

costs and benefits of available regulatory alternatives contained in the interim final rule (70 FR 29949 at 29951) is adopted without change in this final rule. By now reaffirming that interim final rule, FDA has not imposed any new requirements. Therefore, there are no additional costs and benefits associated with this final rule.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule does not make any changes to the interim final rule or our analysis included therein, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

#### IV. The Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

#### V. Environmental Impact

The agency has determined under 21 CFR 25.30(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that 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. Accordingly, the

agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

#### List of Subjects in 21 CFR Part 1271

Biological Drugs, Communicable diseases, HIV/AIDS, Human cells, tissues, and cellular and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1271 is amended as follows:

#### PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED-PRODUCTS

■ Accordingly, the interim final rule amending 21 CFR part 1271 which was published at 70 FR 29949 on May 25, 2005, is adopted as a final rule without change.

Dated: May 26, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-11795 Filed 6-18-07; 8:45 am]

**BILLING CODE 4160-01-S**

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## DEPARTMENT OF STATE

### 22 CFR Part 62

RIN 1400-AC15

[Public Notice 5824]

#### Exchange Visitor Program—Trainees and Interns

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

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** The Department is hereby revising its regulations regarding, Trainees and Interns to, among other things, eliminate the distinction between "non-specialty occupations" and "specialty occupations," establish a new internship program, and modify the selection criteria for participation in a training program. The new regulations also require sponsors to screen, vet, and enter into written agreements with third parties who assist them in recruiting, selecting, screening, orienting, placing, training, or evaluating foreign nationals who participate in training and internship programs. Sponsors must fully complete and secure signatures on a Form DS-7002, Training/Internship Placement Plan (T/IPP) for each trainee

and intern prior to issuing a Form DS-2019. The Department adopts no changes to existing flight training regulations.

**DATES:** This rule becomes effective July 19, 2007.

The Department will accept comments from the public up to 30 days from June 19, 2007.

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

- 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>.
- *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.
- *E-mail:* [jexchanges@state.gov](mailto:jexchanges@state.gov). You must include the RIN (1400-AC15) in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:**

Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547; 202-203-5096 or e-mail at [jexchanges@state.gov](mailto:jexchanges@state.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Department of State designates U.S. government, 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 (Fulbright-Hays Act), 22 U.S.C. 2451 *et seq.*; the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-208, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT) (Pub. L. 107-56), Sec. 416; the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107-173; and other statutory enactments, Reorganization Plans, and Executive Orders. Under those authorities, designated program sponsors facilitate the entry into the United States of more than 300,000 exchange participants each year, of which approximately 27,000 are trainees.

The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the U.S. Department of State, have promulgated regulations governing the Exchange Visitor

Program. Those regulations appear at 22 CFR part 62. Regulations specifically governing training programs appear at 22 CFR 62.22. These regulations largely have remained unchanged since 1993, when the USIA undertook a major regulatory reform of the Exchange Visitor Program. Since then, the Department and the Government Accountability Office (GAO) have reviewed the implementation of these regulations. While training programs overall have been highly successful in meeting the goals of the Fulbright-Hays Act, both the Department and the GAO have found there have been occasions where training programs were being misused by some sponsors (e.g.; trainees were actually being used as “employees” and the J visa was being used in lieu of the H visa or as a stepping stone for another longer-term non-immigrant or immigrant classification that may have been unavailable at the time of visa application).

In particular, the GAO Report (“Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work Travel and Trainee Categories of the Exchange Visitor Program,” Report GAO-06-106, October 2005) found that “the potential exists for the Trainee Program to be misused as an employment program. Regulations strictly prohibit the use of the trainee category for ordinary employment purposes, stating in particular that sponsors must not place trainee participants in positions that are filled or would be filled by full-time or part-time employees.” (GAO Report, p. 20). The Department agrees with the GAO on this point. At the same time, the Department recognizes that work is an essential component of on-the-job training, and that in many respects there are no conceptual or legal distinctions between an employee and a trainee. These two perspectives are not inconsistent. While a trainee is performing work as a component of his/her training experience, the work is only a part of the learning program that is designed to enhance the trainee’s skills in his/her occupational specialty through exposure to American techniques, methodologies, and expertise.

By the same token, the Fulbright-Hays Act and the Exchange Visitor Program regulations were not meant to supply U.S. employers with employees under the guise of being trainees. The legislative and regulatory intent was, and continues to be, that trainees enter the United States, are exposed to American techniques, methodologies, and expertise, gain a better

understanding of American culture and society, and then return to their homelands to share that learning with their countrymen. Trainees (and the new sub-category Interns) are not meant to fill positions that are or could be occupied by American workers on a full- or part-time or temporary or permanent basis. Thus, the new regulations contain provisions that will permit the Department more closely to monitor training programs to ensure that they are consistent with the purposes and intent of the Fulbright-Hays Act and are not subject to abuses similar to those it and the GAO found with respect to certain training programs.

