

February 27, 2017

VIA ELECTRONIC SUBMISSION

G. Kevin Saba
Acting Deputy Assistant Secretary of State
Office of Private Sector Exchange
Bureau of Educational and Cultural Affairs
US. Department of State
SA-5, Floor 5
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Washington, DC 20522
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Re: Exchange Visitor Program-Summer Work Travel; Proposed Rule

Dear Acting Deputy Assistant Secretary Saba:

The Association of Pool and Spa Professionals (APSP) along with several Pool Management Companies (PMCs) listed below appreciate the opportunity to address the Department of State (DOS) Proposed Rule published January 12, 2017, and respectfully submit the following comments.

A. ABOUT THE SUBMITTING ORGANIZATIONS

Each of these organizations and companies is committed to the health and safety of swimmers and bathers in public aquatic facilities, as well as the lifeguards that protect them.

- The APSP is the aquatics industry trade association who creates Standards used in the design, operation, and maintenance of swimming pools. The APSP is also the co-developer, along with the International Code Council (ICC), of the International Swimming Pool and Spa Code (ISPSA) which has been adopted in all or parts of over 20 states. APSP is also represented on and participates in various other standards-making organizations promulgating standards including the ICC, International Association of Plumbing and Mechanical Officials (IAPMO), American Society of Testing and Materials (ASTM1551), and the National Electrical Code®. In addition, the APSP provides educational programs and monitors the accredited continuing education requirements for various licensing

programs for aquatics professionals. One of the Standards developed by the APSP is the ANSI/NSPI-1 2011 Standard for Public Swimming Pools. This Standard advocates the presence of lifeguards at public swimming pools, and also recognizes the efficacy and safety of a single lifeguard.

- The undersigned PMCs provide comprehensive pool management and operation services for apartments, condominiums, homeowner associations, community facilities, swim clubs, marinas, and hotels and motels, as well as several military training facilities. The undersigned PMCs are largely concentrated in the mid and north Atlantic states, including New Jersey, Delaware, Pennsylvania, Maryland, Virginia, Georgia, The District of Columbia and both North & South Carolina. The overwhelming majority of pools in these states operate on a seasonal basis, typically between Memorial Day and Labor Day. Most of these states or localities therein require the presence of a lifeguard at all public or semipublic pools. The undersigned PMCs are predominantly small businesses, typically with fewer than 25 year round employees, but collectively employ several thousand lifeguards each summer for this purpose. Typically the PMCs sign contracts with the facilities (many of which are also small businesses such as swim clubs and individually owned hotels and motels) in December or January, committing to meet their needs for the following summer. These facilities are therefore able to remain open for the short season, offering millions an opportunity to swim and learn to swim.

The PMCs supported the 2012 rulemaking and the goal of ensuring meaningful interaction between participants and U.S. citizens during the workday portion of the program.

B. BACKGROUND: The J1 Participant Summer Lifeguard Experience.

J1 Participants who have been placed as lifeguards at the above pools have consistently enjoyed a safe and highly rewarding experience in full compliance with the regulations adopted by DOS. In addition to the after-work cultural activities organized by the sponsors and host employers, participants form meaningful relationships with their supervisors, co-workers and property personnel, as well as the children and adults who use the pools. At the same time they acquire valuable skills not only with regard to surveillance and rescue but in getting to know the patrons and particularly the children who they are watching. The safety of small children and even older non swimmers has always been a joint function of lifeguard and parent/guardian, even at multiple lifeguard pools, and the J1 participants learn to work side by side in this important task with American families.

Attached as exhibit "A" are just a few of the letters, e-mails and blogs from past participants who speak glowingly of the support, interaction, camaraderie and friendships which developed during the course of their summers. Additional comments from past exchange visitors can also be viewed at:

<http://www.premieraquatics.com/references/index/employee>, and <https://www.youtube.com/watch?v=E8sCrv1j2-U&t=32s>

Participants often remain in contact with residents of the communities, and are frequently requested by name by property staff for the following summer. Occasionally families will even visit these young men and women in their native countries.

Participants, even at single lifeguard pools, interact with and have opportunities to work alongside supervisory, human resources, service and maintenance personnel of the PMC, as well as those employed and/or contracted by the properties where they are assigned, including property managers, maintenance and security staff, Home Owners Association Boards and Pool Committee Members. Lifeguards invariably grow to be on a friendly and first name basis with many of the above. This is in addition to the meaningful and lasting friendships participants often form with the residents or guests of the community through a summer long interaction at the swimming pool. As a result, many participants are eager to return to the same placements the following summer.

Supervision is provided on a regular ongoing basis, and the PMCs

1. Ensure phone access to enable lifeguards to contact designated pool management company representatives, other than the area supervisor, 24/7.
2. Offer an option to J1 participants to choose to be permanently or temporarily assigned to a multiple lifeguard pool before their arrival to the U.S.
3. Offer one or more work day events at the facility to introduce the lifeguard to patrons and workers stationed at the facility.
4. Conduct monthly surveys focused on J1 participants satisfaction with employment conditions, level of interaction with U.S. citizens, and level of cultural exchange.
5. Ensure flexible scheduling, e.g. days-off for one or multiple J1 participants that would allow J1 participants to experience nearby cultural exchange opportunities (landmarks, cultural and sport events, shopping, trips).

Before they arrive in the United States, lifeguards receive standard comprehensive training in accordance with the requirements of the American Red Cross (ARC). This includes scanning methods, surveillance, rescues, emergency action plans, injury prevention, rescue breathing, CPR, AED and other first aid, stabilization of spinal injuries, proper stages of intervention and learning how to work alongside and interact with property personnel, swimmers and their parents and guardians.

Upon arriving they receive an initial orientation both with regard to the program and logistical matters, and with regard to their responsibilities as lifeguards. Frequent in service training, including refresher and drills, is also provided, often on a weekly basis, and property staff and residents are often invited to attend.

Area supervisors are responsible for overseeing the performance and evaluation of the lifeguards and will make visits to each facility several times a week. These visits include spot-checking and discussing the facility with the lifeguard to ensure that the participant

is comfortable with his or her function and has everything they need. Supervisors are also on call and can be readily reached by cell phone at any time of day or night. Participants also interact regularly with PMC service personnel that are also frequently on site, as well as Human Resources staff.

Exchange visitors serving as lifeguards are also provided with frequent breaks and time for lunch and/or dinner. Exchange visitors at all pools are often relieved for stretches by additional lifeguards and/or supervisors who are properly certified, and have full authority to close the pool to all bathers for break or meal time or if in their judgment they need to leave the pool area for any reason.

PMCs and property owners also organize holiday barbecues or other community events. Participants also interact with many other personnel at their respective pools, including property managers, maintenance and grounds personnel, security guards who check in with the lifeguard as part of their regular rounds as well as State or Local Health Departments and Fire Safety Inspectors. The lifeguard will invariably be on a first-name basis with many of these people within a matter of days or weeks.

The safety of lifeguards and their charges is of paramount concern. Many PMCs retain nationally recognized aquatic safety experts to oversee and evaluate their lifeguard and pool operation practices.

The number of lifeguards assigned to a given pool or facility is typically determined based on State and or local codes, and anticipated or maximum permitted bather load.

The safety and efficacy of a single lifeguard at an appropriately sized pool is widely recognized in national consensus standards, model codes and in the American Red Cross (ARC) Lifeguard Training Manual. The ARC Manual specifically states “Total coverage is used at single-lifeguard facilities or when only one lifeguard is needed for a small number of patrons present.” While the ARC permits a 15 year old to serve as a lifeguard, all exchange visitors serving as lifeguards are 18 or older.

The 2014 ANSI/NSPI-1 Standard for Public Swimming Pools states in section 22.2.2 “Class A and B pools shall have a lifeguard on duty...”¹ (Excerpts attached as Exhibit “B”). This Standard is also accepted and recognized in the current edition of the Model Aquatic Health Code, developed by the CDC. This edition also specifically accepts the presence of one or more lifeguards (section 6.3.2).²

Attached as Exhibit “C” is a letter from a highly recognized aquatic safety expert, Dr. Tom Griffiths, explaining that the placement of a single lifeguard at appropriately sized pools is widely accepted in the aquatic community as safe for the lifeguard and for swimmers.

¹ Class A pools are intended for competitive events. Class B pools are intended for public recreational swimming.

² See links at <http://www.cdc.gov/healthywater/pdf/swimming/pools/mahc/structure-content/mahc-lifeguarding-bather-supervision-code.pdf>, and at <http://www.cdc.gov/healthywater/pdf/swimming/pools/mahc/structure-content/mahc-lifeguarding-bather-supervision-annex.pdf>

Equally significant is the fact that the undersigned PMCs have collectively employed over 10,000 young men and women as lifeguards over a period of several decades and are not aware of a single report of a serious injury or death to a summer lifeguard in their care or at any single lifeguard placement.

C. EXCHANGE VISITORS EMPLOYED AS LIFEGUARDS DO NOT TAKE OPPORTUNITIES AWAY FROM AMERICAN CITIZENS

As noted above, lifeguard positions in these regions must be filled from Memorial Day through Labor day, six or seven days a week. High School academic years, including finals, state wide or advanced placement exams, typically extend well into June and College students typically end their summer employment by early August. For these and other reasons, (including a preference for internships or other employment and family obligations) it is extremely difficult to find American candidates with the necessary lifeguard and CPR certifications and availability. J-1 Exchange Visitors fill this critical void, enabling these pools to remain open throughout the already brief season.

D. COMMENT ON PROPOSED RULE.

1. The stated purpose and intent of the current proposed rulemaking as it pertains to lifeguards is found on page 4130, under **Proposed Changes**, section 12, *Program Exclusions* and states:

“Sole responsibility for safety of others. In situations where an exchange visitor would be solely responsible for the safety of others, such as working as lifeguards at single lifeguard pools, exchange visitors may not be placed at such host entities **where** the host entity does not provide regular on-site or on-call supervision and reasonable time off for exchange visitor breaks and meals. (See proposed paragraph 62.32(k)(24)). (emphasis added)

Here the DOS states a clear intent to permit placement of J-1 exchange visitors as lifeguards, even in single lifeguard pools, provided the host entity provides regular on site or on call supervision, and reasonable time off for breaks and meals. The APSP and the PMCs fully support this language and are committed to meeting those requirements as well as the general requirements that participants work along side American guests, customers, coworkers and supervisors, as explained above.

The language in the actual proposed rulemaking, however, is different. 62.32(k) lists prohibited placements and states on p 4143-4:

(k) A sponsor must not place an exchange visitor in a host placement that is:

(24) In a position where an exchange visitor is solely responsible for the safety of others (e.g., as a lifeguard); does not have regular on-site or

timely on-call supervision by the host entity **and/or** would be without reasonable time off for breaks and meals; (emphasis added).

The wording in (k)(24) may, and in the case of several sponsors, has already been interpreted to suggest that exchange visitors may not be placed as lifeguards under any circumstances, whether at single or multiple lifeguard facilities, which clearly does not appear to be the intent of the Department.

We believe this inconsistency was not intended and can be corrected, either a) by using the exact language from page 4130 above, or with the following correction:

(24) In a position where an exchange visitor is solely responsible for the safety of others (e.g., as a lifeguard) **unless there is** regular on-site or timely on-call supervision by the host entity **and** reasonable time off for breaks and meals;

2. The above section in the Proposed Rule does not specify what is considered reasonable time off for breaks and meals. To avoid confusion and inconsistent application, the APSP and PMCs respectfully request that the DOS state that time off for breaks and meals will be provided as required by applicable Federal and state Labor Laws and regulations.

3. **62.32(k)(5):** Requiring Licensing of the exchange visitor as a Program Exclusion –

Lifeguards take classes and are certified, typically by the American Red Cross, YMCA, or international equivalent. In most jurisdictions, there is no licensing of lifeguards. Some jurisdictions, however, such as the District of Columbia, and certain counties in Virginia and Maryland, require that all lifeguards, or at least one lifeguard on duty have a Pool Operator License. This is not indicative of any unique requirements or functions that the exchange visitor must perform. The activities are identical as those in the vast majority of jurisdictions where such a license is not required. It is merely an artifact of a few jurisdictions. The license is also readily obtainable with less than 25 hours training, and materials and testing for this license are provided by the host entity with no cost to and a minimal time commitment from the exchange visitor, who in the end acquires a greater skill set.

Therefore the APSP and the PMCs propose that this subsection state

“(k) A sponsor must not place an exchange visitor in a host placement that is:

(5) in a position that where licensing is **typically** required by law **in a majority of states**.

4. Form DS-7007 and its Housing Addendum

63.32 (m): Employers are already providing detailed information regarding the job conditions, housing, etc. on the Sponsor's Job Offer form. Adding another form would cause a significant burden to employers and Sponsors causing unnecessary delays in processing student applications.

CONCLUSION

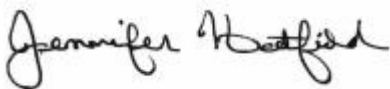
The APSP and the undersigned PMCs have always been dedicated to the safety of all who use and work in and around swimming pools and to meeting the spirit and intent of the DOS regulations pertaining to the J1 program.

Based on the foregoing, we respectfully request that the DOS revise the proposed rule as indicated above.

Because of the commitments made by PMCs to clients far in advance and the lack of available American youth to fill these critical positions, we also request that any broad revisions to the J-1 program be phased in gradually, over a period of years, and with substantial notice.

We welcome an opportunity to discuss these issues further if the DOS feels it appropriate and thank you for your time and consideration.

Sincerely,



Jennifer Hatfield
Director, Government Affairs

And the following APSP member Pool Management Companies:

Aquasafe Pool Management
Douglas Aquatics
Guardian Aquatics
High Sierra Pools
Millennium Pool Service
Premier Aquatics

Sears Pool Management
Sunset Pools Management
Sweetwater Pools
Titan Pool Service
United Pool Management
Winkler Pool Management