

[Federal Register: June 27, 2002 (Volume 67, Number 124)]
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[DOCID:fr27jn02-25]

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Proposed Rules

Federal Register

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 4054]

Participation in the Exchange Visitor Program as Professor and Research Scholar

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Department is proposing to amend its existing regulations governing participation in the Exchange Visitor Program as a professor and research scholar. These proposed amendments will extend the duration of program participation from three years to five years and eliminate program extensions beyond the five-year period. Limitations governing the eligibility for program participation of professor and research scholar participants are also included. These limitations enhance the integrity and programmatic effectiveness of the Exchange Visitor Program.

DATES: Written comments regarding this rule will be accepted until July 29, 2002.

ADDRESSES: Comments regarding this rule must be presented in duplicate and addressed as follows: U.S. Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 852, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, U.S. Department of

State, 301 Fourth Street, SW., Room 852, Washington, DC 20547;
telephone (202) 401-9810; fax (202) 401-9809.

SUPPLEMENTARY INFORMATION: Since 1949, a three-year period of program duration has been afforded to professors and research scholars participating in Department-designated exchange visitor programs. During the development of comprehensive rules published in 1993, numerous comments were received suggesting that the period of program duration for professors and research scholars should be greater than three years. In recent consultation with the academic community, there has once again been great interest in extending the program duration for this category.

Accordingly, the Department proposes to amend existing regulatory provisions under the professor and research scholar category at section 22 CFR 62.20(i) to permit a maximum duration of program participation of five years. Calculation of the five years shall begin from the initial program start date listed on the DS-2019 pursuant to which professor or research scholar participant status is acquired and shall end five years from that date. (Example: July 1, 2002-July 1, 2007). It shall include time spent outside the United States. With this change to the length of program duration, the Department is of the opinion that extensions beyond the proposed five-year maximum period of program duration will be inappropriate. Therefore, the Department proposes the deletion of section 22 CFR 62.20(j) regarding extensions to the professor and research category. If adopted, these amendments would also permit program sponsors to extend a current participant's program up to the maximum program duration of five years. Extensions beyond the duration of participation are not permitted under this category.

The Department also proposes to limit repeated program participation. No individual who has been afforded a five-year period of program participation as a professor or research scholar will be eligible for repeat participation in the professor or research scholar category for a period of two years from the end date of his/her prior program. This provision is proposed to ensure that the reciprocal exchange objectives underlying the Exchange Visitor Program are met, and that the exchange visitor's visa is not misused for long-term employment purposes.

The twelve-month bar will remain as stated in section 22 CFR 62.20(d)(ii). This regulation places a twelve-month bar from continued program participation upon individuals who have been physically present in the United States for all or part of the twelve months immediately preceding their commencement of program participation as a professor or research scholar. However, 22 CFR 62.20(d)(ii) does provide exceptions to the application of the twelve-month bar including one for prospective participants who have previously participated in the Exchange Visitor Program as short-term scholars.

The Department invites comments regarding this proposed rule. The Department will accept comments for 30 days following publication of this proposed rule. A final rule will be adopted following Department review of all comments received and coordination with the adoption of the Student and Exchange Visitor Information System (SEVIS).

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 30-day provision for post-promulgation public comments, based on the ``good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The proposed changes will provide notice and a comment

period prior to adoption of this rule.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 USC 605(b)), has reviewed this regulation and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

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 section 804 of the Small Business Regulatory Enforcement Act of 1996. 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,

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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 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.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping 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. Amend Sec. 62.20 by revising paragraph (i) and removing paragraph (j) to read as follows:

Sec. 62.20 Professors and research scholars.

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(i) Duration of participation. The permitted duration of program participation for a professor or research scholar shall be as follows:

(1) General limitation. The professor and research scholar shall be authorized to participate in the Exchange Visitor Program for the length of time necessary to complete his or her program, which time shall not exceed five years. The five-year period of permitted program participation shall begin with the initial program start date listed on the DS-2019 pursuant to which professor or research scholar participant status is acquired and shall end five years from such date. It shall include time spent outside the United States.

(2) Repeat Participation. Individuals who have entered the United States under the Exchange Visitor Program as a professor or research scholar, or who have acquired such status while in the United States shall not be eligible for repeat participation as a professor or research scholar for a period of two years.

(3) Change of category. A change between the categories of professor and research scholar shall not extend an exchange visitor's permitted period of participation beyond five years.

(4) Extensions beyond the duration of participation are not permitted under this category.

Dated: June 4, 2002.

Patricia S. Harrison,
Assistant Secretary, Bureau of Educational and Cultural Affairs,
Department of State.

[FR Doc. **02-16157 Filed** 6-26-02; 8:45 am]

BILLING CODE 4710-05-P