



Version: December 20, 2007

Republished Rule on EVP Sanctions and Terminations for EV Programs, compiled and annotated

[72 Fed. Reg. 72245](#) (December 20, 2007)

Summary

Effective January 22, 2008, the Department of State (DOS) has revised its Exchange Visitor Program (EVP) regulations at 22 C.F.R. Part 62, Subpart D (Sanctions) and 22 C.F.R. Part 62, Subpart E (Termination and Revocation of Programs).

This resource shows how the prior rule has been modified by the new rule.

Here are the rule's enumerated bases for sanctions:

1. Violating one or more provisions of the Exchange Visitor regulations;
2. Evidencing a pattern of failure to comply with one or more provisions of the Exchange Visitor regulations;
3. Committing an act of omission or commission, which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or
4. Otherwise conducting its program in such a way as to undermine the foreign policy objectives of the United States, compromise the national security interests of the United States, or bring the Department or the Exchange Visitor Program into notoriety or disrepute.

Changes to the sanctions scheme itself include:

- DOS no longer has to find that alleged violations of the Exchange Visitor regulations are willful or negligent before imposing sanctions. A sponsor being sanctioned can submit a statement in opposition to or mitigation of the proposed sanction, where the sponsor can explain the circumstances of the alleged violation, and argue that a lesser sanction, or no sanction at all, would be appropriate in view of those circumstances. Also, the review process available for significant sanctions provides a second opportunity for the sponsor to make its case before a panel of three Review Officers not connected with the Exchange Visitor Program. The panel would conduct a "paper review" in lieu of a trial-type hearing.
- Providing for program termination in the case of failure to file an annual management audit, in program categories requiring such audits.
- Providing for termination or denial of redesignation for an entire class of designated programs, if DOS determines that they compromise the national security of the United States, or no longer further DOS's public diplomacy mission.

Style Key:

This text style reflects the current rule text *unaltered by the final rule*

This text style reflects the current rule text *removed by the final rule*

This text style reflects new rule text *added by the final rule*

22 C.F.R. PART 62 - EXCHANGE VISITOR PROGRAM

Subpart D—Sanctions

62.50 Sanctions

§ 62.50 *Sanctions.*

62.50(a) Reasons for sanctions

(a) *Reason for sanctions.* The Department of State (Department) may, ~~upon a determination by the Office of Exchange Coordination and Designation (“ECD”), Bureau of Educational and Cultural Affairs,~~ impose sanctions against a sponsor which has upon a finding by its Office of Exchange Coordination and Designation (Office) that the sponsor has:

- (1) ~~Willfully or negligently v~~Violated one or more provisions of this ~~p~~Part;
- (2) Evidenced a pattern of ~~willful or negligent~~ failure to comply with one or more provisions of this ~~p~~Part;
- (3) Committed an act of omission or commission, which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or
- (4) ~~Committed an act or acts which may have the effect of~~ Otherwise conducted its program in such a way as to undermine the foreign policy objectives of the United States, compromise the national security interests of the United States, or bringing the Department of State or the Exchange Visitor Program into notoriety or disrepute.

The new rule modifies the “reasons for sanctions” in two ways: 1) it removes the condition that a violation be “willful or negligent” in order for it to be actionable; and 2) it adds a new ground for sanction applicable to programs that conduct their programs “in such a way as to undermine the foreign policy objectives of the United States” or “compromise the national security interest of the United States.”

In the supplementary information that precedes the rule, DOS states that protecting and furthering the public diplomacy goals of the President and of the United States “is the underpinning for the Department’s entire approach to the sanctions regime.”

62.50(b) Lesser sanctions

(b) *Lesser sanctions.*

62.50(b)(1)

(1) In order to ensure full compliance with the regulations in this ~~p~~Part, the ~~Department of State,~~ in its discretion and depending on the nature and

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seriousness of the violation, may impose any or all of the following sanctions (“lesser sanctions”) on a sponsor ~~for any of the reasons set forth in paragraph (a) of this section~~ upon a finding that the sponsor engaged in any of the acts or omissions set forth in paragraph (a) of this section:

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's ~~E~~exchange ~~V~~visitor ~~P~~program designation, or other sanctions as set forth ~~in this section~~ herein;

(ii) A declaration placing the exchange visitor sponsor's program on probation, for a period of time determined by the Department of State in its discretion, signifying a pattern of ~~serious willful or negligent~~ violation of regulations such that further violations could lead to suspension or revocation of the sponsor's Exchange Visitor Program designation, or other sanctions as set forth herein;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) ~~A limitation or reduction~~ Up to a 15 percent (15%) reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of the sponsor's recruitment or activity. If the sponsor continues to violate the regulations in this Part, the Department may impose subsequent additional reductions, in ten-percent (10%) increments, in the authorized number of exchange visitors in the sponsor's program or in the geographic area of its recruitment or activity.

Program probation under the prior rule followed from a pattern of “serious willful or negligent” violation of regulations. The new rule removes the “serious willful or negligent” condition.

The prior rule included program limits or reductions as a possible sanction as well. The new rule quantifies that sanction by specifying reduction percentages.

62.50(b)(2)

(2) Within ten (10) ~~calendar~~ days ~~of~~ after service of the written notice to the sponsor imposing any of the sanctions set forth in ~~this paragraph (b) paragraph (b)(1) of this section~~, the sponsor may submit to ~~ECD the Office~~ any a statement or information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and may request a conference. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. Sponsors shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. Upon its review and consideration of such submission, the ~~Department of State Office~~ Office may, in its discretion, modify, withdraw, or confirm such sanction. All materials ~~submitted by the sponsor~~ the sponsor submits shall will become a part of the sponsor's file with ~~ECD the Office~~. ~~The decision of ECD is not appealable with regard to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section, if:~~

The new rule allows sponsors who receive notice that a lesser sanction has been imposed may submit a “statement in opposition or mitigation” to the Exchange Visitor Program Office. The rule restricts the statement to 20 pages double-spaced. If additional documentary material is submitted, the sponsor must include an index of that material with a summary of the relevance of each additional document submitted.

(i) ~~The proposed limitation in the size of the sponsor's program is equivalent to 10 percent or less of the number of authorized visitors in the sponsor's program during the previous calendar year; or~~

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~~(ii) The proposed limitation in the size of the sponsor's program will not cause a significant financial burden for the sponsor.~~

62.50(b)(3)

(3) The decision of the Office is the final Department decision with regard to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section.

The prior rule allowed sponsors to appeal lesser sanctions that caused a significant financial burden or that reduced a program by more than 10%. Apart from the right to submit a letter in opposition or mitigation, the new rule provides no appeal venue for lesser sanctions.

62.50(c) Suspension

~~(c) Suspension or significant program limitation.~~

~~(1) Upon a finding that a suspension, or a reduction in the sponsor's program equivalent to a number greater than 10 percent of the number of authorized visitors, is warranted for any of the reasons set forth at paragraph (a) of this section, ECD shall give written notice to the sponsor of the Department of State's intent to impose the sanction, specifying therein the reasons for such sanction and the effective date thereof, which shall not be sooner than thirty (30) calendar days after the date of the letter of notification.~~

The new rule eliminates the distinction found in the prior rule between "suspension" and "summary suspension," replacing both sanctions with a single "suspension" sanction. Under the prior rule, only one ground for suspension existed: endangering the health, safety or welfare of a participant. The new rule adds another ground: Damaging the national security interests of the United States. DOS notes that the summary process for such suspensions has been improved for sponsors in two respects. First, a sponsor is given additional time in which to submit an initial opposition to the suspension. Second, such an opposition is received, reviewed and decided at a higher level, by the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (PDAS) rather than by the Exchange Visitor Program Office. As under the prior rule, the sponsor can seek further agency review of this decision, by a three-member review panel.

~~(2) Prior to the proposed effective date of such sanction, the sponsor may submit a protest to ECD, setting forth therein any reasons why suspension should not be imposed, and presenting any documentary evidence in support thereof, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.~~

~~(3) ECD shall review and consider the sponsor's submission and, within seven (7) calendar days of receipt thereof, notify the sponsor in writing of its decision on whether the sanction is to be affected. In the event that the decision is to impose the sanction, such notice shall inform the sponsor of its right to appeal the sanction and of its right to a formal hearing thereon.~~

~~(4) The sponsor may within ten (10) calendar days after receipt of the aforesaid notice effecting the sanction, appeal the sanction to the Exchange Visitor Program Designation, Suspension and Revocation Board ("Board") by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal shall serve to stay the effective date of the sanction pending appeal.~~

~~(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee, shall, within ten (10) calendar days,~~

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~~convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.~~

(1) Upon a finding that a sponsor has committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, or of damaging the national security interests of the United States, the Office may serve the sponsor with written notice of its decision to suspend the designation of the sponsor's program for a period not to exceed one hundred twenty (120) days. Such notice must specify the grounds for the sanction and the effective date thereof, advise the sponsor of its right to oppose the suspension, and identify the procedures for submitting a statement of opposition thereto. Suspension under this paragraph need not be preceded by the imposition of any other sanction or notice.

Suspension appears to be applicable only if the Exchange Visitor Program Office finds that "a sponsor has committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, or of damaging the national security interests of the United States, which relate to grounds 3 and 4 in the section 62.50(a) *Reasons for sanctions* paragraph. Note that those general grounds do not specify that the act must be "serious" but the suspension provision does require the Exchange Visitor Program office to find that the act was "serious" before applying the suspension sanction.

(2)(i) Within five (5) days after service of such notice, the sponsor may submit to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs (Principal Deputy Assistant Secretary, or PDAS) a statement in opposition to the Office's decision. Such statement may not exceed 20 pages in length, double-spaced and, if appropriate, may include additional documentary material. A sponsor shall include with all documentary material an index of the documents and a summary of the relevance of each document presented. The submission of a statement in opposition to the Office's decision will not serve to stay the effective date of the suspension.

In suspension cases, sponsors can submit to the PDAS a statement in opposition, but that does not stay the effective date of the suspension.

(ii) Within five (5) days after receipt of, and upon consideration of, such opposition, the Principal Deputy Assistant Secretary shall confirm, modify, or withdraw the suspension by serving the sponsor with a written decision. Such decision must specify the grounds therefore, and advise the sponsor of the procedures for requesting review of the decision.

(iii) All materials the sponsor submits will become a part of the sponsor's file with the Office.

(3) The procedures for review of the decision of the Principal Deputy Assistant Secretary are set forth in paragraphs (d)(3) and (4), (g), and (h) of this section, except that the submission of a request for review will not serve to stay the suspension.

~~(d) Summary suspension.~~

~~(1) ECD may, upon a finding that a sponsor has willfully or negligently committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, and upon written notice to the sponsor specifying the reason therefore and the effective date thereof, notify the sponsor of the Department of State's intent to suspend the designation of the sponsor's program for a period not to exceed sixty (60) calendar days.~~

The new rule eliminates the distinction found in the prior rule between "suspension" and "summary suspension," replacing both sanctions with a single "suspension" sanction at section 62.50(c). See the notes in that section.

~~(2) No later than three (3) calendar days after receipt of such notification, the sponsor may submit a rebuttal to ECD, setting forth therein any reasons why a suspension should not be imposed.~~

~~(3) The sponsor may present any statement or information in such protest, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. Within three (3) calendar days of receipt of such submissions, ECD shall notify the sponsor in writing of its decision whether to effect the suspension. In the event the decision is to effect the suspension, such notice shall advise the sponsor of its right to appeal the suspension and of its right to a formal hearing thereon.~~

~~(4) The sponsor may, within ten (10) calendar days after receipt of the aforesaid notice continuing the suspension, appeal the suspension to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal of a summary suspension shall not serve to stay the suspension pending appeal.~~

~~(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.~~

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62.50(d) Revocation of designation

(ed) Revocation of designation.

(1) Upon a finding of any act or omission set forth at § 62.50(a), the Principal Deputy Assistant Secretary, or his or her designee, may, for any reason set forth at paragraph (a) of this section, give the Office may serve a sponsor with not less than thirty (30) calendar days' notice in writing written notice of its intent to revoke the sponsor's Exchange Visitor Program designation, specifying therein Such notice must specify the grounds for such revocation the proposed sanction and the its effective date of the revocation, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Revocation of designation under this paragraph need not be preceded by the imposition of a summary-suspension, a suspension, or any lesser sanctions any other sanction or notice.

Whereas the suspension sanction requires DOS to find that a sponsor has committed a "serious act of omission or commission" relating to grounds 3 and 4 of section 62.50(a), this section allows DOS to use the revocation sanction upon a finding of "any act or omission set forth at § 62.50(a)."

(2)(i) Within ten (10) calendar days of receipt of the after service of such written notice of intent to revoke designation in paragraph (e)(1) of this section, the sponsor shall have an opportunity to show cause as to why such revocation should not be imposed, and may submit to the Principal Deputy Assistant Secretary any statement of information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the violations charged, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD a statement in opposition to or mitigation of the proposed sanction, which may include a request for a meeting.

(ii) The submission of such statement will serve to stay the effective date of the proposed sanction pending the decision of the Principal Deputy Assistant Secretary.

If the sponsor submits a timely statement in opposition to or mitigation of the proposed revocation, the revocation will be stayed pending the PDAS's decision. Compare this to the suspension sanction, which is not stayed while a sponsor pursues review.

(iii) The Principal Deputy Assistant Secretary shall provide a copy of the statement in opposition to or mitigation of the proposed sanction to the Office. The Office shall submit a statement in response, and shall provide the sponsor with a copy thereof.

(iv) A statement in opposition to or mitigation of the proposed sanction, or statement in response thereto, may not exceed 25 pages in length, double-spaced and, if appropriate, may include additional documentary material. Any additional documentary material may include an index of the documents and a summary of the relevance of each document presented.

(v) Upon consideration of such statements, the Principal Deputy Assistant Secretary shall modify, withdraw, or confirm the proposed sanction by serving the sponsor with a written decision. Such

decision shall specify the grounds therefor, identify its effective date, advise the sponsor of its right to request a review, and identify the procedures for requesting such review.

(vi) All materials the sponsor submits will become a part of the sponsor's file with the Office.

~~(3) The Principal Deputy Assistant Secretary, or his or her designee, shall review and consider the sponsor's submission and, thereafter, notify the sponsor in writing of its decision on whether the revocation is to be effected. In the event that the decision is to effect the revocation, such notice shall advise the sponsor of its right to appeal the revocation and of its right to a formal hearing thereon.~~

~~(43) The sponsor may, w~~Within twenty ten (2010) calendar days after receipt service of such written notice of the decision of the Principal Deputy Assistant Secretary, of the notice effecting the revocation in paragraph (e)(3) of this section, appeal the revocation to the Board by filing a notice of appeal with the the sponsor may submit a request for review with the Principal Deputy Assistant Secretary. ~~The filing of the notice of appeal~~ submission of such request for review shall will serve to stay the effective date of the ~~revocation~~ decision pending ~~appeal the~~ outcome of the review.

The sponsor can no longer appeal the PDAS decision in a revocation case, but can submit a request for review. Submitting that request for review also stays the effective date of the sanction.

~~(54) Upon receipt of the notice of appeal~~ Within ten (10) days after receipt of such request for review, the ~~Principal Deputy Assistant Secretary, or his or her designee~~ Department shall, ~~within ten (10)-calendar days, convene the Board~~ designate a panel of three Review Officers pursuant to paragraph (g) of this section, and the Principal Deputy Assistant Secretary shall forward to each panel member all notices, statements, and decisions submitted or provided pursuant to the preceding paragraphs of paragraph (d) of this section. ~~Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section~~ the review will be conducted pursuant to paragraphs (g) and (h) of this section.

62.50(e) Denial of application for redesignation

(e) Denial of application for redesignation. Upon a finding of any act or omission set forth at paragraph (a) of this section, the Office may serve a sponsor with not less than thirty (30) days' written notice of its intent to deny the sponsor's application for redesignation. Such notice must specify the grounds for the proposed sanction and its effective date, advise the sponsor of its right to oppose the proposed sanction, and identify the procedures for submitting a statement of opposition thereto. Denial of redesignation under this section need not be preceded by the imposition of any other sanction or notice. The procedures for opposing a proposed denial of

Like a revocation proceeding, DOS reserves the right to initiate a denial of redesignation "upon a finding of any act or omission set forth at § 62.50(a)." The procedures for opposing a proposed denial of redesignation are the same as opposing an intention to revoke designation.

redesignation are set forth in paragraphs (d)(2), (d)(3), (d)(4), (g), and (h) of this section.

62.50(f) Responsible Officers

(f) *Responsible officers.* ~~(1) The Department of State Office~~ may direct a sponsor to ~~summarily suspend,~~ suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in paragraph (a) of this section. The procedures for suspending or revoking a responsible officer or alternate responsible officer are set forth at paragraphs (d), (g), and (h) of this section.

~~(2) In the event that such action is directed, the sponsor shall be entitled to all of the rights of review or appeal that are accorded to a sponsor under paragraphs (b), (c), (d), and (e) of this section.~~

62.50(g) Review Officers

~~(g) Denial of application for redesignation:~~

~~(1) ECD shall give an applicant for redesignation not less than thirty (30) calendar days notice in writing of its intentions to deny the application for exchange visitor program redesignation, specifying therein the grounds for such denial.~~

~~(2) Within ten (10) calendar days of receipt of the aforesaid notice of intent to deny the application in paragraph (g)(1) of this section, the applicant shall have an opportunity to demonstrate why the application should be approved, and may submit to ECD any statement or information including, if appropriate, any documentary evidence or affidavits in support of its application.~~

~~(3) ECD shall review and consider the applicant's submission and thereafter notify the applicant in writing of its decision on whether the application for redesignation will be approved. In the event that the decision is to deny the applicant, such notice shall advise the applicant of its right to appeal the denial and of its right to a formal hearing thereon.~~

~~(4) The applicant may, within twenty (20) calendar days after receipt of the notice of denial in paragraph (g)(3) of this section, appeal the denial to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary.~~

~~(5) Upon receipt of the notice of appeal the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.~~

(g) Review officers. A panel of three Review Officers shall hear a sponsor's request for review pursuant to paragraphs (c), (d), (e), and (f) of this section. The Under Secretary of State for Public Diplomacy and Public Affairs shall designate one senior official from an office reporting to him/her, other than from the Bureau of Educational and Cultural Affairs, as a member of the Panel. The Assistant Secretary of State for Consular Affairs and the Legal Adviser shall each designate one senior official from their bureaus as members of the Panel.

Paragraph (g), that used to relate to denial of redesignation, now houses the provision explaining how the new panel of Review Officers will be structured. Paragraph (e) covers denial of redesignation under the new rule.

~~(h) The Exchange Visitor Program Designation, Suspension, and Revocation Board~~ Review. The Review Officers may affirm, modify, or reverse the sanction imposed by the Principal Deputy Assistant Secretary. The following procedures shall apply to the review:

62.50(h) Review Panel procedures

This paragraph explains how the new panel of Review Officers will work. The new system of review is a paper-based review, not a trial-like review that was part of the prior system.

