure that they are considered equally qualified with U.S. teachers in host schools across the United States.

A number of comments made the point that the Department should permit in the program teachers who are not currently teaching but have recent teaching experience. The Teacher exchange program is not an employment program, but an educational exchange experience that has a reciprocal element as one of its goals. In the Teacher

exchange category, currently working teachers bring to the program opportunities to link their home and host schools and communities through projects and other contributions to mutual understanding. It is anticipated that the exchange experience will give exchange teachers the opportunity to share their experiences with their home school students through virtual linkages and when they return home.

Other comments expressed concern that by requiring teachers to be working at the time of application, the program would exclude potentially highly qualified candidates who have the requisite teaching experience, but have not been working because they have been pursuing an advanced degree. The Department agrees and wishes to facilitate the exchange of teachers who have continued their education beyond a degree equivalent to a U.S. bachelor's degree. The Department agrees that an international teaching experience would be a valuable additional educational benefit to teachers completing advanced degrees. For this reason, this final rule makes one exception to the requirement that applicants must be working as teachers at the time of application. Applicants who are not currently working may participate in the program if they: (i) have at least a degree equivalent to a U.S. bachelor's degree, (ii) have two years of teaching experience within the past eight years, and (iii) have successfully completed an advanced degree beyond a U.S. bachelor's degree-equivalent within one year of the date upon which their program application is submitted, even if they are not currently teaching. The advanced degree must be in the subject field (or a closely related one) that the exchange teacher proposes to teach while in the United States, or in the field of education. In making this exception, the Department acknowledges that potential exchange teachers might wish to complete

an advanced degree and follow-up this degree by taking the opportunity to teach abroad for a period of time soon thereafter, before they continue their teaching careers in their home countries. Sponsors must require teachers who are not currently working, but are participating in the program by virtue of having recently completed an advanced degree, to locate and cooperate with a school, preferably in their home country and at their teaching level, in order to conduct the required international dialogue or virtual aspect of the cross-cultural activity component while on exchange. Sponsors must require candidates for the program, before they submit their application to a sponsor, to take the additional steps necessary to make arrangements with a suitable school outside the United States with which they could, if accepted to the program, complete the required cultural activity component.

Pre-kindergarten teacher eligibility: The Department received 37 comments about whether pre-kindergarten teachers should be permitted to participate in the Teacher category of the Exchange Visitor Program. All comments noted that beginning language instruction with a native speaker in early childhood would be beneficial for U.S. children. Those submitting comments also noted that preventing pre-kindergarten language teachers from coming to the United States on a teacher exchange would reduce the overall effectiveness of “language immersion” programs, whose faculty could benefit from hosting native speakers. In response to these comments, the Department will permit teachers, under the final rule, to be placed as instructors in pre-kindergarten “language immersion” programs offered as regular courses of study by accredited primary schools. Such exchange teachers must teach a full-time schedule of at least 32 hours at their host

school or at accredited schools in the same school district, even if not all of their instruction involves teaching at the pre-kindergarten level. If exchange teachers are placed in private schools where they are not under the governing authority of a school district, then they must teach a full-time schedule of at least 32 hours, any schools in which they teach must be located no more than 25 miles from their main host school, and the sponsor must ensure that reasonable and effective modes of transportation to such additional sites of activity exist. Pre-kindergarten exchange teachers may not participate in exchanges at institutions whose primary purpose is daycare, nor may they teach in supplemental educational programs offered at, but not included as, a regular course of study by an accredited school.

Program dates: The Department received three comments on its proposed new requirement (set forth in the final rule at 22 CFR 62.24(f)(2)) that program dates should coincide with the U.S. academic year cycle (July 1 – June 30). Some comments pointed out that school systems in other parts of the world follow different calendar cycles and expressed the view that the Teacher exchange program should accommodate this. The Department notes that exchange teachers will be teaching in U.S. schools, so it is generally necessary that they comply with the U.S. academic year in order to ensure a smooth transition as faculty arrive and depart. The Department understands that there may be instances where a teacher on a different academic calendar may need to conduct an exchange on a different year-cycle. In such a situation, sponsors must notify and receive approval from the Department if a host school has an exchange teacher beginning an exchange after the start of the U.S. academic year and must ensure that the host school

includes such alternate dates in its contract with the exchange teacher. Host schools should give the same orientation programming and assistance to the incoming exchange teacher that an exchange teacher arriving at the normal time in the school year would ordinarily receive. When sponsors notify the Department that the exchange is occurring on a different program cycle and receive the Department's approval, the Department has the opportunity to monitor these exchanges to ensure that the sponsor and host school are providing the necessary support to an exchange teacher who enters a new school with a potentially more difficult adjustment period.

Program extensions: The Department received 29 comments on the issue of program extensions, with a majority supporting either program extensions of up to two years beyond the proposed exchange period of three years or simply a five-year exchange period. A former exchange teacher commented that international teachers who experience the United States for periods longer than three years can become "instructional leaders" in their host schools. Others voiced the perspective that a three-year program limit may mean that some students have less continuity in receiving instruction from a highly qualified international teacher.

The Department believes that a program duration of three years is most consistent with the goals and mission of the Teacher exchange, namely to encourage exchange teachers to learn new skills and perspectives while teaching in the United States, and then return to their home countries and foster ties between schools in their home countries and their host schools in the United States. However, the Department recognizes that program extensions beyond the three-year duration may be necessary or desirable where

the exchange teacher has carried out his or her program requirements in a particularly effective way at the U.S. host school. Accordingly, sponsors may apply to the Department on behalf of a host school to extend an exchange teacher's program duration by one or two additional years. In permitting extensions of up to two years, the Department will not authorize exchange teachers to extend their stay by fractions of academic years. The Department believes this would result in considerable administrative complexity to both home and host schools attempting to make international teacher exchanges possible. In addition, having exchange teachers extend for fractions of years might be disruptive to students. Extension requests must contain documentation showing that the school has a particular need for the exchange teacher to remain, that the exchange teacher can be recommended for extension based on professional performance at the host school, and that the exchange teacher has fulfilled all aspects of the cross-cultural activity component. Instructions for requesting a program extension may be found on the Department's J-Visa website (www.jvisa.gov) under the "Participants - Adjustments and Extensions" link at <http://j1visa.state.gov/participants/current/adjustments-and-extensions>. Sponsors must send extension requests to the Department for its approval at least three months prior to the beginning date of the requested extension.