Also, the 1993 overhaul of the Exchange Visitor Program regulations included a provision governing training programs that distinguished among training in “specialized” occupations, “non-specialized” occupations, and “unskilled” occupations. Time has proven that the distinctions among these three occupational categories are conceptually artificial and do not adequately describe the types of training that the Department desires to promote in the national interest. In that regard, the Department has concluded that it is more *the amount* of prior experience that the trainee has acquired, rather than some artificial categorization of *the type* of training, that should be determinative as to whether the trainee should be permitted to enter the United States for further training. Accordingly, the regulations will require that to be eligible to participate in a training program, trainees must have either (1) a degree or professional certificate from a post-secondary academic institution outside the United States and at least one year of prior related work experience in their occupational field acquired outside the United States or (2) five years of work experience outside the United States in their occupational field. This provision ensures that prospective participants have an established connection with their home country at the time of application for participation in a training program.

In order to ensure that trainees and interns are sufficiently fluent in English to benefit from and comprehend fully the training being undertaken, the regulations require that they have verifiable English language skills sufficient to function on a day-to-day basis in the training environment. Trainees’ and interns’ English language skills must be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through a documented interview conducted by program sponsors or a

third party in person, by videoconferencing, or by web camera.

The Department will designate training and internship programs in the following occupational categories: Agriculture, Forestry, and Fishing; Arts and Culture; Aviation (subject to the Statement of Policy set forth at 71 **Federal Register** 3913, January 24, 2006); Construction and Building Trades; Education, Social Sciences, Library Science, Counseling and Social Services; Health Related Occupations; Hospitality and Tourism; Information Media and Communications; Management, Business, Commerce and Finance; Public Administration and Law; and the Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations; and such other occupational categories that the Department may from time to time include in training and internship programs. Regulations are being developed that will establish a subcategory of Student Intern within the College and University Students category (§ 62.23) for use by U.S. post-secondary academic institutions.

The regulations the Department adopted in 1993 required the completion of structured training plans for trainees [22 CFR 62.22(f) and (g)]. The Department’s experience since then, however, has shown that the regulations regarding the content and use of such training plans have not been effective and do not adequately assist the Department in determining whether real training is being provided to the trainee or whether a “boilerplate” structured training plan is truly descriptive of what the individual trainee is actually doing in the workplace. Accordingly, the Department is replacing the existing training plan regulations with new regulations for both training and internship placement plans, which are located at 22 CFR 62.22(i), *Training/Internship Placement Plan (T/IPP)—Form DS-7002*.

The Department also recognizes that foreign nationals who are current students at or recent graduates of degree- or certificate-granting post-secondary academic institutions and who have not yet had the opportunity to acquire experience in their academic field may also be interested in pursuing training in the United States. This subset of participants has in the past been the source of discussions regarding eligibility and regulatory compliance as the existing training plan requirements and selection criteria do not readily accommodate the inclusion of this significant portion of the population. The Department has concluded that it is in furtherance of the goals of the

Fulbright-Hays Act that such current students and recent graduates be permitted and, indeed, encouraged to enter the United States to participate in the Exchange Visitor Program. Accordingly, these regulations create a new intern sub-category within the regulations governing trainees.

It is imperative that the new internship program be a true learning experience for the participant, one that is an integral part of the on-going education of the participant and one that is in harmony with what the Congress intended when it enacted the Fulbright-Hays Act. To that end, and based upon the requirements for participation in the training program, the new intern regulations require sponsors to permit foreign nationals who (1) are currently enrolled in and pursuing studies at a degree-or certificate-granting post-secondary academic institution or (2) graduated from such an institution no more than 12 months prior to their exchange visitor program begin date to participate in an internship program. Sponsors must ensure that interns have verifiable English language skills sufficient to function on a day-to-day basis in their program environment. Interns may remain in the United States as a participant in a designated internship program for a maximum of 12 months. The training and internship program will also be subject to a number of other sections of the Exchange Visitor Program regulations, including the General Provisions. 22 CFR 62.1 through 62.17.

Training programs in the field of agriculture and in the "Hospitality and Tourism" occupational category will be limited to 12 months. The Department is of the view that 12 months is sufficient time to train a person in these occupational fields or categories, especially in light of the fact that, before entering the United States to participate in a training program, trainees must already have either (1) a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or (2) five years of work experience outside the United States in their occupational field. However, the new regulations also provide that the duration of a training program in the field of agriculture may be up to 18 months if at least six months of the program is classroom participation and studies. Moreover, the Department also recognizes there are training programs in the field of agriculture or in the "Hospitality and Tourism" occupational category that

are, in reality, management programs (e.g., hotel or restaurant management, turf grass management). Such management programs may last up to 18 months. The new regulations give the Department the flexibility to classify such programs under the occupational code of "Management, Business, Commerce, and Finance," as opposed to "Agriculture" or "Hospitality and Tourism" occupational codes. Training programs in all other occupational categories will have a maximum duration of 18 months.

