

Dated: September 11, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4121]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended: Transitional Foreign Student Monitoring Program

AGENCY: Department of State.

ACTION: Interim rule; with request for comments.

SUMMARY: This rule creates an electronic system known as the "Interim Student and Exchange Authentication System" (ISEAS) for monitoring the visa adjudication process and visa issuances to foreign students and exchange visitors who enter the United States in F-1, M-1, or J-1 nonimmigrant visa categories. Recent legislation requires ISEAS to be operational by September 11, 2002. ISEAS will remain in operation until the foreign student monitoring system being developed by the INS is fully operational. The Department, the INS, approved institutions of higher education or other approved educational institutions, and exchange visitor program sponsors will use the ISEAS database for the collection and transmission of information pertaining to foreign student and exchange visitor visa applicants to ensure compliance with the legislation.

DATES: Effective date: This interim rule is effective on September 11, 2002. Comment date: Written comments must be submitted on or before November 18, 2002.

ADDRESSES: Submit comments in duplicate to Chief, Legislation and Regulations Division, Visa Services, Department of State, 20520-0106. Comments may also be forwarded via e-mail to VisaRegs@state.gov or faxed to 202-663-3898.

FOR FURTHER INFORMATION CONTACT: Nancy Altman, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, 202-261-8040.

SUPPLEMENTARY INFORMATION:

What Is the Background for This Action?

On May 14, 2002, the President signed into law the "Enhanced Border Security and Visa Entry Reform Act of 2002" (Border Security Act), Public Law 107-173, section 501 of the Border Security Act addresses the need to improve our ability to track foreign students while in the United States. Section 501(a) expands the Attorney General's responsibilities for monitoring and verification requirements established for students and exchange visitors by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IRRIRA), Public Law 101-649. An electronic information collection and tracking system is being developed by the INS pursuant to these responsibilities (known as the "Student and Exchange Visitor Information system" (SEVIS)) and is required to be fully implemented by January 1, 2003.

Section 501(c) of the Border Security Act requires the establishment by the Department of an interim program for the electronic monitoring of foreign student and exchange visitor visa issuance, admission to the United States, and enrollment until SEVIS is fully operational. The interim system, known as ISEAS, will be the means by which the Department, INS, approved educational and vocational institutions and exchange visitor programs meet the legislative requirements under 501(c). Subject to a thirty to sixty day phase-in and testing period, ISEAS will become operational on September 11, 2002.

While section 501(c) of the Act only mandates its application to exchange visitors seeking to attend approved institutions of higher education, the Department has determined to make ISEAS requirements identical to SEVIS requirements regarding the participation of all exchange visitor applicants. The Department also believes that this determination more accurately reflects the intent of Congress as expressed in the USA PATRIOT Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, both of which contain provisions relating to the electronic monitoring of students and exchange visitors. Thus, all exchange visitor visa applications will be subject to ISEAS verification.

Why Is This Action Being Taken?

In light of national security concerns, Congress has mandated an interim electronic system to monitor aliens seeking to enter the United States under the F, M, or J nonimmigrant visa categories. Until SEVIS is fully implemented, ISEAS will facilitate the

collection and transmission of student and exchange visitor applicant data by the Department, the INS, approved educational and other educational institutions, and exchange visitor programs to ensure that visa requirements are met before student or exchange visitor visas are issued and that students and exchange visitors, in fact, enroll in the institutions and programs that formed the basis of their visa classifications.

When Must Officials Designated by Institutions and Programs Begin To Use ISEAS?

Will There Be a Phase-in Period?

ISEAS will be available to officials designated by institutions and programs beginning September 11, 2002. These officials should begin entering student and exchange visitor data into the ISEAS database on that date. However, it will not be fully operational for an additional thirty to sixty days after September 11. Therefore, during this phase-in and testing period, entry of data into ISEAS may not guarantee that a consular officer will receive the data electronically. In view of that fact and because no student or exchange visitor visas can be issued on or after September 11 unless the Department receives "electronic evidence of documentation of the alien's acceptance," the Department has devised back-up procedures to ensure that consular officers receive timely electronic verification of enrollment from the sponsoring institutions and programs during the first month or two before ISEAS is fully operational.