Teacher compensation: The Department did not receive comments on the issue of compensation. Accordingly, as proposed, the Department has amended the regulations at 22 CFR 62.24(g)(2) to make clear that exchange teachers are to be compensated directly by the schools or school districts in which they are placed, unless they are supported by

foreign government funding, through continued support from their home schools, or through a combination of home and host school support. Exchange teachers must be under the direct supervision and guidance of host schools and host school districts. SEVIS records should reflect the funding situation for each exchange teacher. Teaching positions, including duties, responsibilities, hours of employment, and compensation, must be consistent with similarly-situated American teachers in the school or school district where an exchange teacher is assigned to teach. Sponsors should ensure that exchange teachers receive all information about teaching in a particular school or school district that is available to similarly-situated U.S. teachers.

Repeat participation: Commenters generally supported a clause making clear that exchange teachers are eligible for repeat participation provided they reside outside the United States for two years following their teacher exchange program. Several commenters noted that inserting this provision should go hand-in-hand with extending the possible exchange duration to five years. The regulations have been amended to permit exchange teachers who have successfully completed their teacher exchange programs, either for a period of three years or, if extended, for four or five years, to participate again as exchange teachers in the Exchange Visitor Program. To be eligible to repeat the program, exchange teachers must have resided outside the United States for at least two years following completion of their program and must continue to meet all other eligibility requirements for this category.

REGULATORY ANALYSIS AND NOTICES

Administrative Procedure Act

The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government, and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA). U.S. government policy and longstanding practice have been for the Department to oversee foreign nationals who come to the United States as participants in exchange visitor programs, either directly or through private sector program sponsors or grantee organizations. When problems arise, the U.S. Government is often held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems. The purpose of this rule is to protect the health, safety and welfare of foreign nationals entering the United States (often on programs funded by the U.S. Government) for a finite period of time and with a view that they will return to their countries of nationality upon completion of their programs. The Department is of the opinion that failure to protect the health, safety and welfare of these foreign nationals would have direct and substantial adverse effects on the foreign affairs of the United States. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department nevertheless published a proposed rule on May 2, 2013, with a 60-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory

Enforcement Fairness Act of 1996 (5 U.S.C. 801-808). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department has determined that this regulation will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business Impacts

Since the Department is of the opinion that this rule is exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the APA, the Department is also of the opinion that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). However, to better inform the public as to the costs and burdens of this rule, the Department notes that this regulation will affect the operations of 54 sponsors designated

by the Department to conduct programs in the Teacher category of the Exchange Visitor Program. Currently, approximately 1,200 new exchange teachers may begin exchange programs annually with program durations of up to three years, and it is expected that this number will stay relatively constant; an estimated total of around 2,300 exchange teachers may continue their programs in years two and three as expected (estimated at 1,150 exchange teachers per year), for a total number of 3,500 in their first three years as an exchange visitor. An estimated 500 exchange teachers may be on an extension of their exchange in the U.S. beyond the initial three years (an estimated 250 in extension status in years four and five), so that a total of approximately 4,000 active exchange teachers may be in the United States annually.

Numbers of small businesses

Of the 54 currently-designated sponsors in the Teacher category of the Exchange Visitor Program, 16 are corporate, academic and tax-exempt program sponsors with annual revenues of less than \$7 million. These 16 small sponsors accounted for around 800, or approximately 32 percent, of the total active 2,500 participants in the Teacher category in calendar year 2014 and 384 of the new exchange teachers beginning the program. The Department estimates that exchange teachers associated with small sponsors may account for as many as 1,280 of the 4,000 active participants in 2016 and beyond, once the option to extend is offered to exchange teachers, calculated as follows: 1,200 multiplied by three years for new exchange teachers minus 100 teachers who are estimated not to continue on to three years as expected, plus an estimated total of 500 exchange teachers on extension (250 in extension status per year in years four and five)

equals 4,000 total exchange teachers. Multiplying this total by 0.32 equals an expected 1,280 exchange teachers affiliated with sponsors that are small businesses.

Teacher selection

Sponsors already are required to screen applicants for eligibility (including the two-year home stay requirement through SEVIS); verify that applicants are currently working as teachers; verify their English language proficiency; and confirm their receipt of, at a minimum, a degree equivalent to a U.S. bachelor's degree. Department collections already include 1.5 hours for selection (screening, verifying language proficiency, and confirming degree). Sponsors also must check prospective host school attestations that their exchange teacher appointments are temporary, that the teacher's salary will fall within the range paid to U.S. teachers, and that the exchange teacher will satisfy the teaching eligibility standards of the U.S. state in which he or she will teach. These requirements will add 0.5 hours multiplied by \$31.50 weighted wage for sponsors multiplied by 384 placement schools, or an additional total of \$6,048 annually. The amount of \$31.50 is based upon average weekly earnings for middle-range employees in the educational non-profit sector according to the Bureau of Labor Statistics, or around \$24.20 per hour and benefits of around 30 percent of salary. In addition, host schools will have a 0.5 hour burden to write these attestations, which totals \$8,279, based on the average weighted wage of \$43.12 for middle-range U.S. public school administrators, according to the Bureau of Labor Statistics and the national salary comparison website Payscale (www.payscale.com) (0.5 hours multiplied by \$43.12. weighted wage multiplied by 384 placement schools).

Under the amended regulation, sponsors must verify that exchange teachers qualifying with an advanced degree have earned such a degree within the past 12 months in education or in the subject field (or closely related subject field) that the applicant would teach on exchange. They also will need to verify that the exchange teacher's application package includes a letter from the head of a school in another country, preferably the teacher's home country, which states that school's willingness to work with the exchange teacher on the cross-cultural component of the exchange. These items are not expected to add greatly to a sponsor's screening responsibilities. Sponsors would already regularly screen for the teacher's academic, linguistic, and other credentials; this added screening is simply for a higher level of academic credential and verification that the cross-cultural component letter has been submitted for the applicant.