The new regulations also provide that trainees may return to the United States for additional training. Should a trainee wish to enter the United States for advanced training or for training in a different field, they may do so as long as they meet the selection criteria and have been absent from the United States for no less than two years after the completion of their initial training program.

The new regulations substantially change the former provisions dealing with the obligations of program sponsors and any third parties—either domestic or overseas—with whom sponsors contract to assist them in recruiting, selecting, screening, orienting, placing, training, or evaluating foreign nationals who participate in training and internship programs. The regulations require sponsors to enter into a written agreement with third parties outlining the full relationship between the parties on all matters involving the Exchange Visitor Program. Third parties must provide a Dun & Bradstreet identification number. At the recommendation of industry comments, the Department is also changing its regulations to require sponsors to screen and vet all third parties.

Sponsors often contract with third parties operating outside the United States to recruit, select, or screen program participants. The regulations require sponsors to vet such third parties to ensure that they are legitimate businesses in the context of their home country.

A wide range of U.S. businesses and governmental or non-governmental entities host participants in training and internship programs on behalf of sponsors. These regulations set baseline standards to which sponsors are required to adhere to ensure that such host organizations are legitimate entities, are appropriately registered or licensed to conduct their activities in their jurisdiction, and possess and maintain the ability and resources to provide structured and guided work-based experience according to

individualized T/IPPs. In some instances, sponsors also will be required to conduct a site visit of the host organization's training location. The goal of the sponsor in vetting host organizations is to collect sufficient evidence to support a finding that participants are properly placed with host organizations that meet these standards.

Finally, the regulations prohibit sponsors from placing trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, or in any kind of position that involves patient care or contact. Further, sponsors must not place trainees or interns in positions that involve more than 20 per cent clerical work during their programs.

#### Analysis of Comments

The Department received a total of 1,591 comments on the proposed trainee and intern regulations set forth at 22 CFR 62.22 and published in the **Federal Register** on April 7, 2006. Of this total, 1,332 responses were identical form letters encouraged through writing campaigns directed by either the Alliance for International Educational and Cultural Exchange or by German and French academic institutions and organizations with ties to the Exchange Visitor Program. The remaining 259 responses were from Exchange Visitor Program sponsors and the general public. The commenting parties addressed the following issues:

Section 62.22(d)(2) received 1,580 comments, of which all were opposed to the change and recommended that the Department allow post-secondary students to participate in the Intern category. The Department concurs and has amended the definition of an Intern to include post-secondary students.

Section 62.22(d)(3) received 705 comments, of which all were opposed to the change. Due to the difficulty limiting testing and tying a score to one type of English proficiency test, the Department has eliminated the TOEFL requirement and amends the regulations to require sponsors to conduct a thorough screening of potential trainees or interns, including a documented interview in-person, by videoconference, or by web camera.

Section 62.22(e) and (e)(1) received three comments, of which all were opposed to the change with the opinion that trainees and interns receive stipends and do not need the additional screening. The Department has determined that the financial screening of an applicant and having a Training/ Internship Placement Plan in place is

critical to a successful program and therefore upholds the requirement as outlined in Section (e).

Section 62.22(f)(1)(ix) received four comments, of which all were opposed to the change which required certification by agricultural programs to meet the Fair Labor Standards Act. The Department adopts this change and has incorporated the certification on the Training/Internship Placement Plan (Form DS-7002).

Section 62.22(f)(2) received 426 comments, of which all were opposed to the change. Several parties, however, recommended allowing a Third Party to conduct the interview. The Department has reviewed the comments and agrees to allow a third party to conduct the initial screening as identified in a third-party agreement with the sponsor.

Section 62.22(f)(2)(v) received 662 comments, of which all were opposed to the three year experience requirement for trainees. The Department has reviewed all comments and has redefined the experience requirements for trainees and interns.

Section 62.22(g)(1) received 389 comments, of which all were opposed to the change, but, however, recommended implementation of careful vetting requirements by sponsors. The Department adopts the requirement for site visits to host organizations; however amends the requirement to host organizations that have not previously participated successfully in the sponsor's training or internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue.

Section 62.22(g)(2) received 377 comments, of which all were opposed to the change and recommended elimination of this requirement. The Department concurs and eliminates this requirement.

Section 62.22(g)(4) received six comments, of which all were opposed to the change and recommended clarification of the arrival date versus program begin date. The Department amends this requirement to require training and internship sponsors to ensure that trainees and interns are appropriately selected, placed, oriented, supervised and evaluated.