~~(1) The Exchange Visitor Program Designation, Suspension, and Revocation Board ("Board") shall consist of:~~

~~(i) The Deputy Assistant Secretary for Academic Programs of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall also serve as presiding officer of the Board;~~

~~(ii) The Executive Director, Office of the Executive Director of the Bureau of Educational and Cultural Affairs, or his or her designee; and~~

~~(iii) The Director, Office of Policy and Evaluation of the Bureau of Educational and Cultural Affairs, or his or her designee.~~

(1) Upon its designation, the panel of Review Officers shall promptly notify the Principal Deputy Assistant Secretary and the sponsor in writing of the identity of the Review Officers and the address to which all communications with the Review Officers shall be directed.

~~(2) The Office of the Legal Adviser of the Department of State shall appoint an attorney from the Office of the Legal Adviser to present the case to the Board on behalf of the Department. Such attorney shall not take part in the deliberations of the Board.~~

(2) Within fifteen (15) days after service of such notice, the sponsor may submit to the Review Officers four (4) copies of a statement identifying the grounds on which the sponsor asserts that the decision of the Principal Deputy Assistant Secretary should be reversed or modified. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. A sponsor shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the Principal Deputy Assistant Secretary, who shall, within fifteen (15) days after receipt of such statement, submit four (4) copies of a statement in response. Any such statement may not exceed 25 pages in length, double-spaced; and any attachments thereto shall not exceed 50 pages. The Principal Deputy Assistant Secretary shall include with all attachments an index of the documents and a summary of the relevance of each document presented. The Review Officers shall transmit one (1) copy of any such statement to the sponsor. No other submissions may be made unless specifically authorized by the Review Officers.

~~(3) The Office of the Legal Adviser of the Department of State shall also appoint an attorney in the Office of the Legal Adviser to serve as a legal adviser to the Board. Such attorney shall not have had any substantial prior involvement with the particular case pending before the Board.~~

(3) If the Review Officers determine, in their sole discretion, that a meeting for the purpose of clarification of the written submissions should be held, they shall schedule a meeting to be held within twenty (20) days after the receipt of the last written submission. The meeting will be limited to no more than two (2) hours. The purpose of the meeting will be limited to the clarification of the written submissions. No transcript may be taken and no evidence, either through documents or by witnesses, will be received. The sponsor and the representative of the Principal Deputy Assistant Secretary may attend the meeting on their own behalf and may be accompanied by counsel.

(4) Following the conclusion of the meeting, or the submission of the last written submission if no meeting is held, the Review Officers shall promptly review the submissions of the sponsor and the Principal Deputy Assistant Secretary, and shall issue a signed written decision within thirty (30) days, stating the basis for their decision. A copy of the decision will be delivered to the Principal Deputy Assistant Secretary and the sponsor.

(5) If the Review Officers decide to affirm or modify the sanction, a copy of their decision shall also be delivered to the Department of

Under the new system, both parties may submit a statement of not more than 25 pages double-spaced and an appendix of documentation not more than 50 pages. If an appendix of documentation is submitted, the submitter must also include an index of all attachments and a summary of the relevance of each document presented.

Although a trial-like proceeding is not part of the new rule, the Review Panel does have the discretion to schedule a meeting of no more than 2 hours to clarify the written submissions. Both parties may appear at the meeting accompanied by counsel.

Homeland Security and to the Bureau of Consular Affairs of the Department of State. The Office, at its discretion, may further distribute the decision.

(6) Unless otherwise indicated, the sanction, if affirmed or modified, is effective as of the date of the Review Officers' written decision, except in the case of suspension of program designation, which is effective as of the date specified pursuant to paragraph (c) of this section.

62.50(i)

~~(i) General powers of the Board. At any hearing before the Board pursuant to this Part, the Board may:~~

~~(1) Administer oaths and affirmations;~~

~~(2) Rule on offers of proof and receive any oral or documentary evidence;~~

~~(3) Require the parties to submit lists of proposed witnesses and exhibits, and otherwise regulate the course of the hearing;~~

~~(4) Hold conferences for the settlement or simplification of the issues by consent of the parties;~~

~~(5) Dispose of motions, procedural requests, or similar matters; and~~

~~(6) Make decisions, which shall include findings of fact and conclusions of law on all the material issues of fact, law or discretion presented on the record, and the appropriate sanction or denial thereof.~~

62.50(j)

~~(j) Proceedings before the Board. The following procedures shall govern all designation, suspension, summary suspension, and revocation proceedings before the Board:~~

~~(1) Upon being convened, the Board shall schedule a hearing, within ten (10) calendar days, at which hearing the parties may appear on their own behalf or by counsel, present oral or written evidence, and cross-examine witnesses. A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding;~~

~~(2) At the conclusion of the hearing, the Board shall promptly review the evidence and issue a written decision within ten (10) calendar days, signed by a majority of the members, stating the basis for its decision. The decision of the majority shall be the decision of the Board. If a Board member disagrees with the majority, the member may write a dissenting opinion;~~

~~(3) If the Board decides to affirm the suspension, summary suspension, revocation, or denial of redesignation, a copy of its decision shall be delivered to ECD, the sponsor, the Immigration and Naturalization~~

Service, and the Bureau of Consular Affairs of the Department of State. ECD, at its discretion, may distribute the Board's decision as it deems appropriate; and

~~(4) The suspension, revocation, or denial of designation shall be effective as of the date of the Board's decision.~~

62.50(i) Effect of suspension

(i) ~~Effect of suspension, summary suspension, revocation, or denial of redesignation.~~ A sponsor against which an order of suspension, ~~summary suspension, revocation, or denial of redesignation has been entered~~ has become effective shall may not thereafter issue any Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019); ~~or~~ or advertise, recruit for, or otherwise promote its program, ~~and, u~~ Under no circumstances shall the sponsor facilitate the entry of an exchange visitor into the United States. An order of ~~S~~ suspension, summary suspension, revocation, or denial of redesignation shall not invalidate any Certificate of Eligibility for Exchange Visitor Status issued prior to the effective date of the suspension, summary suspension, revocation, or denial of redesignation, nor shall the suspension, summary suspension, revocation, or denial of redesignation will not in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program applicants or participants.

This provision was paragraph (k) in the prior rule. The new rule removes the prior provision that protected the validity of an exchange visitor's DS-2019 if their sponsor's program is sanctioned. The rule also extends the sponsor's legal and financial responsibilities to program applicants in addition to program participants.

62.50(j)

(j) *Miscellaneous.*

(1) *Computation of time.* In computing any period of time prescribed or allowed by the regulations in this section, the day of the act or event from which the designated period of time begins to run ~~shall is~~ is not be included. The last day of the period so computed ~~shall be is~~ is included unless it is a Saturday, a Sunday, or a federal legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, or federal legal holidays ~~shall be are~~ are excluded in the computation.

(2) *Service of notice on to sponsor.* ~~When used in this part the terms "written notice to the sponsor" shall mean service of written notice by~~ Service of notice to a sponsor pursuant to this section may be accomplished by mail, delivery or facsimile, upon ~~either~~ either the president, chief executive officer, managing director, General Counsel, responsible officer, or alternate responsible officer of the sponsor.

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Subpart E—Termination and Revocation of Programs

62.60 Termination of designation

§ 62.60 *Termination of designation.*

Designation shall be terminated upon the occurrence of ~~when~~ any of the circumstances set forth in this section ~~occur~~.

62.60(a)

(a) *Voluntary termination.* A sponsor ~~may voluntarily terminate its designation by notifying~~ notifies the Department of State of such intent ~~of its intent to terminate its designation voluntarily and withdraws its program in SEVIS via submission of a “cancel program” request.~~ The sponsor's designation shall terminate upon submission of such notification. Such sponsor may reapply for a new program designation.