As set forth at 22 CFR 62.24(f)(1), sponsors must ensure that Forms DS-2019 are not issued until potential exchange teachers have received and accepted written offers of full-time teaching positions from the accredited primary (including pre-kindergarten level) or secondary schools in which they will teach. It is estimated that host schools and sponsors associated with the programs of small sponsors will each spend 30 minutes either writing or reviewing such offer letters. For sponsors, the Department estimates an aggregate burden of \$6,048 (384 new teachers multiplied by 0.5 hours multiplied by \$31.50 per hour weighted wage). This is not a new cost. For host schools, the Department estimates an aggregate burden of \$8,279 (384 new teachers multiplied by \$43.12 weighted wage of the average U.S. public school administrator multiplied by 0.5 hours).

Program extension

In regard to program extensions, as set forth at 22 CFR 62.24(k), sponsors must review host school extension letters and supporting materials, send extension applications they support to the Department for review, and notify host schools regarding the status of their extension requests. The Department estimates that these additional collection requirements will cost \$2,520, one hour burden multiplied by the hourly weighted wage of \$31.50 for an estimated 250 extending exchange teachers; or \$2,520 for the 32 percent of 250 yearly extending exchange teachers or 80 exchange teachers, who are likely to be affiliated with small sponsor organizations. It is estimated that the hour burden to host schools affiliated with small sponsors to submit letters for teachers extending to a fourth or fifth year is \$3,450 (80 exchange teachers multiplied by \$43.12 weighted wage for a school administrator multiplied by one hour). In addition, small sponsors may incur an estimated \$400 per year associated with keeping records for extension requests (80 extending teachers per year multiplied by \$5), or a total of \$1,200 for 80 extending teachers multiplied by \$5 multiplied by three years for the entire duration of such extension request recordkeeping. The \$5 per record cost is based on estimates provided by several private sector records storage companies at an average of \$20 per cubic foot box divided by an estimated four teacher cross-cultural project records per box, which includes room for potential storage of larger items teachers may submit to document their exchange experience, or to cover the cost of electronic file archival storage.

Program disclosure

22 CFR 62.24(g) requires sponsors to disclose fees and costs to exchange teachers at the time of their recruitment, selection into the program, and signing of their contracts with host schools. Department collections already include 0.5 burden hours for program disclosure by sponsors. The Department estimates total requirements in this area annually will cost \$12,096 (384 new exchange teachers associated with small sponsors multiplied by \$31.50 weighted wage multiplied by a total of one hour), or new costs of \$6,048 (384 new exchange teachers associated with small sponsors multiplied by \$31.50 weighted wage multiplied by a total of 0.5 hours).

Cross-cultural activity component and related annual report

The final rule at 22 CFR 62.24(h) requires sponsors to assist exchange teachers with their cross-cultural activity components and to collect exchange teachers' annual reports detailing their fulfillment of the required cross-cultural activity components. The Department estimates that this assistance and the collection of these reports annually will cost \$40,320, or one burden hour at \$31.50 weighted hourly wage multiplied by 1,280 teachers affiliated with small sponsors (32 percent of 4,000) multiplied by one hour, or new costs of \$20,160, or 0.5 burden hours at \$31.50 weighted hourly wage multiplied by 1,280 exchange teachers affiliated with small sponsors.

In addition, small sponsor cataloguing and storing of annual reports with cross-cultural activity components would cost small sponsors \$11,200 annually (7,000 reports requiring storage multiplied by 0.32 multiplied by \$5 per report). The \$5 annual cost is based upon conservative private sector estimates of onsite record storage in the office

environment per cubic foot of records. The Department estimates that each annual report, with paper and other addenda, could take up to one-quarter cubic feet of space.

Summary: Collectively, this regulation will impose new costs of no more than \$47,176 to the 16 small program sponsors. The additional cost of this regulation divided by the total number of exchange teachers associated with small business (1,280) is \$37. In 2014, the 16 small sponsors ranged in the number of exchange teachers they sponsored annually as follows: Six of the 16 small businesses brought in no more than seven exchange teachers for the year 2014, which meant a new burden cost of \$259. For these businesses, annual revenue averaged around seven million dollars, and this amount was far less than one-half of one percent of their revenues. Six small businesses brought in between 12 to 50 exchange teachers annually at a maximum cost of \$1,850; one small business sponsored 133 exchange teachers, which computes to a cost of \$4,921; and two sponsored around 200 teachers, which computes to a cost of around \$7,400. For these businesses, annual revenue ranged from \$695,000 to six million dollars, and was in all cases, less than 1.5 percent of their revenue. For the four small businesses that recruited the largest number of new exchange teachers (as many as 282 exchange teachers) in 2014, the cost of this regulation is estimated to be no greater than \$10,434. For these businesses, annual revenues ranged from five to seven million dollars, and the new regulatory cost was less than one percent of their revenues. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. The total cost burden to host schools affiliated with small businesses is \$20,008 or around \$16 per school (\$20,008 divided by 1,280 host schools).

Executive Orders 12866 and 13563

The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government, and that rules governing the conduct of this function are exempt from the requirements of Executive Orders 12866 and 13563. The Department has nevertheless reviewed these regulations to ensure their consistency with the regulatory philosophy and principles set forth in those Executive Orders and submitted the rule to the Office of Management and Budget's Office of Information and Regulatory Affairs. The regulations governing the Teacher category of the Exchange Visitor Program were last amended on March 19, 1993.

First, the regulations set forth in this final rule include a requirement for sponsors to provide full transparency on all fees and costs associated with teacher exchanges. The Department believes that requiring sponsors to provide foreign teachers at the time of recruitment with a comprehensive summary of total program fees and costs would greatly enhance transparency and better ensure that exchange teachers understand the financial obligations they assume when choosing to participate in the Exchange Visitor Program. The Department believes that sponsors already prepare such comprehensive summaries as a business practice. The cost of this requirement will come from adding a summary to the existing sponsor application and website and disseminating this fee and cost summary to the individual exchange teacher at the time of selection into the program, and is estimated at one hour, or 0.5 additional burden hours, for an estimated 4,000 sponsor collections from host schools to disclose fee and cost information multiplied by \$31.50 sponsor weighted wage, or \$126,000 divided by two, or a \$63,000 new cost.

Second, both exchange teachers and sponsors will accrue costs from the application process. Foreign teacher applicants who are chosen for the Teacher program must demonstrate that they meet the eligibility and selection requirements set forth in 22.CFR 62.24 (d)-(e), including demonstrating their qualifications for teaching at either the primary, including pre-kindergarten, or secondary levels in schools in their home country; that they are working as a teacher in their home country at the time of application; and that they have at least two years of full-time teaching experience. They must show that they have, at a minimum, a degree equivalent to a U.S. bachelor's degree in either education or the academic subject field in which they plan to teach. They also must demonstrate that they have the requisite English language proficiency, provide references to their good character, and ensure that they meet the teaching requirements of the U.S. state in which they are placed, under the requirements of 22.CFR 62.24 (d)-(e). It is anticipated that it will take 1,200 new exchange teachers six hours for a total of 7,200 hours to document their eligibility at \$26.26 per hour weighted wage for a total cost of \$189,072. The figure of \$26.26 weighted wage per hour for exchange teachers approximates, according to the Bureau of Labor Statistics and the private sector Teacher Portal (a website summarizing teacher salaries nationwide at www.teacherportal.com), the average teacher salary in the past academic year for teachers having under ten years of experience (the Exchange Visitor Program's main applicants) plus benefits of 30 percent of salary.

Sponsors must screen exchange teachers before accepting them for the program and placing them in a suitable host school. Sponsors, therefore, must verify the educational

and other qualifications of each foreign teacher applicant to determine whether he or she satisfies all selection criteria; review references for each foreign teacher attesting to that teacher's good reputation, character and teaching skills; ensure that each selected foreign teacher possesses sufficient proficiency in the English language to function in American classrooms as well as on a day-to-day basis; check, if applicable, that a home school letter stating the school's willingness to work with the exchange teacher on a cross-cultural component has been submitted; check that host schools appoint exchange teachers to temporary positions and that these teachers' salaries fall within the range paid to U.S. teachers; and verify that each exchange teacher meets the requirements of the state in which he or she will teach. It is estimated that 54 sponsors will need 2 hours, an increase of 0.5 hours, to review 1,200 successful exchange teacher applications at \$31.50 weighted wage for a total cost of \$75,600 (and total new costs of \$18,900).

Third, an exchange teacher who qualifies for the program by virtue of having completed an advanced degree in education or in an academic subject matter that he or she intends to teach or that is directly related to his or her teaching subject field (see 22 CFR 62.24(d)(1)(ii)) also must provide a letter from the head of a school (or another individual in an appropriate position of authority to speak for the school within the foreign country's school system) in another country, preferably that exchange teacher's home country, which states that school's willingness to work with the exchange teacher on the cross-cultural component. It will take an estimated 50 exchange teachers two hours to organize receipt of such a letter within their home country, to include a translation if not in English, and provide the letter as part of their application package, at

\$26.26 weighted wage multiplied by 50 multiplied by two burden hours, for a total of \$2,626.

Fourth, sponsors must ensure that Forms DS-2019 are not issued until potential exchange teachers have received and accepted written offers of full-time teaching positions from the accredited primary (including pre-kindergarten level) or secondary schools in which they will teach. This is not a new cost for sponsors. Sponsors will need to collect written offers of each exchange teacher's fulltime teaching position from the placement schools, and these placement schools will need to provide the written offer letters, estimated at a 0.5 hour burden. Furthermore, host schools will have an additional 0.5 hour burden to attest that exchange teacher appointments to positions within accredited primary or secondary schools are temporary, even if the teaching positions are permanent, and do not lead to tenure; and that these positions have duties, responsibilities, hours of employment and compensation commensurate with those of similarly-situated U.S. teachers in the school district or host school where that exchange teacher is assigned to teach. The cost to host schools is estimated at \$51,774 annually (\$43.12 weighted wage for a middle level school administrator multiplied by one hour multiplied by 1,200 schools) and the cost to sponsors at \$18,900 (\$31.50 weighted wage multiplied by 0.5 hours multiplied by 1,200 new exchange teachers).

In addition, it is estimated that host schools, numbering around 250, that wish to extend their exchange teacher's program into the fourth or fifth year, will need one hour to fulfill extension requirements, estimated at \$43.12 multiplied by 250, for a total cost of \$10,780. Sponsors will need to review these applications, estimated to take one hour at a

weighted wage of \$31.50 multiplied by 250, for a total cost of \$7,875. This is a new cost for sponsors. Sponsors also will need to keep on file the criteria and supporting documentation justifying exchange teacher extensions for no less than three years. Recordkeeping costs for keeping 250 extension requests on file annually at \$5 per exchange teacher result in a total for all sponsors of \$1,250. The cost is based on average private sector estimates of file storage costs in an office environment per one-quarter-cubic foot of files.

Finally, to ensure that this program remains an educational and cultural exchange program, the Department mandates that exchange teachers organize an activity in a public setting where there is direct interaction with host school students or with the host community and, in addition, organize an activity that involves U.S. students in a dialogue or other activity with schools or students in another country, preferably the exchange teacher's home school. It is estimated that it will take an exchange teacher three hours to perform the cross-cultural activity component and file his or her report with the sponsor, at \$26.26 weighted wage multiplied by 4,000 teachers, for a total of \$315,120 annually. In addition, the Department estimates that it will take sponsors one hour, a 0.5 hour increase, to assist the exchange teacher with the cross-cultural component and review these reports, which, at \$31.50 per hour weighted wage for up to 4,000 reports, will total \$126,000 annually (or \$63,000 in new costs). Recordkeeping for sponsors' maintenance of cross-cultural reports on file for three years (an estimated 7,000 files multiplied by \$5 per exchange teacher) comes to a total of \$35,000 annually or \$105,000 over the required three years of retention. The cost is based on average private sector estimates of file

storage costs in an office environment per one-quarter cubic foot of files or by electronic means.