Section 62.22(j)(2) received two comments, both of which were opposed to the change and recommended that the Department not define a percentage of time. The Department upholds and adopts this requirement.

Section 62.22(k) received 392 comments, of which all were opposed to the change regarding the duration of training and internship programs in the occupational fields of agriculture and

hospitality. The Department is of the view that 12 months is sufficient time to train a person in these occupational fields or categories, especially in light of the fact that, before entering the United States to participate in a training program, trainees must already have either (1) a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or (2) five years of work experience outside the United States in their occupational field. Therefore, the Department adopts the duration of program participation as outlined in 62.22(k).

Section 62.22(l) received one favorable comment.

Section 62.22(n) received 22 comments, of which all were opposed to the repeat participation requirement. The Department has taken the comments into consideration and has amended the section to permit interns to participate in additional internship programs as long as they maintain student status or begin a new internship program within 12 months of graduation. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following their initial training program.

Section 62.22(o) received six comments, of which all were opposed to the change and recommended rewriting this section. The Department has decided not to make any changes to this section at this time.

Section 62.22 received eight comments requesting elimination of the requirement that Internships be directly related to an Intern's field of study. The Department has reviewed the comments and upholds the requirement as defined.

Section 62.22 received ten comments stating that the proposed regulations will negatively impact U.S. students. The Department has reviewed all comments and finds that the new definition of an Intern, as defined in this Interim Final Rule, will help alleviate the negative impact on U.S. students abroad.

Section 62.22 received six comments requesting the reinstatement of "Counseling and Social Services" in the list of occupational categories. The elimination of the occupational categories of Counseling and Social Services in the proposed rule was an oversight and has been reinstated in the Interim Final Rule.

The Department recognizes the concerns regarding eligibility and monitoring of trainees and interns and

therefore adopted several of the suggested changes as appropriate.

#### **Administrative Procedure Act, Unfunded Mandates Reform Act of 1995, and Small Business Regulatory Enforcement Fairness Act of 1996**

The Department originally published this rulemaking as a Proposed Rule, with a 60-day comment period (See: 71 **Federal Register** 177768, April 7, 2006). Some 1,591 comments were received and analyzed and a number of the suggestions made in the comments have been incorporated in this Interim Final Rule. This rule is issued on an interim final basis as an accommodation to the Department's designated sponsor community. This approach will provide the opportunity for straightforward amendment of regulatory language, if necessary, but will also permit this rule to be implemented in a timely manner.

This rulemaking process has been conducted without prejudice to whether it involves a foreign affairs function of the United States exempt from the requirements of 5 U.S.C. 553 and without prejudice to whether the Department may invoke that exemption in other contexts.

This Interim Rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have a substantial effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it has been determined that the Interim Final Rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

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

In its April 7, 2006 promulgation of the Proposed Rule, 71 **Federal Register** 177768, the Department certified that the proposed changes to the regulations were 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 through 612, and Executive Order 13272, section 3(b). By letter dated May 30, 2006, the Office of Advocacy of the Small Business Administration opined that the Department's certification lacked a factual basis in that the Proposed Rule, if adopted as written, could have significant impact on a substantial number of small entities, in particular, nine flight training schools that utilize the J visa.

After receiving and analyzing the aforementioned 1,591 comments and after consultation with affected stakeholders, a number of changes have been made to the proposed regulation. With respect to the flight training schools, the Department has decided to make no changes to existing regulations governing flight training in this Interim Final Rule. Therefore, the changes proposed in this Rule do not impact such schools. After revising the Proposed Rule, the Department again reviewed the regulations being promulgated in this Interim Final Rule in order to determine if they would potentially have a significant economic impact on any other small entities utilizing the J visa. Other than those comments received from flight training sponsors, no other comments asserted potential significant economic impact on small entities. Accordingly, the Department has determined and hereby certifies that the Interim Final Rule is not expected to have an economic impact on a substantial number of small entities.

In cases where a rulemaking involves a foreign affairs function, the rulemaking is not subject to 5 U.S.C. 553, and therefore is not subject to sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. sections 601 through 612, or section 3(b) of Executive Order 13272. In this case, the Department's certification concerning impact on small entities is made without prejudice to whether this rulemaking involves a foreign affairs function of the United States exempt from the Regulatory Flexibility Act and without prejudice to whether the Department may invoke that exemption in any other contexts.

#### Executive Order 12866

The Department of State does not consider this Interim Final 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 Interim Final Rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

#### Executive Order 12988

The Department has reviewed this Interim Final Rule 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.

#### Paperwork Reduction Act

The information collection requirements contained in this rulemaking (Form DS-7002) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, under OMB Control Number 1405-0170, expiration date: 07/31/2009. The Proposed Rule for Trainees and Interns, published 4/07/2006, stated in its PRA section that the Department would develop and publish a new form (Form DS-7002—Training/Internship Placement Plan). This form was designed and developed and a Notice of request for public comment was published. The proposed data collection and Form DS-7002 published in the **Federal Register** on 06/01/2006. The Notice directed that all comments and questions be directed to OMB. Final approval of the form and data collection was issued on 07/31/2006.

#### 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, 1372 (2001), 1701-1775 (2002); 22 U.S.C. 1431-1442, 2451-2460; 6501 (1998); 5 U.S.C. app. § 1-11 (1977); 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 62.2 is amended by removing the definitions for "Non-specialty occupation" and "Specialty occupation" and by adding the following definitions for "Clerical", "Host Organization", "Intern", "Internship Program", "Staffing Agency", "Trainee", and "Training Program", to read as follows:

#### § 62.2 Definitions

\* \* \* \* \*

*Clerical*—means routine administrative work generally performed in an office or office-like setting, such as data entry, filing, typing, mail sorting and distribution, and other general office tasks.

\* \* \* \* \*

*Host Organization*—means a in the United States that conducts training or internship programs on behalf of

designated program sponsors pursuant to an executed written agreement between the two parties.

*Intern*—means a foreign national who either

(1) Is currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or

(2) Graduated from such an institution no more than 12 months prior to his/her exchange visitor program begin date, and who enters the United States to participate in a structured and guided work-based internship program in his/her specific academic field.

*Internship Program*—means a structured and guided work-based learning program as set forth in an individualized Training/Internship Placement Plan (T/IPP) that reinforces a student's or recent graduate's academic study, recognizes the need for work-based experience, provides on-the-job exposure to American techniques, methodologies, and expertise, and enhances the Intern's knowledge of American culture and society.

\* \* \* \* \*

*Staffing/Employment Agency*—means a U.S. business that hires individuals for the express purpose of supplying workers to other businesses. Typically, the other businesses with which workers are placed pay an hourly fee per employee to the Staffing/Employment Agency, of which the worker receives a percentage.

*Trainee*—means a foreign national who has either:

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

(2) Five years of work experience outside the United States in his/her occupational field, and who enters the United States to participate in a structured and guided work-based training program in his/her specific occupational field.

*Training Program*—means a structured and guided work-based learning program set forth in an individualized Trainee/Internship Placement Plan (T/IPP) that enhances both a trainee's understanding of American culture and society and his/her skills in his/her occupational field through exposure to American techniques, methodologies, and expertise.

■ 3. Section 62.22 is revised to read as follows:

**§ 62.22 Trainees and interns.**

(a) *Introduction.* These regulations govern Exchange Visitor Programs under which foreign nationals have the opportunity to receive training in the United States. These regulations also establish a new internship program under which foreign nationals who:

(1) Are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or

(2) Graduated from such an institution no more than 12 months prior to their exchange visitor program begin date may enter the United States to obtain work-based learning to build on their academic experience by developing practical skills. Regulations dealing with training opportunities for certain foreign students who are studying at post-secondary accredited educational institutions in the United States are located at § 62.23 (“College and University Students”). Regulations governing alien physicians in graduate medical education or training are located at § 62.27 (“Alien Physicians”).

(b) *Purpose.* (1)(i) The primary objectives of the programs offered under these regulations are to enhance the skills and expertise of exchange visitors in their academic or occupational fields through participation in structured and guided work-based training and internship programs and to improve participants’ knowledge of American techniques, methodologies, and expertise. Such training and internship programs are also intended to increase participants’ understanding of American culture and society and to enhance Americans’ knowledge of foreign cultures and skills through an open interchange of ideas between participants and their American associates. A key goal of the Fulbright-Hays Act, which authorizes these programs, is that participants will return to their home countries and share their experiences with their countrymen.

(ii) Exchange Visitor Program training and internship programs must not be used as substitutes for ordinary employment or work purposes; nor may they be used under any circumstances to displace American workers. The requirements in these regulations for trainees are designed to distinguish between *bona fide* training, which is permitted, and merely gaining additional work experience, which is not permitted. The requirements in these regulations for interns are designed to distinguish between a period of work-based learning in the intern’s academic field, which is

permitted, and unskilled labor, which is not.

(2) In addition, a specific objective of the new internship program is to provide foreign nationals who are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date a period of work-based learning to allow them to develop practical skills that will enhance their future careers. Bridging the gap between formal education and practical work experience and gaining substantive cross-cultural experience are major goals in educational institutions around the world. By providing training opportunities for current foreign students and recent foreign graduates at formative stages of their development, the U.S. Government will build partnerships, promote mutual understanding, and develop networks for relationships that will last through generations as these foreign nationals move into leadership roles in a broad range of occupational fields in their own societies. These results are closely tied to the goals, themes, and spirit of the Fulbright-Hays Act.