Instructions have been sent to all consular posts advising consular officers that if no data has been entered into or a consular officer cannot access data from ISEAS, the officer must send an email inquiry directly to the sponsoring institution or program office and request email confirmation of the student's or exchange visitor's enrollment. Our officers in many cases may be able to obtain email addresses using internet search engines or from the visa applicant directly. The Department also is creating lists of institutional and program web pages, and will be available to assist consular officers in locating email addresses. If a consular officer cannot obtain the electronic verification directly, the Visa Office will seek to obtain it from the sponsoring institution through the Department's internet or email resources.

Thus, admissions offices of all institutions and the acceptance offices of all exchange visitor program sponsors should be aware of the possibility that

despite the fact that they have entered student and program participant information into ISEAS, they may receive direct email requests for verification from consular officers or from the Visa Office if enrollment cannot be verified through ISEAS. These offices should respond promptly to any such request in order not to delay the issuance of a visa to the student or exchange visitor.

The Department also is undertaking an extensive media campaign targeted at institutions and programs that will inform them in detail about the new requirements.

How Does the Transitional Program Work?

Aliens who wish to obtain visas to study or participate in an exchange program in the United States must first apply to an educational institution that has been approved by the INS or to a program approved by the Department's Bureau of Educational and Cultural Affairs. When a student or exchange visitor accepts an offer to study or otherwise participate in an exchange program, the approved institution or program must complete the appropriate form for that institution or program. Academic or language institutions must complete the Form I-20A-B, "Certificate of Eligibility for Nonimmigrant (F-1) Student Status." Vocational schools must complete the Form I-20M-N, "Certificate of Eligibility for Nonimmigrant (M-1) Student Status." Designated exchange visitor program sponsors must complete the Form DS-2019, "Certificate of Eligibility for Exchange Visitor (J-1) Status."

Section 501(c) requires the approved institution or program to electronically transmit evidence of the student's or exchange visitor's acceptance to the Department. An official designated by an approved institution or program must enter certain information from the Forms I-20A-B, I-20M-N or DS-2019 into the ISEAS database. Consular officers may not issue an F-1, M-1, or J-1 visa unless they have received and reviewed the electronic acceptance data submitted by the approved institution or program. The Department, in turn, must notify the INS upon issuance of an F-1, M-1, or J-1 visa.

The fact that section 501(c) provides that a consular officer may not issue an F-1, M-1 or J-1 visa until the official designated by a school or program enters the appropriate information into ISEAS means that an alien already enrolled in a school or exchange program whose visa expires may not obtain a new visa until the designated official makes the ISEAS entries.

Therefore, ISEAS requirements do not apply only to new school and program enrollees. They apply to all principal aliens seeking student and exchange visitor visas after September 11, 2002, whether or not a visa was previously issued to that student or exchange visitor for the same program.

Section 501(c) also requires the INS to notify the approved institution at the time of the student's or the exchange visitor's admission to the United States. If the student or exchange visitor fails to register for classes or an exchange program, the approved institution must notify the INS of such failure no later than 30 days after the deadline for registration has passed.

How Will Approved Institutions and Programs Transmit Student Acceptance Documentation to the Department?

An official designated by an approved institution or exchange visitor program can enter student or exchange visitor acceptance documentation for transmission to the Department by going to the State Department web page, www.iseas.state.gov. The official of the approved institution or program will follow instructions contained on the web page for entering student or exchange visitor identification data. ISEAS checks the list of approved institutions and exchange visitor programs against the identification data entered by the institution or program to determine if the institution or program is on the INS or State Department Bureau of Educational and Cultural Affairs approved list, as appropriate. Once ISEAS confirms that the institution or program is on one of the approved lists, an official designated by the approved institution or program will enter into the database certain student or exchange visitor data contained in the forms I-20, IAP-66 or DS-2019. After each record is entered into the ISEAS database, ISEAS will return a confirmation number. The institution or program sponsor user must download and retain the ISEAS confirmation number as part of the institution's or program sponsor's student or exchange visitor data.