62.60(b)

(b) *Inactivity.* A sponsor's designation ~~shall automatically terminate for inactivity if the~~ sponsor fails to comply with the minimum size or duration requirements, as specified in §62.8 (a) and (b), in any ~~twelve~~ 12-month period. Such sponsor may reapply for a new program designation.

62.60(c)

(c) *Failure to file annual reports.* A sponsor's designation shall automatically terminate if the sponsor fails to file annual reports for two (2) consecutive years. Such sponsor may reapply for a new program designation ~~upon the filing of the past due annual reports.~~

62.60(d)

(d) Failure to file an annual management audit. A sponsor fails to file an annual management audit, if such audits are required in the relevant program category. Such sponsor is eligible to apply for a new program designation upon the filing of the past due management audit.

Inserts a new ground for termination of designation if a program that is required to submit an annual management audit does not do so.

62.60(e)

~~(d)~~(e) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply to the Department of State for redesignation of the new entity, and it may continue its exchange visitor activities to administer the exchange visitor activities of the previously-designated program while approval of the application for redesignation designation is pending before the Department of State:

(1) With respect to a for-profit corporation, a major change in ownership shall be deemed to have occurred when ~~thirty-three and one-third percent~~

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~~(33 1/3 percent)~~ one third (33.33%) or more of its stock is sold or otherwise transferred within a 12 month period;

(2) With respect to a not-for-profit corporation, a major change of control shall be deemed to have occurred when fifty-one percent (51%) or more of the board of trustees, or other like body, vested with its management, is replaced within a 12-month period.

62.60(f)

~~(e)~~(f) *Loss of licensure or accreditation.* A sponsor's designation shall automatically terminate in the event that the sponsor fails to remain in compliance with local, state, federal, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation or licensure.

62.60(g)

~~(f)~~(g) *Failure to apply for redesignation.* Prior to the conclusion of its current designation period, the sponsor is required to apply for redesignation pursuant to the terms and conditions of §62.7. Failure to apply for redesignation will result in the automatic termination of the sponsor's designation. If so terminated, the former sponsor may apply for a new designation, but the program activity will be suspended during the pendency of the application.

62.61 Revocation

§ 62.61 *Revocation.*

~~A designation may be terminated by revocation for cause as specified in §62.50. A sponsor whose designation has been revoked may not apply for a new designation within a five year period. The Department may terminate a sponsor's program designation by revocation for cause as specified in § 62.50. Such sponsor may not apply for a new designation for five (5) years following the effective date of the revocation.~~

62.62 Termination of, or denial of redesignation for, a class of designated programs

§ 62.62 Termination of, or denial of redesignation for, a class of designated programs.

The Department may, in its sole discretion, determine that a class of designated programs compromises the national security of the United States or no longer furthers the public diplomacy mission of the Department of State. Upon such a determination, the Office shall:

(a) Give all sponsors of such class of designated programs not less than thirty (30) days' written notice of the revocation of Exchange

Adds a new sanction that allows DOS to terminate or deny redesignation for an entire class of designated programs, if DOS determines that the class of programs "compromises the national security of the United States or no longer furthers the public diplomacy mission of the Department of State."

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Visitor Program designations for such programs, specifying therein the grounds and effective date for such revocations; or

(b) Give any sponsor of such class of designated programs not less than thirty (30) days' written notice of its denial of the sponsor's application for redesignation, specifying therein the grounds for such denial and effective date of such denial. Revocation of designation or denial of redesignation on the above-specified grounds for a class of designated programs is the final decision of the Department.

62.63 Responsibilities of the sponsor upon termination or revocation

§ ~~62.6263~~ *Responsibilities of the sponsor upon termination or revocation.*

Upon termination or revocation of its designation, ~~the a~~ sponsor ~~shall~~ must:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation; and

(b) Notify exchange visitors who have not entered the United States that the program has been terminated or revoked, unless a transfer to another designated program can be obtained; ~~and~~

~~(c) Return all Certificate of Eligibility Forms in the sponsor's possession to the Department of State within thirty (30) calendar days of program termination or revocation.~~