(c) *Designation.* (1) The Department may, in its sole discretion, designate as sponsors entities meeting the eligibility requirements set forth in Subpart A of 22 CFR Part 62 and satisfying the Department that they have the organizational capacity successfully to administer and facilitate training and internship programs.

(2) Sponsors must provide training and internship programs only in the occupational category or categories for which the Department has designated them as sponsors. The Department will designate training and internship programs in any of the following occupational categories:

- (i) Agriculture, Forestry, and Fishing;
- (ii) Arts and Culture;
- (iii) Aviation;
- (iv) Construction and Building Trades;
- (v) Education, Social Sciences, Library Science, Counseling and Social Services;
- (vi) Health Related Occupations;
- (vii) Hospitality and Tourism;
- (viii) Information Media and Communications;
- (iv) Management, Business, Commerce and Finance;
- (x) Public Administration and Law; and
- (xi) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations.

(d) *Selection Criteria.* (1) In addition to satisfying the general requirements set forth in § 62(10)(a), sponsors must ensure that trainees and interns have verifiable English language skills sufficient to function on a day-to-day basis in their training environment. English language proficiency must be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through an interview conducted by the sponsor, or an in-person, by videoconference, or by web camera.

(2) Sponsors of training programs must verify that all potential trainees are foreign nationals who have either a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or five years of work experience outside the United States in their occupational field.

(3) Sponsors of internship programs must verify that all potential interns are foreign nationals who are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date.

(e) *Issuance of Forms DS-2019.* In addition to the requirements set forth in Subpart A, sponsors must ensure that:

(1) They do not issue Forms DS-2019 to potential participants in training and internship programs until they secure placements for trainees or interns and complete and secure requisite signatures on Form DS-7002, Training/Internship Placement Plan (T/IPP or Forms DS-7002);

(2) Trainees and interns have sufficient finances to support themselves for their entire stay in the United States, including housing and living expenses; and

(3) The training and internship programs expose participants to American techniques, methodologies, and expertise and expand upon the participants’ existing knowledge and skills. Programs must not duplicate the participants’ prior work experience or training received elsewhere.

(f) *Obligations of Training and Internship Program Sponsors.* (1) Sponsors designated by the Department to administer training and internship programs must:

(i) Ensure that trainees and interns are appropriately selected, placed, oriented, supervised, and evaluated;

(ii) Be available to trainees and interns (and host organizations, as appropriate) to assist as facilitators, counselors, and information resources;

(iii) Ensure that training and internship programs provide a balance between the trainees' and interns' learning opportunities and their contributions to the organizations in which they are placed;

(iv) Ensure that the training and internship programs are full-time (minimum of 32 hours a week); and

(v) Ensure that any host organizations and third parties involved in the recruitment, selection, screening, placement, orientation, evaluation for, or the provision of training and internship programs are sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adhere to all regulations set forth in this Part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(2) Sponsors must ensure that they or any host organization acting on the sponsor's behalf:

(i) Have sufficient resources, plant, equipment, and trained personnel available to provide the specified training and internship program;

(ii) Provide continuous on-site supervision and mentoring of trainees and interns by experienced and knowledgeable staff;

(iii) Ensure that trainees and interns obtain skills, knowledge, and competencies through structured and guided activities such as classroom training, seminars, rotation through several departments, on-the-job training, attendance at conferences, and similar learning activities, as appropriate in specific circumstances;

(iv) Conduct periodic evaluations of trainees and interns, as set forth in § 62.22(l);

(v) Do not displace full-or part-time or temporary or permanent American workers or serve to fill a labor need and ensure that the positions that trainees and interns fill exist solely to assist trainees and interns in achieving the objectives of their participation in training and internship programs; and

(vi) Certify that training and internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(3) Sponsors or any third parties acting on their behalf must conduct a thorough screening of potential trainees

or interns, including a documented interview in-person, by videoconference, or by web camera.

(4) Sponsors must retain all documents referred to in § 62.22(f) for at least three years following the completion of all training and internship programs. Documents and any requisite signatures may be retained in either hard copy or electronic format.

(g) *Use of Third Parties*—(1) *Sponsors Use of Third Parties*. Sponsors may engage third parties (including, but not limited to host organizations, partners, local businesses, governmental entities, academic institutions, and other foreign or domestic agents) to assist them in the conduct of their designated training and internship programs. Such third parties must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the full relationship between the sponsor and third party on all matters involving the administration of their exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this Part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsor.

(2) *Screening and Vetting Third Parties Operating Outside the United States*. U.S. sponsors must ascertain that third parties operating outside the United States are legitimate entities within the context of their home country environment. For third parties that operate as businesses, sponsors must obtain relevant home country documentation, such as business registration or certification, and Dun & Bradstreet identification numbers. Written agreements between sponsors and third parties operating outside the United States must include an annually updated price list for training and internship programs offered by each third party, and must ensure that such overseas third parties are sufficiently trained in all aspects of the programs they represent, including the regulations set forth in this Part.

(3) *Screening and Vetting Host Organizations*. Sponsors must adequately screen all potential host organizations at which a trainee or intern will be placed by obtaining the following information:

(i) The Dun & Bradstreet identification number (unless the host organization is

an academic institution, government entity, or family farm);

(ii) Employer Identification Number (EIN) used for tax purposes;

(iii) Verification of telephone number, address, and professional activities via advertising, brochures, Web site, and/or feedback from prior participants; and

(iv) Verification of Workman's Compensation Insurance Policy.

(4) *Site Visits of Host Organizations*. Sponsors must conduct site visits of host organizations that have not previously participated successfully in the sponsor's training and internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue. Placements at academic institutions or at federal, state, or local government offices are specifically excluded from this requirement. The purpose of the site visits is for the sponsors to ensure that host organizations possess and maintain the ability and resources to provide structured and guided work-based learning experiences according to the individualized T/IPPs and that host organizations understand and meet their obligations set forth in this Part.

(h) *Host Organization Obligations*. Sponsors must ensure that:

(1) Host organizations sign a completed Form DS-7002 to verify that all placements are appropriate and consistent with the objectives of the trainees or interns as outlined in their program applications and as set forth in their T/IPPs. All parties involved in internship programs should recognize that interns are seeking entry-level training and experience. Accordingly, all placements must be tailored to the skills and experience level of the individual intern; (i) Host organizations notify sponsors promptly of any concerns about, changes in, or deviations from T/IPPs during training and internship programs and contact sponsors immediately in the event of any emergency involving trainees or interns; (ii) Host organizations abide by all Federal, State, and Local occupational health and safety laws; and (iii) Host organizations abide by all program rules and regulations set forth by the sponsor, including the completion of all mandatory program evaluations.

(i) *Training/Internship Placement Plan (Form DS-7002)*. (1) Sponsors must fully complete and obtain requisite signatures for a Form DS-7002 for each trainee or intern before issuing a Form DS-2019. Sponsors must provide each signatory an executed copy of the Form DS-7002. Upon request, trainees and interns must present their fully

executed Form DS-7002 to a Consular Official during their visa interview.

(2) To further distinguish between bona fide training for trainees or work-based learning for interns, which are permitted, and ordinary employment or unskilled labor which are not, all T/IPPs must

(i) State the specific goals and objectives of the training and internship program (for each phase or component, if applicable);

(ii) Detail the knowledge, skills, or techniques to be imparted to the trainee or intern (for each phase or component, if applicable); and

(iii) Describe the methods of performance evaluation and the supervision for each phase or component, if applicable.

(3) A T/IPP for trainees must be divided into specific and various phases or components, and for each phase or component must

(i) Describe the methodology of training and

(ii) Provide a chronology or syllabus.

(4) A T/IPP for interns must:

(i) Describe the role of the intern in the organization and, if applicable, identify various departments or functional areas in which the intern will work and

(ii) Identify the specific tasks and activities the intern will complete.

(j) *Program Exclusions.* Sponsors designated by the Department to administer training and internship programs must not:

(1) Place trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, or in clinical or any other kind of work that involves patient care or contact, including any work that would require trainees or interns to provide therapy, medication, or other clinical or medical care (e.g., sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education);

(2) Place trainees or interns in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(3) Engage or otherwise cooperate or contract with a Staffing/Employment Agency to recruit, screen, orient, place, evaluate, or train trainees or interns, or in any other way involve such agencies in an Exchange Visitor Program training and internship program.

(4) Designated sponsors must ensure that the duties of trainees or interns as outlined in the T/IPPs will not involve more than 20 per cent clerical work, and

that all tasks assigned to trainees or interns are necessary for the completion of training and internship program assignments.

(5) Sponsors must also ensure that all "Hospitality and Tourism" training and internship programs of six months or longer contain at least three departmental or functional rotations.

(6) Place interns in the field of aviation.

(k) *Duration.* The duration of a trainee's or intern's participation in a training and internship program must be established before a sponsor issues a Form DS-2019. Except as noted below, the maximum duration of a training program is 18 months, and the maximum duration of an internship program is 12 months. For training programs in the field of agriculture and in the "Hospitality and Tourism" occupational category, the maximum duration is 12 months. Training programs in the field of agriculture are permitted to last a total of 18 months, if in development of the T/IPP the additional six months of the program consists of classroom participation and studies. Program extensions are permitted within maximum durations as long as the need for an extended training and internship program is documented by the full completion and execution of a new Form DS-7002.