Teacher exchange programs conducted under the authorities of the Exchange Visitor Program promote mutual understanding by providing foreign teachers the opportunity to teach in U.S. primary and secondary schools and participate in daily educational curricula in the United States. Foreign teachers participating in the Exchange Visitor Program gain an understanding of and an appreciation for the similarities and differences between their own cultures and that of the United States. Upon their return home, these teachers enrich their schools and communities with their fresh perspectives of U.S. culture. Teacher exchanges also foster enduring relationships and lifelong friendships that help build longstanding ties between the people of the United States and other countries. In reciprocal fashion, U.S. primary and secondary school teachers and students are provided opportunities to increase their knowledge and understanding of the world through these friendships.

Although the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that such benefits far outweigh the costs associated with this regulation. The non-monetary benefits to the Teacher exchange program contained in this rule are many: In conducting a cross-cultural component, the exchange teacher will acquaint a wide number of students in the host school and members of the host community with the teacher's home culture, and students in the exchange teacher's home and host countries will have the opportunity to learn about each other's cultures. In addition, requiring sponsors to disclose fees and costs of

the exchange to prospective exchange teachers at the time of recruitment and at the time of program selection will protect the exchange teacher and also may reduce program costs in the long run, as the disclosures can reduce turnover resulting from teachers who opt to return home early after facing unexpected costs. Finally, permitting individuals who have an advanced degree to apply for the program shortly after completing that degree will enable additional qualified, highly educated and knowledgeable exchange teachers to participate in the program.

Executive Order 12988

The Department has reviewed this rulemaking 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 burdens.

Executive Orders 12372 and 13132 – Federalism

Acknowledging that the administration of schools is primarily a state function, the Department finds that this regulation will not have substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with 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. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this rule.

Paperwork Reduction Act

This rule requires new collection of information by sponsors for screening, program disclosure, the cross-cultural component, and program extensions under an existing collection. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Chapter 35, all agencies are required to submit to the Office of Management and Budget (OMB) for review and approval the reporting and recordkeeping requirements contained in any rule covered under the PRA. The information collection requirements contained in this rulemaking are issued pursuant to the PRA and OMB Control Number 1405-0147, and consist of Form DS-7000 (within the overall collection that includes Forms DS-3036, DS-3037 and DS-7000).

The Department submitted an information collection request to OMB for Forms DS-3036, DS-3037 and DS-7000 in spring 2014 for review and approval under the PRA, and did not receive substantive comments on the collection. The collection renewal was approved by the OMB on March 21, 2014. The changes requested here were not added to the collection at that time because the collection would have expired before the final Teacher rule would enter into effect. The Department received comments in response to the Notice of Proposed Rulemaking that touched on the paperwork burden associated with the proposed rule. These comments were addressed in the supplementary information section.

No amendments are required under this rulemaking for Forms DS-3036 and DS-3037, but amendments are requested under this rulemaking for Form DS-7000.

30-Day Notice of Proposed Information Collection: *DS-3036, DS-3037 and DS-7000 Recording, Reporting and Data Collection Requirements – Student and Exchange Visitor Information System (SEVIS)*

Title: Submission to OMB of proposed collection of information.

The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval.

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to the Office of Policy and Program Support, ECA/EC, SA-5, Floor 5, U.S. Department of State, 2200 C Street, N.W., Washington, D.C. 20522-0505; fax: (202) 632-2701; e-mail: JExchanges@state.gov.

- *Title of Information Collection:* Recording, Reporting, and Data Collection – Student and Exchange Visitor Information System (SEVIS)
- OMB Control Number: 1405-0147
- *Type of Request:* Revision of a Currently Approved Collection
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, ECA/EC
- *Form Number:* Forms DS-3036, DS-3037 and DS-7000
- *Respondents:* Foreign teachers wishing to participate as an Exchange Visitor Program teacher, schools hosting exchange teachers on the Exchange Visitor Program, U.S. government and public and private organizations wishing to become

U.S. Department of State designated sponsors authorized to conduct exchange visitor programs, and Department of State designated sponsors.

- *Estimated Number of Respondents:* 191,675 (DS-3036 – 60; DS-3037 – 1,415; DS-7000 – 190,200)
- *Estimated Number of Responses:* 1,558,859 (DS-3036 – 60; DS-3037 – 2,830; DS-7000 – 1,555,969)
- *Average Time Per Response:* DS-3036 – 8 hours; DS-3037 – 20 minutes; DS-7000 – 50 minutes
- *Total Estimated Burden:* 1,328,207 hours (DS-3036 – 480 hours; DS-3037 – 943 hours; DS-7000 - 1,326,784 hours)
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

Estimate of the total new annual burden (in hours) associated with the collection.

The estimate of the total new annual burden for sponsors for the Teacher section of 22 CFR Part 62 is two and one-half hours. Previously, a non-weighted wage of \$20 was used to calculate sponsor costs for Form DS-7000. Therefore, some of the cost increase indicated in this rule stems from using the higher *weighted* wage figure of \$31.50 for sponsors in this submission. New costs for sponsors collectively (not including recordkeeping) based on the weighted wage of \$31.50 are \$189,025 and based on the non-weighted wage of \$20 are \$133,250. (A difference of \$55,775 of the overall new sponsor costs are thus attributed to using a weighted wage in these calculations.) In

addition, \$506,818 total costs are applicable to exchange teachers, calculated using the weighted wage of \$26.26, based on the time it takes them to complete their application to the program and carry out cross-cultural activities. Costs applicable to host schools, using the weighted wage or \$43.12, are \$62,524 for providing exchange teachers with offer letters, making attestations to sponsors regarding temporary positions and commensurate compensation, and collecting information to file exchange teacher extensions. Individual cost figures associated with Form DS-7000 are summarized below:

- Provision by sponsors, at the time of recruitment and selection, of a summary of total fees and costs as set forth by 22 CFR 62.24(g): \$126,000 total costs, of which \$63,000 are new costs. (0.5 hours new or one hour total burden hours multiplied by 4,000 host schools to gather information on fees and costs for recruitment and provide information on fees and costs to selected teachers from this data at \$31.50 weighted wage)
- Document collection by potential exchange teachers to prove their eligibility under 22 CFR 62.24(d)-(e): \$189,072 new cost. (Six hours multiplied by 1,200 new exchange teachers multiplied by \$26.26 weighted wage)
- Sponsor screening of exchange teachers before accepting them for the program and matching them to a suitable host school under 22 CFR 62.24(d)-(f): \$75,600, of which \$18,900 are new costs. (0.5 new and two hours total burden multiplied by review of 1,200 exchange teacher files multiplied by \$31.50 weighted wage)

- Documentation to be provided, including translation, if applicable, by exchange teachers qualifying for the program by virtue of having completed an advanced degree as set forth at 22 CFR 62.24(d)(1)(ii): \$2,626 (Two hours multiplied by 50 exchange teachers multiplied by \$26.26 weighted wage)
- Sponsor verification that Forms DS-2019 are not issued until potential exchange teachers have received and accepted written offers of full-time teaching positions from the accredited host school, as set forth at 22 CFR 62.24(f)(1): \$18,900. This is not a new cost. (0.5 hours multiplied by 1,200 exchange teachers at \$31.50 weighted wage)
- Host School provision of written offer letters of full-time teaching and attestations of temporary status of teaching positions and commensurateness of compensation at 22 CFR 62.24(f)(1) and (4)-(5): \$51,744. (One hour multiplied by 1,200 schools hosting exchange teachers at \$43.12 weighted wage)
- Host schools that wish to extend their exchange teacher's program into a fourth and/or fifth year will need to provide documentation to the sponsor as set forth at 22 CFR 62.24(k): \$10,780. (One hour to fulfill extension requirements multiplied by 250 exchange teachers at \$43.12 weighted wage)
- Sponsor review of host school request for extension as set forth at 22 CFR 62.24(k): \$7,875 in new costs. (One hour to fulfill extension requirements multiplied by 250 exchange teachers at \$31.50 weighted wage)

- Exchange teacher organization of the cross-cultural program component and writing of related report under 22 CFR 62.24(h): \$315,120. (Three hours multiplied by 4,000 exchange teachers on program at \$26.26 weighted wage)
- Sponsor assistance to exchange teachers on the cross-cultural component and review of their reports under 22 CFR 62.24(h): \$126,000, of which \$63,000 are new costs. (One hour multiplied by 4,000 exchange teachers at \$31.50 weighted wage)

Additional new annual record-keeping is as follows:

- Recordkeeping for exchange teachers on extension: 250 files of extending exchange teachers annually at \$5 per file to equal \$1,250, which are new costs.
- Storing annual report with cross-cultural component: 7,000 exchange teachers multiplied by \$5 per teacher to equal \$35,000, which are new costs.

Abstract of collection.

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Nonimmigrant) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended, 22 U.S.C. 2451 *et seq.* This final rule will require amendment of Form DS-7000 (Non-SEVIS Collection), as follows:

The Department requires sponsors under 22 CFR 62.24(g) to provide foreign teachers at the time of recruitment and again at the time of selection with a summary of program fees and costs, thereby enhancing transparency and better ensuring that exchange teachers understand the financial obligations they assume when choosing to participate in the

Exchange Visitor Program. The cost of this requirement will come from adding a summary to the existing sponsor recruiting materials and website and disseminating this fee and cost summary to the individual exchange teacher at the time of selection into the program.

Successful foreign teacher applicants must demonstrate to the sponsor, as set forth under 22 CFR 62.24(d)-(e), that they meet qualifications for teaching at the primary, including pre-kindergarten, or secondary levels in schools in their home country; are working as a teacher in their home country at the time of application; and have at least two years of full-time teaching experience. They must show that they have, at a minimum, a degree equivalent to a U.S. bachelor's degree in either education or the academic subject field in which they plan to teach, demonstrate English language proficiency, provide references to their good character, and ensure that they meet the teaching requirements of the U.S. state in which they are placed. An exchange teacher who qualifies for the program by virtue of having completed an advanced degree in education or in an academic subject matter that he or she intends to teach or that is directly related to his or her teaching subject field must provide, under 22 CFR 62.24(e)(4), a letter signed by the head of a school (or another individual in an appropriate position of authority to speak for the school within the foreign country's school system) in another country, preferably that exchange teacher's home country, which states that school's willingness to work with the exchange teacher on the cultural component.

In addition, as set forth in 22 CFR 62.24(d)-(f), sponsors must screen prospective exchange teachers before accepting them for the program and must match them with a suitable host school. Such screening includes verifying the educational and other qualifications of each foreign teacher applicant to determine whether he or she satisfies all selection criteria; reviewing references for each foreign teacher attesting to that teacher's good reputation, character, and teaching skills; ensuring that each selected foreign teacher possesses sufficient proficiency in the English language to function in American classrooms as well as on a day-to-day basis; checking, if applicable, that a home school letter stating that school's willingness to work with the exchange teacher on a cross-cultural component has been submitted; checking that host schools appoint exchange teachers to temporary positions and that these teachers' salaries fall within the range paid to similarly-situated U.S. teachers; and verifying that each foreign teacher meets the requirements of the state in which he or she will teach, including criminal background check requirements.

Host schools, as set forth at 22 CFR 62.24(f)(1), will need to provide the sponsor written offers of each exchange teacher's full-time teaching position from the placement schools. In addition, host schools that wish to extend their exchange teacher's program into the fourth or fifth year will need to have sponsors apply on their behalf to the Department for an extension, as set forth in 22 CFR 62.24(k). As also set forth in 22 CFR 62.24(k), sponsors will need to collect and submit extension requests to the Department and reply to the host school.

Finally, to ensure that this program remains an educational and cultural exchange program, the Department mandates under 22 CFR 62.24(h) that exchange teachers organize an activity in a public setting where there is direct interaction with host school students or with the host community and, in addition, involve U.S. students in a dialogue or other activity with schools or students in another country, preferably with the exchange teacher's home school. Additional costs will accrue to sponsors, who will need to assist exchange teachers with the cross-cultural component and review their cross-cultural activity reports, and to exchange teachers, who will need to carry out and report on these activities.

Additional information.

The total number of sponsor organizations designated by the Department to conduct teacher exchange program activities is 54. Around 1,200 new exchange teachers are expected annually in the Teacher exchange category to conduct exchanges in a similar number of new host schools, with an estimated 2,300 additional exchange teachers and host schools continuing their exchange on three year programs, and 250 exchange teachers annually extending their exchanges times two years, the duration of the permissible extension period, equaling an additional 500 exchange teachers, for a total of up to 4,000 exchange teachers in the United States at a given time.

List of Subjects in 22 CFR Part 62

Cultural exchange programs; Reporting and recordkeeping requirements.

Accordingly, 22 CFR Part 62 is amended as follows:

PART 62 -- EXCHANGE VISITOR PROGRAM

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

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431 *et seq.*; 22 U.S.C. 2451 *et seq.*; 22 U.S.C. 2651(a); Pub. L. 105-277, Div. G, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended; Pub. L. 107-56, 416, 115 Stat. 354; and Pub. L. 107-173, 116 Stat. 543.

2. Section 62.24 is revised to read as follows:

§ 62.24 Teachers.

(a) *Purpose.* The regulations in this section govern exchange visitors who teach full-time in accredited public and private U.S. primary and secondary schools (K-12), including pre-kindergarten language immersion programs offered as regular courses of study by accredited primary schools. Programs in this category promote the interchange of U.S. and foreign teachers and enhance mutual understanding between the people of the United States and other countries. Exchange teachers sharpen their professional skills and participate in cross-cultural activities in schools and communities, and they return home after the exchange to share their experiences and increased knowledge of the United States and the U.S. educational system. Such exchanges enable foreign teachers to understand better U.S. culture, society and teaching practices at the primary and secondary levels, and enhance U.S. students' knowledge of foreign cultures, customs and teaching approaches.

(b) *Designation.* The Department may, in its discretion, designate *bona fide* programs satisfying the objectives in paragraph (a) of this section as exchange visitor programs in the Teacher category.

(c) *Definitions.* In addition to those definitions set forth in § 62.2, the following definitions apply to the Teacher category of the Exchange Visitor Program:

(1) *Accredited primary or accredited secondary school:* Any publicly or privately operated primary or secondary institution for educating children in the United States that offers mainly academic programs and is duly accredited by the appropriate academic accrediting authority of the jurisdiction in which such institution is located.

(2) *Full-time teaching:* A minimum of 32 hours per week of teaching or teaching-related administrative activities.

(3) *Home country school:* An exchange teacher's school in his or her country of nationality or last legal country of residence.

(4) *Host school:* The U.S.-accredited primary or secondary school in which a sponsor places an exchange teacher pursuant to the exchange teacher's written acceptance of the placement.

(5) *International school:* A school that is so designated by its school district, state, or other applicable governing authority, or one whose curriculum focuses predominantly on international aspects of the subject matter taught and/or language immersion, or one that predominantly follows a national curriculum of a foreign country.

(6) *Language immersion program:* A program that is a regular course of study offered by an accredited school having sustained and enriched instruction, in a language not native

to the majority of the student population, that occurs for at least fifty percent of the school day.

(7) *Virtual exchange*: A technology-enabled, sustained, people-to-people cross-cultural educational program that may supplement the goals of an in-person exchange and integrates global knowledge, cultural awareness, and/or foreign language into the classroom or other setting.

(d) *Teacher eligibility*. Foreign nationals are eligible to participate in exchange visitor programs as full-time teachers if, at the time of initial application to the sponsor, an individual making such application demonstrates to the satisfaction of the sponsor that he or she:

(1) Either:

(i) Meets the qualifications for teaching at the primary, including pre-kindergarten, or secondary levels in schools in his or her home country; is working as a teacher in his or her home country at the time of application; and has at least two years of full-time teaching experience; or

(ii) Is not working as a teacher in his or her home country at the time of application, but otherwise meets the qualifications for teaching at the primary (including pre-kindergarten) or secondary levels in schools in the home country; has had at least two years of full-time teaching experience within the past eight years; and, within 12 months of his or her application submission date for the program, has or will have completed an advanced degree (beyond a degree equivalent to a U.S. bachelor's degree) in education or

in an academic subject matter that he or she intends to teach or that is directly related to his or her teaching subject field;

(2) Possesses, at a minimum, a degree equivalent to a U.S. bachelor's degree in either education or the academic subject field in which he or she intends to teach;

(3) Satisfies the teaching eligibility standards of the U.S. state in which he or she will teach (e.g. meets minimum educational requirements, has passed teacher training coursework at a sufficiently proficient level, has provided an evaluation of foreign teaching preparation coursework, has demonstrated the requisite prior teaching experience), to include any required criminal background or other checks;

(4) Is of good reputation and character; and

(5) Agrees to come to the United States temporarily as a full-time teacher of record in an accredited primary or secondary school. Exchange teachers may teach a variety of subjects and levels at their host school or schools, if qualified, but at the pre-kindergarten level, may teach only in language immersion programs.

(e) *Teacher selection.* Sponsors must screen foreign teachers carefully before accepting them for the program. In addition to the requirements set forth in § 62.10 and all security checks required by U.S. state departments of education and host schools, sponsors also must:

(1) Verify the qualifications of each foreign teacher to determine whether he or she satisfies the criteria set forth in paragraph (d) of this section;

(2) Secure references from one colleague and one current or former supervisor of each foreign teacher, attesting to that teacher's good reputation, character and teaching skills;

(3) Verify that each selected foreign teacher applicant possesses sufficient proficiency in the English language to function in U.S. classrooms and to function on a day-to-day basis, in accordance with the provision for selection of exchange visitors set forth at § 62.10(a)(2); and

(4) Verify that each foreign teacher who is eligible for the program under paragraph (d)(1)(ii) of this section has a letter from the head of a school in another country, preferably that teacher's home country, which states that school's willingness to work with the exchange teacher on the cross-cultural activity component set forth in paragraph (h)(1)(ii). The foreign school with which the exchange teacher plans to work must be at the same academic level as the foreign teacher's proposed host school. The letter submitted as part of the foreign teacher's application package must be signed by the head of the school or another individual in an appropriate position of authority to speak for the school within the foreign country's school system; the official signing the letter must list both e-mail and telephone contact information. The letter may be submitted in English or in the original language of the home country with an English translation; the name, title/organization and contact information of the translator must be noted on the translation.

