

because this port closure and port limit extension are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

### Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to CBP. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

Dated: March 24, 2005.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

Dated: August 4, 2005.

**Michael Chertoff,**

*Secretary.*

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## DEPARTMENT OF STATE

### 22 CFR Part 62

#### [Public Notice 5155]

RIN: 400-AC13

### Secondary School Student Exchange Programs

**AGENCY:** State Department.

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

**SUMMARY:** The Department is proposing to amend existing regulations set forth at 22 CFR 62.25 to impose new program administration requirements. These amendments would require program sponsors to complete criminal background checks for officers, employees, agents, representatives and volunteers acting on their behalf and would also require monthly contact with host families and students. Amendments are also proposed that would require the vetting of all adult members of a host family household through a sex offender registry maintained by the respective state of

residence. A requirement to report any allegation of sexual misconduct to both the Department and local law enforcement authorities is also proposed.

**DATES:** The Department will accept comments from the public up to October 11, 2005.

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

- E-mail: [jexchanges@state.gov](mailto:jexchanges@state.gov). You must include the RIN in the subject line of your message.
- Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Exchange Coordination and Designation, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547.
- Fax: 202-203-5087.

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.

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

**SUPPLEMENTARY INFORMATION:** The Department of State designates academic and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended. Under this authority, some 1,450 program sponsors facilitate the entry of more than 275,000 exchange participants each year. Secondary school students have been a vital component of these private sector exchange activities since 1956 and serve to inform the opinion of foreign youth of the United States and its people.

The safety and security of these participants are of paramount importance to the Department. Although participants are generally 17 to 18 years of age, some participants are as young as 15 and often away from home for the first time. Given the vulnerable status of such a population the Department is proposing that all officers, employees, representatives, agents, and volunteers acting on the sponsors' behalf not only be adequately trained and supervised but also pass a criminal background check. This proposed change is consistent with requirements that have been adopted nationwide for volunteers and employees of organizations serving youth populations. The Department

anticipates that a sufficient network of local and state mechanisms is now in place to provide for the convenient and cost effective vetting of these individuals.

As a related issue, the Department is proposing that all adult members of a prospective host family be vetted through a sex offender registry maintained by the state in which the host family resides. These registries have been established over the last few years and are now available in 48 of the 50 states. The registries are easily accessed and require only the name and zip code of the individual being vetted. The efficiencies of these registries are also evolving rapidly as more states mandate the registering of sex offenders. To further protect student participants, the Department is also proposing that sponsors provide written information to each participant regarding the reporting of sexual abuse or exploitation. The Department concludes that such information is well advised given the youth of the participants and cross cultural differences that may contribute to a reluctance to speak out regarding such matters.

To provide greater clarity regarding program eligibility, the Department proposes to amend existing regulations set forth at 62.25(e) to require that student participants be bona fide students not more than 18 years and six months of age as of the program start date. This change may have a limited effect on the pool of potential exchange participants but is appropriate given the demographics of U.S. high school education. Students past this age have generally completed high school studies in their home country and would be more appropriately placed in a community college or other higher education institution. The Department is also of the opinion that older students will receive limited benefit from this exchange activity.

All secondary school student program sponsors are required to submit a placement report by August 31 of each academic year, and by January 15 of each year for those programs which have students arriving for the Spring semester or calendar year programs. The placement report is expected to include all final placements for the semester or year. For example, it is to include all placed exchange visitors for the academic year program, including participants for the fall semester only. Students selected by program sponsors, but not placed by August 31, should not enter the U.S. for the academic year/fall semester programs. They must wait until the Spring semester to participate in the Exchange Visitor Program.

**Regulatory Analysis and Notices***Administrative Procedure Act*

The Department is publishing this rule as a proposed rule, with a 60-day provision for public comments, in accordance with 5 U.S.C. 553.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

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

*Unfunded Mandates Reform Act of 1995*

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

*Small Business Regulatory Enforcement Fairness Act of 1996*

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

*Executive Order 12866*

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

*Executive Order 12988*

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

*Executive Orders 12372 and 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

*Paperwork Reduction Act*

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

**List of Subjects in 22 CFR Part 62**

Cultural exchange programs.

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

**PART 62—EXCHANGE VISITOR PROGRAM**

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

**Authority:** 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p.200; E.O.12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

2. Section 62.25 is revised to read as follows:

**§ 62.25 Secondary school students.**

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

(b) *Program sponsor eligibility.* Eligibility for designation as a secondary school student exchange visitor program

sponsor shall be limited to organizations:

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

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

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

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

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

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

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

(1) Are adequately trained and supervised;

(2) Make no student placement beyond a two-hour driving time of the home of a local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from an exchange student's participation in the exchange visitor program;

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

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

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

(e) *Student selection.* In addition to satisfying the requirements of § 62.10(a), sponsors must ensure that all participants in a designated secondary

school student exchange visitor program are:

(1) Secondary school students in their home country who have not completed more than eleven years of primary and secondary study, exclusive of kindergarten; and

(2) At least 15 years of age but not more than 18 years and six months of age as of the program start date; and

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

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

(f) *Student enrollment.* (1) Sponsors must secure prior written acceptance for the enrollment of any exchange student participant in a United States public or private secondary school prior to issuing a Form DS-2019. Such prior acceptance must:

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

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

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

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

(4) Sponsors must provide the school with a translated "written English language summary" of the exchange student's complete academic course work prior to commencement of school, in addition to any additional documents the school may require.

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

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

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program;

(2) A detailed summary of travel arrangements;

(3) A detailed profile of the host family in which the exchange student is placed. The profile shall state whether

the host family is either a permanent placement or a temporary arrival family;

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Verify that each member of the host family household eighteen years of age and older has been vetted through

a sex offender registry in their state, if that state maintains such a registry; and

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

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

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

(2) Provide all selected host families with a copy of Department of State-promulgated Exchange Visitor Program regulations; and

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

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

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

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

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

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

(m) *Reporting Requirements.* Along with the annual report required by regulations set forth at § 62.15, sponsors shall:

(1) Immediately report to the Department and local law enforcement authorities any incident or allegation involving the actual or alleged sexual

exploitation or abuse of an exchange student participant. Failure to report such incidents to the Department and local law enforcement authorities shall be grounds for the summary suspension and termination of the sponsor's Exchange Visitor Program designation.

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

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

Dated: August 9, 2005.

**Dina Habib Powell,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 05-16128 Filed 8-11-05; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-156518-04]

RIN 1545-BE10

#### Section 411(d)(6) Protected Benefits

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance on certain issues relating to the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code, which generally protect accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans. The proposed regulations would address the interaction between the anti-cutback rules of section 411(d)(6) and the nonforfeitable requirements of section 411(a), and would also provide a utilization test under which certain plan amendments would be permitted to eliminate or reduce certain early retirement benefits, retirement-type subsidies, or optional forms of benefit. These proposed regulations would generally affect sponsors of, and

participants in, qualified retirement plans.

**DATES:** Written or electronic comments must be received by November 10, 2005.

Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for December 6, 2005, at 10 a.m. must be received by November 15, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-156518-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-156518-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically, via the IRS Internet site at <http://www.irs.gov/regs>, or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-156518-04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Pamela R. Kinard at (202) 622-6060; concerning submissions of comments, the hearing, and the requests to be placed on the building access list to attend the hearing, contact Treena Garrett, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code (Code). These proposed regulations, when finalized, would revise Treasury Regulations § 1.411(d)-3 to provide guidance on when a plan amendment may alter a benefit entitlement with respect to benefits accrued before the date of the amendment to add a condition that is permitted under section 411(a). These rules are intended to reflect the holding in *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (June 7, 2004). The proposed regulations would also provide a new method—a utilization test—under which a plan amendment is permitted to eliminate or reduce an early retirement benefit, a retirement-type subsidy, or an optional form of benefit.

Section 411(a) generally provides that an employee's right to the accrued benefit derived from employer contributions must become nonforfeitable within a specified period

of service. Section 411(a)(3) provides circumstances under which an employee's benefit is permitted to be forfeited without violating section 411(a). Section 411(a)(3)(B) specifically provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits: (1) In the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such benefits were being paid; and (2) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The definition of employment for which benefit payments are permitted to be suspended is further described in 29 CFR 2530.203-3 of the Department of Labor Regulations, which interprets section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the counterpart to section 411(a)(3)(B) of the Code. Employment that satisfies the conditions described in section 203(a)(3)(B) of ERISA and the regulations thereunder is referred to as "section 203(a)(3)(B) service." See 29 CFR 2530.203-3(c).

Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) of the Code or section 4281 of ERISA. Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. For a retirement-type subsidy, this protection applies only with respect to an employee who satisfies the preamendment conditions for the subsidy (either before or after the amendment). Section 411(d)(6)(B) also authorizes the Secretary of the Treasury to provide, through regulations, that section 411(d)(6)(B) does not apply to any plan amendment that eliminates optional forms of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).