(l) *Evaluations.* In order to ensure the quality of training and internship programs, sponsors must develop procedures for evaluating all trainees and interns. All required evaluations must be completed prior to the conclusion of a training and internship program, and both the trainees and interns and their immediate supervisors must sign the evaluation forms. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. For programs of six months or less, at a minimum, concluding evaluations are required. Sponsors must retain trainee and intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each training and internship program.

(m) *Issuance of Certificate of Eligibility for Exchange Visitor (J-1) Status.* Sponsors must not deliver or cause to be delivered any Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019) to potential trainees or interns unless the individualized Form DS-7002 required by § 62.22(i) has been completed and signed by all requisite parties.

(n) *Additional Training and Internship Program Participation.* Foreign nationals who enter the United States under the Exchange Visitor

Program to participate in training and internship programs are eligible to participate in additional training and internship programs under certain conditions. For both trainees and interns, additional training and internship programs must address the development of more advanced skills or a different field of expertise. Interns may participate in additional internship programs as long as they maintain student status or begin a new internship program within 12 months of graduation. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following their initial training program. Participants who have successfully completed internship programs and no longer meet the selection criteria for internship programs may participate in a training program after a two-year period of residency outside the United States following their internship program. As long as participants meet the selection criteria and fulfill these conditions, there is no limit to the number of times they may participate in a training and internship program.

(o) *Flight Training.* (1) The Department will consider the application for designation of a flight training program if such programs comply with the above regulations, and, additionally:

(i) Is, at the time of making said application, a Federal Aviation Administration certificated pilot school pursuant to title 14 CFR part 141; and

(ii) At the time of making said application is accredited as an flight training program by an accrediting agency which is listed in the current edition of the U.S. Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or is accredited as a flight training program by a member of the Council on Postsecondary Accreditation; or

(iii) At the time of making said application has formally commenced the accreditation process with an accrediting agency which is listed in the current edition of the U.S. Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or with a member of the Council on Postsecondary Accreditation. If the application for designation is approved, such designation will be for up to 12 months duration, with continued designation thereafter conditioned upon completion of the accreditation process.

(2) Notwithstanding the provisions of § 62.22(k), the maximum period of participation for exchange visitors in



designated flight training programs must not exceed 24 months total. Any request for extension of time in excess of that authorized under this subsection must be made in accordance with § 62.43.

(3) For purposes of meeting the evaluation requirements set forth in § 62.22(m), sponsors and/or third parties conducting the training may utilize the same training records as are required by the Federal Aviation Administration to be maintained pursuant to 14 CFR 141.101.

Dated: March 12, 2007.

**Stanley S. Colvin,**

*Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-11703 Filed 6-18-07; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 75

[DoD-2007-OS-0047]

#### Conscientious Objectors

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This document removes part 75, "Conscientious Objectors" presently in Title 32 of the Code of Federal Regulations. The document on which this part was based has been revised and is limited only to DoD personnel management matters, affects only DoD military personnel, and has no impact on the public.

**DATES:** *Effective Date:* June 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** CDR Lesa J. Kirsch, 703-697-4959.

**SUPPLEMENTARY INFORMATION:** This part 75 is removed as a part of a DoD exercise to remove CFR parts no longer required to be codified. The corresponding DoD Instruction 1300.06 is available at <http://www.dtic.mil/whs/directives>.

#### List of Subjects in 32 CFR Part 75

Conscientious objectors, Military personnel.

#### PART 75—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 75 is removed.

Dated: June 11, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 07-2985 Filed 6-18-07; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-07-031]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; York River, Yorktown, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations during the "Watermen's Heritage Festival Workboat Races", a marine event to be held July 15, 2007 on the waters of the York River, Yorktown, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the York River during the event.

**DATES:** This rule is effective from 9 a.m. to 5:30 p.m. on July 15, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05-07-031) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 12, 2007, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; York River, Yorktown, VA in the **Federal Register** (72 FR 18422). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, spectator craft, and other

vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations, and area newspapers.

#### Background and Purpose

On July 15, 2007, the Watermen's Museum of Yorktown, VA will sponsor "Watermen's Heritage Festival Workboat Races" on the York River, immediately adjacent and north of the shoreline at Yorktown River Cliffs. The event will consist of approximately 40 traditional Chesapeake Bay deadrise workboats racing along a marked straight line race course in heats of 2 to 4 boats for a distance of approximately 1000 yards. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

#### Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the York River, near Yorktown, Virginia.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation will prevent traffic from transiting a portion of the York River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it is safe to do so. In many cases vessel traffic will be able to transit around the regulated using the marked navigation channel along the York River.