(f) *Teaching position.* Sponsors must ensure that:

(1) Forms DS-2019 are not issued until foreign teacher applicants have received and accepted written offers of full-time teaching positions from the accredited primary (including pre-kindergarten level) or secondary schools in which they will teach;

(2) Program dates coincide with the U.S. academic year cycle to ensure a smooth transition as exchange teachers arrive and depart, unless the sponsor notifies, and receives approval from, the Department for other exchange dates before the sponsor issues any Form DS-2019; sponsors should ensure that these dates are included in the exchange teacher's contract;

(3) Exchange teachers comply with any applicable collective bargaining agreement;

(4) Exchange teacher appointments to positions within accredited primary or secondary schools are temporary, even if the teaching positions are permanent, and do not lead to tenure; exchange teachers must be employees of either the host or home school during their exchange.

(5) Teaching positions, including duties, responsibilities, hours of employment, and compensation, are commensurate with those of similarly-situated U.S. teachers in the school district or host school where that exchange teacher is assigned to teach; an exchange teacher, unless he or she is on a program where the Department is the sponsor, must be employed by and under the direct supervision and guidance of his or her host school and, where applicable, host school district; and

(6) A pre-kindergarten level exchange teacher is assigned to teach full-time in an accredited host school (or in several schools within the same host school district, including at several academic levels, with prior permission from the Department). If an

exchange teacher is placed in a private school where there is no host school district, then he or she must teach a full-time schedule of at least 32 hours in a school or schools located no more than 25 miles from the main host school; in such a situation, sponsors must ensure that reasonable and effective modes of transportation exist to such additional sites of activity. An exchange teacher may teach at the pre-kindergarten level only in a language immersion program offered as regular course of study by an accredited primary school.

(g) *Program disclosure.* (1) As part of recruitment, in addition to the information required by § 62.10(b)-(c), sponsors must provide on their main websites and in their recruiting materials a general summary of fees and other costs for the program. This summary should include, but not be limited to, the sponsor fee; foreign or domestic third party or partner fees; visa fee; the Student and Exchange Visitor Information System (SEVIS) fee; insurance costs; estimates for food, housing and local transportation costs; expected work-related deductions; and estimates or ranges for all other fees charged for and significant general costs related to participation in the teacher exchange program.

(2) At the time a foreign teacher is selected for the program, and before the exchange visitor signs any contracts with the host school, sponsors and/or the host school must provide each individual exchange teacher the following information, either within the teacher's contract or in a separate document: the name, location, and brief description of the host school; the terms and conditions of compensation (with deductions from gross salary); any provisions affecting the ability of the exchange teacher to be accompanied abroad by a spouse or dependents (including any related assistance and allowances); a

summary of the significant components of the program (including a statement of the teaching requirements and related professional obligations, as well as the required cross-cultural activity component as set forth in paragraph (h) of this section); specific information on the fees and costs for which the exchange teacher will be responsible while on exchange in that school district in accordance with paragraph (g)(1); anticipated housing options and cost implications; specific local transportation options between the exchange teacher's residence and the host school and transportation cost estimates; insurance costs for accident or illness coverage, repatriation of remains and medical evacuation as required by § 62.14; estimated personal expense money for initial costs the exchange teacher may incur upon arrival in the United States prior to receiving his or her first paycheck; certification or licensure procedures and costs at the host school; administrative fees; and any placement fees. Exchange teacher compensation, unless provided directly to the exchange teacher through government funding, through continued support from the exchange teacher's home school, or from both the teacher's home and host school in a shared cost arrangement, must be paid directly by the host school or host school district in which the exchange teacher is placed.

(h) *Cross-cultural activity component.* In addition to the requirements of § 62.10:

(1) Sponsors must require each exchange teacher to complete, within the United States, and during each academic year of program participation, at least one cross-cultural activity from each of the following two categories:

(i) An activity for the teacher's classroom, larger host school or host school district population, or the community at large designed to give an overview of the history,

traditions, heritage, culture, economy, educational system and/or other attributes of his or her home country. Sponsors of exchange teachers placed at international schools must require their exchange teachers to conduct at least one cross-cultural activity per academic year outside the host school in nearby schools or communities where international opportunities may be more limited than those found in their host school; and

(ii) An activity that involves U.S. student dialogue with schools or students in another country, preferably in the exchange teacher's home school, through virtual exchange or other means, in order to supplement the goals of the in-person exchange.

(2) Sponsors must collect annual reports from their exchange teachers detailing the cross-cultural activity component of their exchange program. The annual report does not have to be in a specific format, but must include the exchange teacher's full name and the program sponsor's name. The report section about the cross-cultural activity component must contain the following information:

- (i) The date(s) of each activity;
- (ii) The location of each activity;
- (iii) The audience for and participants in each activity;
- (iv) A general overview of each activity, including the topic; and
- (v) The estimated impact of each activity.

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

(j) *Duration of participation.* Exchange teachers may be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete the program, which may not exceed three years unless a specific extension of one or two years is authorized by the Department as set forth in paragraph (k) of this section.

(k) *Program extensions.* (1) Sponsors may request from the Department an extension of an exchange teacher's exchange by either one or two years, but not by a semester or by other fractions of academic years.

(2) The sponsor's request for extension must include:

(i) a letter of reference on official letterhead written by the host school or host school district administrator responsible for overseeing the exchange teacher that describes the exchange teacher's performance during the previous three years of the exchange and how the host school has benefited from the exchange teacher's presence; and

(ii) a document describing how the exchange teacher over the previous three years has engaged his or her classroom, the wider host school or host school district, or community through the cross-cultural activity component, if these activities are not already detailed in the exchange teacher's annual reports.

(3) Sponsors must submit their extension request and supporting documentation for the extension to the Department no later than three months prior to the beginning of the desired extension period for the exchange teacher.

(4) Sponsor requests for extension must include proof of payment of the required non-refundable extension fee as set forth in § 62.17.

(5) The Department, at its discretion, may authorize a sponsor to extend an exchange teacher's participation for either one or two additional years beyond the initial three-year exchange period. Sponsors must comply with all Department guidance on creating an extension record for the teacher within SEVIS.

(6) Sponsors that applied for a two-year extension on behalf of a host school and its exchange teacher and received permission from the Department only for a one-year extension may apply again to extend the program of that host school's exchange teacher for one additional year by following the procedures set forth in paragraphs (k)(2)-(4) of this section. The sponsor should include with such additional extension request a copy of the prior extension request submitted to enable the initial one-year extension.

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

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