How Is the Department Amending Its Regulations?

The Department is amending its regulations at 22 CFR 41.61 and 41.62 regarding students and exchange visitors by adding the requirement that approved institutions or program sponsors transmit electronic evidence of the foreign student's or exchange visitor's acceptance documentation to the Department. An F-1, M-1, or J-1 visa may not be issued unless a consular

officer has received and reviewed the student or exchange visitor acceptance documentation.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule with request for comments is based upon the "good cause" exceptions found at 5 U.S.C. 553(b) and (d)(3). The Border Security Act requires that the transitional program be operational no later than September 11, 2002. Considerable time was required to develop a program to implement Section 501(c) of the Border Security Act. The Department has determined that there is insufficient additional time to issue a proposed rule with a request for comments, given the need to promulgate regulations in compliance with the statutory deadline of September 11, 2002.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of 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 or more 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, 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 41

Aliens, Nonimmigrants, Passports and visas.

Accordingly, for the reasons discussed in the preamble, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. Amend § 41.61 by revising paragraph (b)(1)(i) and by adding paragraph (d) to read as follows:

§ 41.61 Students—academic and nonacademic.

* * * * *

(b) * * *

(1) * * *

(i) The alien has been accepted for attendance solely for the purpose of pursuing a full course of study in an academic institution approved by the Attorney General for foreign students under INA 101(a)(15)(F)(i) or a nonacademic student institution approved under INA 101(a)(15)(M)(i), as evidenced by submission of a Form I–20A–B, Certificate of Eligibility for Nonimmigrant (F–1) Student Status—For Academic and Language Students, or Form I–20M–N, Certificate of Eligibility for Nonimmigrant (M–1) Student Status—For Vocational Students, properly completed and

signed by the alien and a designated school official, and the Department also has received from an official designated by the academic or nonacademic institution electronic evidence documenting the student's acceptance as provided in paragraph (d) of this section;

* * * * *

(d) *Electronic submission.* A student's acceptance documentation must be submitted to the Department via the State Department's WEB page at <http://www.iseas.state.gov>. An official designated by an approved Academic, Language or Vocational school must follow the instructions in the electronic submission process, which include the requirement to enter data from the I–20A–B or the I–20M–N into the ISEAS database and download a copy of the confirmation number issued by ISEAS after each student record is successfully stored. The approved Academic, Language or Vocational school shall retain the ISEAS confirmation number as part of that institution's student data.

3. Amend § 41.62 by revising paragraph (a)(1) and adding paragraph (a)(5) to read as follows:

§ 41.62 Exchange visitors.

(a) * * *

(1) Has been accepted to participate, and intends to participate, in an exchange visitor program designated by the Department of State, as evidenced by the presentation of a properly executed Form IAP–66 or DS–2019, Certificate of Eligibility for exchange visitor status, and the Department has received from an official designated by the exchange visitor program electronic evidence documenting the student's acceptance as provided in paragraph (a)(5) of this section;

* * * * *

(5) *Electronic submission.* An exchange visitor's acceptance documentation must be submitted to the Department via the State Department's WEB page at <http://www.iseas.state.gov>. The designated official from the approved exchange program will follow the instructions in the electronic submission process, which include the requirement to enter data from the previously issued IAP–66 or the DS–2019 into the ISEAS database and download a copy of the confirmation number issued by ISEAS after each student or exchange visitor record is successfully stored. The Exchange program is responsible for retaining the ISEAS confirmation number as part of that program's student or exchange visitor data.

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Dated: September 6, 2002.

Dianne Andruch,

Acting Assistant Secretary for Consular Affairs, Department of State.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Changes to Seasons For Muskox in Unit 26(C)

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closure of season.

SUMMARY: This provides notice of the Federal Subsistence Board's emergency closure to protect Muskox populations in Unit 26(C). This regulatory closure provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 28, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2002–2003 regulatory year.

DATES: This emergency action will be effective July 15 through September 14, 2002. The resulting season for muskox in Unit 26(C) will be September 15, 2002 through March 31, 2003, unless the Board takes further action.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified