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Friday  
December 19, 1980



Part IX

**Department of Labor**

Employment and Training Administration

Labor Certification Process for the  
Permanent Employment of Aliens in the  
United States; Final Rule

## DEPARTMENT OF LABOR

Employment and Training  
Administration

## 20 CFR Part 656

Labor Certification Process for the  
Permanent Employment of Aliens in  
the United States

**AGENCY:** Employment and Training  
Administration, Labor

**ACTION:** Final rule.

**SUMMARY:** The Employment and Training Administration of the Department of Labor is amending its regulations relating to the certification of immigrant aliens for permanent employment in the United States. The amendments are intended to clarify some apparent ambiguities in the regulations, to make the regulations easier to read, and to reflect the experience of the Employment and Training Administration in administering the regulations since their promulgation in 1977.

**EFFECTIVE DATE:** These amendments apply to applications for permanent alien labor certification received for processing on or after January 19, 1981.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aaron Bodin, Chief, Division of Labor Certifications, Telephone: 202-376-6295.

**SUPPLEMENTARY INFORMATION:** On January 22, 1980, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published a Notice of Proposed Rulemaking proposing to amend ETA's regulations at 20 CFR Part 656, for clarification, and to reflect ETA's experience in administering Part 656 since its effective date of February 18, 1977. See 42 FR 3441 (January 18, 1977). This document adopts final regulations based upon that January 1980 Notice of Proposed Rulemaking. ETA's regulations for the certification of immigrant aliens for permanent employment in the United States are issued pursuant to section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14)).

Permanent Alien Employment  
Certification Process

Before the Department of State and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(1) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. (8 U.S.C. 1182(a)(14)).

If DOL determines that there are no able, willing, qualified, and available U.S. workers, and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to INS and to the Department of State by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in Part 656.

(b) The employer has not met its burden of proof under section 291 of the Act (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the Act (8 U.S.C. 1361) states, in pertinent part, that:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such other document, or is not subject to exclusion under any provision of this Act.

(c) DOL, through its own knowledge and experience, finds that U.S. workers are available and/or that an adverse effect on similarly employed U.S. workers will result, and the employer has not met the burden of rebutting DOL's finding or findings.

## Department of Labor Regulations

DOL has promulgated regulations at 20 CFR Part 656 governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was

promulgated pursuant to and implements section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)).

The regulations at 20 CFR Part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment offices (the "Job Service") to assist employers in finding available U.S. workers, and how the factfinding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR Parts 601-604, 621, and 651-658; and 29 U.S.C. Chapter 4B.

Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Job Service System, and by other specified means. The purpose is to assure an adequate test of the availability of U.S. workers to perform the work, and to insure that aliens are not employed under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

The amendments made in this document will not change the elements of the program discussed above, which adequately implement the mandate in section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)).

## Comments on Proposed Rule

The Notice of Proposed Rulemaking invited interested parties to submit written comments on the proposed amendments on or before March 24, 1980. 45 FR 4918 (January 22, 1980). More than 500 comments, from individuals and organizations, were received by ETA. All of the comments were reviewed and considered in the preparation of this final rulemaking. Many of the commenters stated that the amendments would clarify, simplify, and improve the permanent alien labor certification process. A number of commenters were critical of one or more of the amendments, and suggested alternatives and improvements. Other comments were outside the scope of the proposed rule. ETA found the vast majority of the comments to be helpful in gaining insight into the way the public views the permanent alien labor certification process, and this document adopts a number of the suggestions submitted by the public. Many of the other comments will be the basis of future consideration for improvement of the program. The paragraphs that follow discuss the comments and the

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amendments adopted by this document as a final rule. Unless otherwise noted, regulatory citations to 20 CFR Part 656 are to that Part as amended by this final rulemaking document.

#### *Dietitians (deleted)*

DOL had proposed to delete dietetics from the list of precertified occupations on *Schedule A*.

Two commenters felt that dietitians should not be removed from *Schedule A* unless a finding is made by ETA that there are no geographic areas in the United States which have a shortage of dietitians. In addition, they stated that the evidence on which the proposal was made also should have been published for public comment.

Information available to ETA revealed that more than half of the approximately 45,000 dietitians in the United States are employed by hospitals, clinics, nursing homes, the Veterans Administration, and the U.S. Public Health Service. In addition, 39,030 of all dietitians are registered with the American Dietetics Association; more than 5,000 of these registered dietitians are on file with the U.S. Office of Personnel Management for employment consideration. The American Hospital Association, Health Food Services Division, advised ETA that some recent U.S. college graduates in dietetics have been forced to accept low level jobs in dietetics because of the limited availability of jobs as dietitians.

The above data, in the absence of information to the contrary, are compelling enough to completely remove the field of dietetics from *Schedule A*. This will not preclude an employer from filing a request for an individual labor certification and making a test of the particular local labor market in which the job is located.

#### *Physicians (and Surgeons) (20 CFR 656.10(a)(2), 656.20(d), and 656.22(c)(2))*

DOL had proposed to amend the testing requirements for physicians (and surgeons) to conform to current law, 20 CFR 656.20(d) and 656.22(c)(2)(i). Also, in shortage areas for specific medical specialties, as designated by the Department of Health and Human Services (HHS), alien specialists in such specialties would be on the precertification list—*Schedule A*, 20 CFR 656.10(a)(2) and 656.22(c)(2).

Several commenters questioned DOL's authority to require passage of an examination by physicians (and surgeons) for purposes of labor certification. One suggested that the Federation Licensing Examination (FLEX) be accepted as an alternative examination. Another commenter

requested that Regional Health Administrators of HHS be given only 30 days to issue a certification of a shortage area; after which the *Schedule A* labor certification would automatically issue. Several commenters felt that the *Schedule A* process is too burdensome. Two commenters felt that exceptionally qualified physicians of renown in only one country should be included on *Schedule A*, and should be exempted from educational or testing requirements as is the case with exceptionally qualified physicians of international renown.

Section 212(a)(32) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(32)) and Section 602(a) of the Health Professions Educational Assistance Act of 1976 (8 U.S.C. 1182 note), as amended, require that alien graduates of foreign medical schools not accredited by a body or bodies approved for the purpose by the Secretary of Education pass Parts I and II of the National Board of Medical Examiners Examination (NBME) or an equivalent examination as determined by the Secretary of HHS. The Visa Qualifying Examination (VQE) offered by the Educational Commission for Foreign Medical Graduates (ECFMG) was determined by the Secretary of HHS to be the equivalent examination. Under this determination, the FLEX examination cannot be accepted as an alternative to the VQE or the NBME. The regulations require that alien physicians (or surgeons) document that they have passed Parts I and II of the NBME or the VQE for purposes of labor certification to avoid having aliens who would be excluded from the United States by the above-cited statutes filing applications for labor certification unnecessarily.

DOL's consultation with HHS regarding geographic areas in the United States in which there are inadequate numbers of health professionals to meet health care needs revealed that a number of factors affect HHS's determinations; and that the making of individual determinations by the Regional Health Administrator (RHA) for each area of intended employment is the most efficient and equitable methodology.

To impose a requirement that, unless the RHA issue a certification within 30 days, certification becomes automatic and places an unreasonable burden on another Federal agency. Additionally, it would be contrary to the Secretary of Labor's responsibility under the Immigration and Nationality Act to

make labor certification determinations based on availability and adverse effect.

Only those physicians (or surgeons) of international renown and those who will be employed in geographic areas certified by RHAs as shortage areas are included on *Schedule A*. Establishing that a physician has only national renown, especially from a nation with limited medical education and medical resources, is not sufficient for DOL to predetermine that there would be no adverse effect on workers in the United States. Absent passage of the NBME or VQE, the achievements of nationally known physicians (and surgeons) cannot be shown to be of the caliber necessary to avoid adverse effect, as required under the Immigration and Nationality Act.

#### *Professional Nurses (20 CFR 656.10(a)(3) and 656.22(c)(3))*

About 80 percent of the comments related to the proposal that foreign professional nurses be required to pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination. Commenters included State licensing authorities, nurse associations, hospital associations, schools of nursing, foreign nurse graduates, nurse recruitment agencies, and individuals. The comments were divided almost equally into support and opposition to the proposal.

The CGFNS is an independent nonprofit organization established because various Federal agencies (e.g., HHS, DOL, and the Department of Education) were concerned over the increasing number of foreign nurses entering the United States who could not pass State professional nursing licensing examinations. The CGFNS developed a screening examination to test the capabilities of foreign nurses in all the areas of nursing for which U.S. nurse-graduates are responsible. The examination provides an objective estimate of the nurses' ability to pass State licensing examinations. The examination is given in April and October of each year in the United States and approximately 30 other countries throughout the world. Further information may be obtained from the Commission on Graduates of Foreign Nursing Schools (CGFNS), 3624 Market Street, Philadelphia, Pennsylvania 19104.

ETA will require the CGFNS examination for permanent employment of foreign professional nurses in the United States. Although the examination requirement may reduce the number of foreign nurses able to immigrate to the United States, it is not in the public interest to grant certification to nurses who will not be able to practice their

profession and who will likely limit or otherwise adversely affect wages or job opportunities for U.S. workers in lower-skilled jobs.

Information supplied to ETA by various State boards of nursing indicate that about 80 percent of foreign-trained nurses fail to pass State licensing examinations. Most States do not allow nursing school graduates to perform professional duties after failing the licensing examinations, so for all practical purposes, these aliens are no longer available as professional nurses.

Several commenters incorrectly interpreted the examination requirement to include foreign nurse graduates who already hold licenses in a State where they will be performing professional nursing services. Therefore, the regulation has been modified to make clear that foreign nurse graduates who already hold full and unrestricted licenses in a State where they will be performing professional nursing services will be exempt from the CGFNS testing requirement. A foreign nurse also would not need to take the CGFNS examination should a State issue a license based on reciprocity or upon its review of foreign nursing credentials and training programs. Foreign nurses who have temporary, provisional, or otherwise restricted licenses in the State of intended employment, or who are licensed in another State, but not in the State of intended employment, are not exempt from the CGFNS examination.

A number of commenters requested that Canadian nurses be exempted from the examination, suggesting that most of these nurses are able to secure State licensure by examination or reciprocity. There are significant differences between United States and Canadian nursing education programs, although they are similar in some respects. In addition, not all nurses from Canada are fluent enough in the English language to pass State licensing examinations. It is the DOL's intention to apply the same standard for all foreign professional nurses who will be permanently employed in the United States.

The proposed rule also would have placed professional nurses on the *Schedule A* precertification list in areas determined by HHS to be shortage areas for the particular setting for which certification was sought. Many commenters objected to this restriction. They asserted that there are not sufficient professional nurses who are able, willing, qualified, and available to work in many rural and urban areas. This has been confirmed by the American Nurses Association, the National League for Nursing, and the American Hospital Association.

DOL has been persuaded by this evidence. The final regulation includes on *Schedule A* all professional nurses who have passed the CGFNS examination or who hold a full and unrestricted license in the State where they will be performing professional nursing services. A certification from a Regional Health Administrator will not be required.

A foreign nurse who cannot provide the required documentation will not be considered for labor certification as a nurse under *Schedule A* or otherwise. 20 CFR 656.22(c)(3) and 656.29(l).

#### *Intracompany Transferees (20 CFR 656.10(d) and 656.22(f))*

ETA proposed to amend *Schedule A*, Group IV (intracompany executive and managerial transferees), to require that prior employment be outside the United States, that the employer has been doing business in the U.S. for one year, and to reaffirm that the alien be eligible for an L-1 visa (8 U.S.C. 1101(a)(15)(L)) on the basis of other than specialized knowledge.

*Schedule A*, Group IV, was designed to facilitate the movement of managers and executives between the foreign and U.S. affiliates of international corporations and organizations, since these aliens' experience abroad uniquely qualifies them for employment in the United States. ETA is unable to make this same general finding for intracompany transferees who are not managers or executives, but who qualify for L-1 visas (temporary intracompany transferees) on the basis of specialized knowledge.

Under the proposal, adopted in final, an intracompany transferee will be required to have been employed outside the United States by the international corporation or organization as a manager or executive for one continuous year immediately before entering the United States. In addition, the international corporation or organization must have been "doing business" (as defined below) in the United States for at least one year at the time of application.

Twelve attorneys (including one representing the Association of Immigration and Nationality Lawyers) and one corporation objected to the above requirements and the definition of "doing business."

The commenters contend that these requirements will hinder expansion of international trade and foreign investment in the United States; are restrictive and burdensome because they surpass the requirements for an L-1 visa; and are contrary to Congressional intent to facilitate establishment of U.S.

branches of foreign businesses. The commenters also requested that investors (see 8 CFR 212.8(b)(14)) and intracompany transferees with specialized knowledge (but who are not executives or managers) be included on *Schedule A*. The commenters also contend that the definition of "doing business" ("a regular, systematic, and continuous course of conduct including both the offer of and the provision of goods and/or services by the employer, and [which] shall not be limited to the mere presence of an agent or office in the United States") will have a substantial effect on the ability of many foreign enterprises to commence operations in the United States.

In establishing Group IV of *Schedule A*, DOL's original intent was to include only those intracompany transferees who have worked as managers or executives outside the United States for one year before entering the United States. The revised definitions of Group IV aliens clarifies the Department's original intent. This does not preclude other intracompany transferees from obtaining a labor certification. The international corporation or organization may file a job offer on the alien's behalf, after adequately recruiting and otherwise testing the market for qualified U.S. workers.

The new requirement that international corporations or organizations be established and doing business in the United States for at least one year prior to submission of an application for *Schedule A*, Group IV, precertification further assures DOL that the integrity of Group IV is maintained and that the employer is a bona fide international corporation or organization.

The Immigration and Naturalization Service, by regulation, has exempted alien investors from the labor certification requirements of Section 212(a)(14) of the Immigration and Nationality Act. See 8 CFR 212.8(b)(14). An investor is described as an alien who establishes on Form I-526 that she or he has invested, or is actively in the process of investing capital of at least \$40,000 in an enterprise in the United States of which she or he will be a principal manager, and that the enterprise will employ a person or persons in the United States who are U.S. citizens or aliens lawfully admitted for permanent residence, exclusive of the alien, her or his spouse, and children. Alien workers enter the United States under immigration preferences (see 8 U.S.C. 1153(a)(3) and (6)), but alien investors do not receive a preference (see 8 U.S.C. 1153(a)(8)). A

labor certification is, therefore, inappropriate for investors?

The requirements for Group IV do not preclude the establishment of international corporations or organizations in the United States. Aliens may be temporarily transferred to the United States to establish U.S. offices, on L-1 or other temporary business visas, for up to three years, and the alien can apply for permanent labor certification after the U.S. operation has been doing business for one year.

*General Filing Instructions (20 CFR 656.20)*

Several attorneys favored the proposal to use INS Form G-28 (Notice of Appearance) to standardize the attorney notice of appearance. While some State job service agencies suggested that INS Form G-28 be signed by the employer and the alien, DOL will not require the signature of the employer and/or the alien, since such signatures are not required normally for attorneys' clients. Of course, the employer is required to sign the application form (20 CFR 656.21(a)); and the alien must sign the Statement of Qualifications (20 CFR 656.21(a)(1)).

Employers and aliens also may have agents represent them throughout the labor certification process. The agent authorization is included on the *Application for Alien Employment Certification* form and is signed by the employer and/or the alien.

Some attorneys objected to the provision which prohibits the alien's attorney or agent from participating in interviews of U.S. workers for the job opportunity offered the alien. DOL, however, reaffirms its determination that the alien's agent or attorney cannot, in good faith, consider U.S. workers for a job opportunity, and at the same time effectively represent the alien to whom the job has been offered.

One commenter suggested that agents and attorneys suspended or disbarred from practice before the Board of Immigration Appeals be heard again by ETA before being denied the right to act for the employer and/or the alien in labor certification matters. Nevertheless, adopting the considered action of that Board is reasonable and acceptable. An additional hearing procedure for ETA in such cases would be unnecessary and duplicative.

*Basic Labor Certification Process (20 CFR 656.21)*

Most of the general documentation requirements for the basic labor certification process have not been changed in content from existing regulations, but were renumbered and

published as part of the proposed rulemaking to make the new requirements easier to understand. A broad range of comments were received regarding new and existing provisions under the basic labor certification process, as follows:

*Prior Recruitment Efforts (20 CFR 656.21(b)(1))*

Eight commenters stated that the regulations are not clear on whether advertising is required prior to the filing of the *Application for Alien Employment Certification*. Prior advertising is not required under the amended regulations. However, if the employer has recruited by advertising or by other means, the results of such recruitment should be filed with the application. Recruitment required by DOL will be conducted after the application is filed with the appropriate local office of the State job service. The regulations have been clarified to reflect this.

*Private Room for Live-In Household Domestic Workers (20 CFR 656.21(a)(3)(i)(1))*

Several State job service agencies commented that the requirement for a private room for household domestic service workers who are required to live on the employer's premises should be spelled out in the regulations. Although this requirement previously was spelled out in the instructions to the *Application for Alien Employment Certification* form, it is now listed in the regulations as a condition required to be in the employment contract.

*Unduly Restrictive Job Requirements (20 CFR 656.21(b)(2))*

The proposed rule added two clarifying requirements to the regulations, relating to job opportunities where the worker is required to live on the employer's premises, and to job opportunities described with an employer preference.

Seven attorneys objected to the provision that a requirement that the worker live on the employer's premises be documented as a business necessity. They contended that a household is not a business, that this requirement is an unwarranted intrusion into personal lives of individuals, and that living on the employer's premises is customary for household domestic service workers.

The specific language in the regulations did not refer only to private households, but to all job opportunities which require the worker to live on the employers' premises, although the majority of such job opportunities have been in private households. It is not the intention of DOL to intrude into the

personal affairs of individuals or to single out private households. The provision is intended to emphasize the need to document the business necessity for a requirement that is not normally required for the job in the United States or is not defined for the job in the *Dictionary of Occupational Titles*. It merely clarifies DOL's consistent interpretation of its previous rules, and therefore is retained in the final rule.

Several commenters objected to unduly restrictive preferences being treated as if they were requirements. These commenters assert that a prohibition against unduly restrictive preferences is contrary to normal recruiting practices of employers and employment agencies. Nevertheless, DOL has found that this is a necessary and reasonable requirement for purposes of labor certification: to assure that interested U.S. workers who are able, willing, qualified, and available for job opportunities offered to alien workers are considered for these jobs. It has been DOL's experience that unduly restrictive employer preferences may have an inhibiting effect on recruitment; and that interested workers view employer preferences as requirements and are reluctant to apply for job opportunities described with preferences which the workers do not meet.

*Posting (20 CFR 656.21(b)(3))*

The proposed rule both eased and clarified the requirement that employers post notices of the job opportunity within their organization. Employment for private households is exempted from the requirement. The rule clarifies how long the notice must be posted and where it should be posted. The requirement to post is intended to be part of a reasonable effort by the employer to recruit U.S. workers, and is not onerous. It informs the employer's current employees, and visitors to the employer's premises, that there is a job opportunity. These employees and visitors, while perhaps themselves unqualified, may know of available U.S. workers who are qualified. DOL has found that such "word-of-mouth" recruitment may be the most prevalent method of filling jobs. See U.S.

DEPARTMENT OF LABOR,  
EMPLOYMENT AND TRAINING  
ADMINISTRATION RESEARCH AND  
DEVELOPMENT MONOGRAPH NO. 59,  
*The Public Employment Service and  
Help Wanted Ads* (1978) at 9; see also  
CAMIL ASSOCIATES, RECRUITMENT,  
JOB SEARCH AND THE UNITED  
STATES EMPLOYMENT SERVICE  
(1975); and U.S. DEPARTMENT OF  
LABOR, BUREAU OF LABOR

#### STATISTICS, JOB SEEKING METHODS USED BY AMERICAN WORKERS (1975).

Several commenters objected to the posting requirement because it does not exempt businesses or organizations which do not post job opportunities as part of their normal recruitment. They also requested that the posting requirement be clarified as it relates to businesses with multiple places of employment.

In the final rule, internal posting continues to be a requirement for all job opportunities (except for private households) filed under the basic labor certification process, primarily because the commenters have failed to show that posting is not a very effective method of recruiting workers. In adopting uniform standards of recruitment, DOL cannot set different recruiting requirements for each employer. DOL merely requires the employer to conduct such recruitment as an employer making a reasonable effort to employ U.S. workers would conduct.

The regulations have been clarified, however, to require that the posting appear only at the business establishment where the job opportunity is located. This is not intended to discourage an employer from seeking U.S. workers by posting notices of the job opportunity at more than one or at all its places of business.

A number of State job service agencies and ETA regional offices requested that the minimum size be specified for a posted notice. DOL has determined not to regulate the size of the notice with such specificity. As long as the posting is made in such a manner as to be conspicuous and clearly visible, it is not necessary to regulate the actual size of the posting. The revised language is designed to alert employers that such posting practices as placing actual size copies of newspaper advertisements on crowded bulletin boards are unacceptable.

#### Rejection of U.S. Workers (20 CFR 656.21(b)(7))

Two commenters questioned whether U.S. workers already employed at substantially the same wages and working conditions as offered to the alien should be considered able, willing, qualified, and available for the job opportunity offered to the alien worker. This provision was not changed substantively in the proposed or final rules. DOL's determination of availability under the Immigration and Nationality Act is not restricted to consideration of only those U.S. workers who are unemployed or partially employed. DOL does not intend to preclude consideration of U.S. workers

who, for whatever reason, are seeking a change in employment and are able, willing, qualified and available for job opportunities offered to aliens.

#### Prevailing Wages (20 CFR 656.20(c) (2) and (3), 656.21(e), and 656.40)

Several commenters requested that the regulations require that the local job service office disclose the factual basis of prevailing wage calculations, including whether the industry norm is commission only. Two objected to the prohibition against wages being based on commissions when this compensation arrangement is normal for the industry. These comments are on provisions unchanged substantively from the current rules.

The regulations already require that the local office put its prevailing wage calculations into writing. Applicants for permanent labor certification may request, and are entitled to be provided, the bases of the local office prevailing wage findings. Additionally, unless a guaranteed wage is offered the alien and to U.S. workers, DOL cannot certify to INS that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by employment of the alien. This DOL finding has been upheld specifically in *Morrison and Morrison, Inc. v. Secretary of Labor of the United States*. — F. 2d — (10th Cir. July 14, 1980).

#### Job Service Job Order (20 CFR 656.21(f))

Several commenters objected to the unchanged rule that the local job service office determine whether a job offer is acceptable before placing a job order into the regular job service recruitment system. The commenters incorrectly have interpreted this to mean that a local office can refuse to process an *Application for Alien Employment Certification* if it determines the job offer is unacceptable.

Nevertheless, the regulations now clearly state that only the ETA Certifying Officer can make such a determination. A local office may not refuse to process an *Application for Alien Employment Certification*; however, the local office cannot assist an employer in recruiting U.S. workers through the Job Service System unless the job opportunity's terms and conditions comply with Job Service Regulations. See 20 CFR Parts 601-604, 621, and 651-658; and 29 CFR Parts 26 and 75; see also 45 FR 39454-39484 (June 10, 1980). If a job offer is unacceptable as a job order under the Job Service Regulations, the local office should advise the employer to remedy the defects. If the employer refuses to do so, the local office will advise the employer

that it is unable to recruit U.S. workers for the job opportunity through the Job Service System and that the application will be forwarded to the appropriate ETA Certifying Officer for determination. The final rule clarifies this process.

#### Advertising (20 CFR 656.21(g))

Over 60 commenters, including State job service agencies, universities, and attorneys, objected to the proposed rule that the local job service office place recruitment advertisements for the employer (referring applicants to the job service) and to the State job service handling the money for advertisements. Many also objected to the proposal that the local office approve the text of such advertisements. Some commenters felt that the role of the local office should be to assist the employer in preparing the text of the advertisements. All commenters felt that the employers should maintain the responsibility for the recruitment advertisements.

DOL has been persuaded by the comments. Requirements for advertising have been revised to require advertising to be published only over the name of the local office of the State job service. That office will refer applicants to the employer. The employer's name may not appear in the advertisement. An employer may, of course, seek U.S. workers by placing advertisements over its own name and is encouraged to submit documentation of such efforts to the Certifying Officer. Employers will have responsibility for placing advertisements over the job service office's name, and for making payments for advertisements directly to the publisher. The local job service office may assist the employer in determining the appropriate newspaper of publication and in preparing the text of the advertisement.

More than 15 commenters objected to restriction of advertisements to business days, asserting that Sunday is a popular day for publishing classified advertisements. Several commenters felt that proposal to require three days of advertising is excessive and too expensive. Confusion on how "three consecutive days" of advertising would apply to weekly or intermittent publications was expressed by some commenters.

The final rule specifies that advertisements published in a newspaper of general circulation must be published for any three consecutive days. DOL does not agree that three days of advertising is excessive or too expensive for an employer who is attempting a reasonable effort to recruit U.S. workers. Employment of alien

workers should only occur when the employer has been unsuccessful in recruiting U.S. workers.

Advertisements placed in professional, trade, or ethnic periodicals that are published on other than a daily basis need only be published once—in the edition of the periodical published after filing the application.

#### *Reduction of Recruitment Efforts (20 CFR 656.21(i))*

Several State job service agencies and ETA regional offices objected to the proposal to allow Certifying Officers to reduce recruitment efforts, asserting that the basis for granting the reduction is too vague and subject to various interpretations. Some attorneys and organizations commenting on the proposed rule favored this provision, but asked that the local job service office rather than the Certifying Officer be given the authority to reduce recruitment efforts.

DOL believes that a reduction in recruitment efforts may be appropriate when the employer has tested the labor market prior to filing the application. However, it is agreed that the language, "for good cause shown," is too vague to give employers and Certifying Officers guidance in determining which circumstances permit a reduction in recruitment efforts. The procedure for requesting a reduction in recruitment, and the responsibilities of local job service and regional ETA offices have been specified in the final rule.

The Congress has given the Secretary of Labor the responsibility for making determinations with respect to the availability of qualified U.S. workers and the potential adverse effect of permanent alien employment, 8 U.S.C. 1182(a)(14). Since this responsibility must rest with DOL, it would be inappropriate for the local office of the State job service to authorize the reduction of recruitment efforts.

#### *Miscellaneous Recruitment Requirements*

Several State job service agencies favored the proposed rule that applications be returned to employers after 45 days of employer and/or alien inactivity, such as failure to provide responses within 45 days. 20 CFR 656.21(h). Some attorneys who commented felt that a corresponding time limit should be placed on State job service agencies to process applications and objected to a change of the date of acceptance on applications which have been returned. See 20 CFR 656.30(b)(1) and 22 CFR 42.62.

The 30-day recruitment period already in the regulations (20 CFR 656.21(f)(1)),

to a large extent, places time constraints on the local job service office's processing of applications. The recruitment period begins upon receipt of a completed application. At the close of the recruitment period, the local office obtains the results from the employer and prepares the application for transmittal to the ETA regional office or the State job service office. The proposed provision providing for return of applications to employers after 45 days of inactivity, and requiring those applications to be refiled as new applications, is being retained in order to reduce backlogs in State job service offices. Excessive extensions of time in the local office beyond the 30-day recruitment period are caused, in general, by employer failure to provide requested documentation or information in a timely manner. Such applications that are refiled will be considered new applications. Therefore, the proposed rule is adopted.

Several commenters objected to the proposed provision which states that the local job service office shall wait 30 days from the date of publication of the employer's advertisement to transmit the application to the State or regional offices, asserting that this in effect, would extend the recruitment period beyond 30 days, especially when the job opportunity is advertised in a professional, trade, or ethnic publication. 20 CFR 656.21(j)(1). This provision applies only to advertisements placed in publications other than daily newspapers. It is anticipated that most responses from U.S. workers to such advertisements will be in the form of resumes. Thus, a period of 30 days from the advertisement date is reasonable. It may take that long to fully disseminate the advertisement, to prepare and transmit resumes, to interview job applicants, and to transmit a report on the results of the employer's interview and consideration of the workers.

#### *Occupations Designated for Special Handling (20 CFR 656.21a)*

##### *College and University Teachers (20 CFR 656.21a(a))*

The proposed rule set forth a revised recruitment requirement for job opportunities as college and university teachers. The basis for this special handling is the distinct way in which such positions are treated in the Immigration and Nationality Act. In most occupations, U.S. workers are considered available for the job opportunity if they are able, willing, and at least minimally qualified for the job offered to the alien. 8 U.S.C. 1182(a)(14). In the cases of job opportunities as

college and university teachers, U.S. workers must be at least as qualified or more qualified than the alien for whom permanent labor certification is sought. *Id.*

Seven universities requested that researchers at colleges and universities be treated the same as college and university teachers. The National Research Council requested that all scientists and engineers be accorded the same special handling, and that major corporations be allowed to document that they have selected the best qualified candidate for research positions. There is no statutory basis for special handling of researchers, scientists, and engineers. The distinct tests of availability for college and university teachers (and aliens of exceptional ability in the performing arts) are unique in the labor certification process. The "equally qualified" provision cannot be extended to other occupations. For other occupations, the Act specifies that U.S. workers need only be able, willing, qualified and available.

Two universities commenting on the proposed rule requested that employers be permitted to file applications for employment certification of college and university teachers as long as 18 to 24 months after a selection of the alien has taken place, rather than the proposed 12 months. (It is possible under the nonimmigrant provisions of the Immigration and Nationality Act for aliens to have been selected competitively and employed prior to the filing of an application for adjustment of status to that of permanent resident.) Several commenters requested clarification on handling applications where the selection will have been made more than 12 months before the effective date of the regulations.

DOL has found these arguments to be persuasive. Therefore, the period in which colleges and universities must file applications for college and university teachers, after a selection has been made pursuant to a competitive recruitment and selection process, has been extended to 18 months. In applications where the competitive recruitment and selection process took place more than 18 months before the effective date of these regulations, the employer will have until December 31, 1981, to file the application without regard to the 18-month restriction.

Some commenters stated that the documentation required for the competitive recruitment and selection process is excessive. However, DOL consulted with representatives of major universities in developing the documentation requirements for the

competitive recruitment and selection process. Those employers agreed that the requirements are reasonable and can be easily documented by colleges and universities.

*Aliens of Exceptional Ability in the Performing Arts (20 CFR 656.21a(a))*

One commenter suggested that the regulations be revised to require aliens of exceptional ability in the performing arts to document that their work experience required, and their intended work in the United States will require, exceptional ability. This suggestion has been adopted in the final rule and represents no substantive change from prior practice.

One commenter felt that advertising should not be required for performing artists. DOL cannot ignore, however, the high unemployment rate for U.S. workers in the performing arts. DOL would be derelict in its responsibilities under the Immigration and Nationality Act, if employers were not required to recruit U.S. Workers for job opportunities in the performing arts offered to aliens.

At the suggestion of one commenter, a clarifying provision has been added to § 656.21a, "Occupations Designated for Special Handling", which provides that applications which are denied under that section may be refiled pursuant to § 656.21, "Basic Labor Certification Process". 20 CFR 656.21a(e).

**Schedule A Process (20 CFR 656.10 and 656.22)**

Comments on the *Schedule A Process for job opportunities as physicians (and surgeons), professional nurses, and intracompany transferees* have been discussed above.

Several universities requested that aliens of exceptional ability, but who do not have international acclaim, be included on *Schedule A*. The National Research Council requested that *Schedule A* be modified to include scientists and engineers who possess a doctoral degree, and who show clear potential for future acclaim or recognition, and who have accomplishments in highly specialized scientific or technical fields. The standards for *Schedule A* precertification of aliens of exceptional ability in a science or art (so-called "Group II" aliens) under the current regulations do preclude many scientists and artists from qualifying for precertification. Many of these aliens are excluded because they have not received internationally recognized prizes or awards; some are not members of associations requiring outstanding achievements of their members. Of

course, all of the aliens could have attempted to obtain certification under the basic labor certification process.

ETA worked very closely with representatives of major universities to develop modifications to the current Group II standards. DOL has determined that international acclaim however, is a reasonable indicator of exceptional ability for *Schedule A* to facilitate the admission of those aliens whose immigration to the United States would benefit substantially the United States economy, culture, security, or welfare.

Since a *Schedule A* precertification is granted without regard to the individual alien's impact on the U.S. labor market, the standards for precertification must be high enough to assure against the displacement of, or adverse effect on, U.S. workers. DOL, therefore, is retaining the requirement of international acclaim for Group II aliens. Setting the receipt of a doctoral degree as sole grounds for Group II certification would include some aliens lacking exceptional ability, and exclude others who have exceptional ability. Similarly, a predetermination based upon potential for future acclaim would be highly subjective and difficult to administer fairly.

Several commenters stated that the documentation requirements for Group II are a favorable improvement over the current regulations. One commenter requested that the rule clarify the requirement concerning published material by or about the alien. More definitive language has been included in the final rule.

Some commenters suggested other occupational categories to be added to *Schedule A*. Since these suggestions are outside the scope of the proposed rule, they were not considered in the present rulemaking.

**Schedule B Process (20 CFR 656.11 and 656.23)**

*Schedule B* contains occupations for which the Administrator, U.S. Employment Service, has predetermined that U.S. workers are able, willing, qualified, and available or that employment of aliens would adversely affect the wages or working conditions of similarly employed U.S. workers. The employer may petition for a waiver of this finding.

The proposed rule would permit employers (and the aliens, if in conjunction with the employers) to rebut proposed denials of petitions for waiver of *Schedule B*. A number of commenters favored this proposed amendment, and it is adopted in the final rule.

The process for requesting *Schedule B* waivers also is simplified in the final

rule. A written request for a waiver should be filed, along with the *Application for Alien Employment Certification*, at the appropriate local job service office. The job service will include the petition for waiver in the application file that is transmitted to the Certifying Officer.

**Labor Certification Determinations (20 CFR 656.24)**

Several State job service agencies and ETA regional offices objected to the proposal to allow Certifying Officers to excuse partially the employer's failure to comply fully with the regulations. Some other commenters favored this change. State job service agencies and ETA regional offices assert that the proposal would encourage employers to exert undue pressure on State and Federal personnel to grant exceptions; and would inundate State and Federal offices with requests to excuse failures to comply.

In view of the concerns expressed, it appears that this provision has been misinterpreted. Employers are expected to comply fully with the regulations governing labor certifications and may not request the Certifying Officers to excuse failures to comply. A certification may be granted only when the Certifying Officer:

- (1) Is considering an application,
- (2) Sees that the employer has omitted or failed to supply an item required by the regulations, and
- (3) Concludes that the item is not material to a proper determination of availability and adverse effect.

**Technical Amendments**

Other minor technical amendments, such as nomenclature changes to conform to 20 CFR 651.7 (45 FR 39457; June 10, 1980), have been made in the final rule. The most significant change is the general usage of the term "job service" in place of the term "employment service." The administrative-judicial review procedures in § 656.26 are clarified to state explicitly that the Administrative Law Judge is to consider only such evidence as was before the Certifying Officer.

**Development of Rule; Regulatory Impact; and Catalog of Federal Domestic Assistance:**

This final rulemaking document was prepared under the direction and control of Mr. David O. Williams, Administrator, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Washington, D.C.

The economic and other impact of this final rule is not so significant as to require the development of a regulatory analysis. See 44 FR 5576 (January 26, 1979).

This program is described under *Catalog of Federal Domestic Assistance* Number 17.203, "Certification for Immigrant Workers."

#### Final Rule

For the reasons set out in the preamble, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is revised to read as follows:

### PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

#### Subpart A—Purpose and Scope of Part 656

- Sec.
- 656.1 Purpose and scope of Part 656.
- 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

#### Subpart B—Occupational Labor Certification Determinations

- 656.10 *Schedule A*.
- 656.11 *Schedule B*.

#### Subpart C—Labor Certification Process

- 656.20 General filing instructions.
- 656.21 Basic labor certification application process.
- 656.21a Applications for labor certifications for occupations designated for special handling.
- 656.22 Applications for labor certifications for *Schedule A* occupations.
- 656.23 Applications for labor certifications for *Schedule B* occupations; requests for waivers from *Schedule B*.
- 656.24 Labor certification determinations.
- 656.25 Procedures following a labor certification determination.
- 656.26 Administrative-judicial review of denials of labor certification.
- 656.27 Hearings.
- 656.27a Published decisions.
- 656.28 Document transmittal following the granting of a labor certification.
- 656.29 Filing of a new application after the denial of a labor certification.
- 656.30 Validity of and invalidation of labor certifications.
- 656.31 Labor certification applications involving fraud or willful misrepresentation.
- 656.32 Fees for services and documents.

#### Subpart D—Determination of Prevailing Wage

- 656.40 Determination of prevailing wage for labor certification purposes.

#### Subpart E—Definitions

- 656.50 Definitions, for purposes of this Part, of terms used in this Part.

#### Subpart F—Addresses

- 656.60 Addresses of Department of Labor regional offices.

- Sec.
- 656.61 Addresses of Regional Health Administrators, Public Health Service regional offices, Department of HHS.
- 656.62 Locations of Immigration and Naturalization Service offices.

**Authority:** Sec. 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14); Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; and 5 U.S.C. 301; unless otherwise noted.

#### Subpart A—Purpose and Scope of Part 656

##### § 656.1 Purpose and scope of Part 656.

(a) Under section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this Part set forth the procedures whereby such immigrant labor certifications may be applied for, and given or denied.

(c) Correspondence and questions concerning the regulations in this Part 656 should be addressed to: Division of Labor Certifications, United States Employment Service, 601 D Street NW., Washington, D.C. 20213.

##### § 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. (See 8 CFR 2.1)

(3) The Consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which aliens may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) states, in pertinent part, that:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act

(c) *Numerical limitations on immigrant visas under the Act.* (1) Immigrant visas may be given only on an individual basis:

(2) Except for so-called "special immigrants" (8 U.S.C. 1101(a)(27)) and for immediate relatives of U.S. citizens, to whom no numerical restriction applies, only 270,000 immigrant visas may be issued in each fiscal year. (See 8 U.S.C. 1151.)

(3) No numerical restriction exists on the number of labor certifications which may be issued by the Department of Labor in any year.

(d) *Visa preferences including non-preference status.* (1) Under section 203 of the Act (8 U.S.C. 1153) certain immigrants are eligible for preferences in obtaining visas. The INS has responsibility for determining whether such aliens qualify for preferences. The preferences for which an immigrant may be eligible are:

(i) First, second, fourth and fifth preferences, which require a close family relationship between the alien and a United States citizen or permanent resident alien of the United States;

(ii) Third preference, which requires that the alien's services be sought by an employer, and that the alien be a qualified member of a profession or a person who, because of exceptional ability in the sciences or the arts, will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States; and

(iii) Sixth preference, which requires that the alien be capable of performing some specific kind of skilled or unskilled labor, which is not of a temporary or seasonal nature, and for which a shortage of employable and willing persons exists in the United States.

(2) Under section 203(a)(7) of the Act (8 U.S.C. 1153(a)(7)) aliens, who are not immediate relatives of U.S. citizens, and who are not eligible for one of the preferences described in paragraph (d)(1) of this section, may be eligible for a nonpreference status and obtain visas strictly in chronological order.

(3) Under section 207 of the Act (8 U.S.C. 1157) aliens who are refugees may be admitted in limited numbers.

without the requirement of a permanent labor certification. Such alien refugees may apply later for adjustment of status to permanent residents, without the requirement of a permanent labor certification. (8 U.S.C. 1159(c)).

(c) *Role of the Department of Labor.*  
 (1) The role of the Department of Labor under the Act derives from section 212(a)(14) (8 U.S.C. 1182(a)(14)), which provides that certain aliens who seek to immigrate to the United States for the purpose of employment in the United States are not eligible for a visa and shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(ii) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(2) This certification is referred to in this Part as a "labor certification".

(3) Aliens required to be a beneficiary of a labor certification by section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)) are:

(i) Aliens who are eligible for a non-preference status as described in paragraph (d)(2) of this section; and

(ii) Aliens who are eligible for third or sixth preferences described in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section.

(4) The Department of Labor issues labor certifications for both the temporary and permanent employment of aliens in the United States. The regulations under this Part apply only to labor certifications for permanent employment.

#### Subpart B—Occupational Labor Certification Determinations

##### § 656.10 Schedule A.

The Administrator, United States Employment Service (Administrator), has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on *Schedule A* and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in *Schedule A* occupations. An alien seeking a labor certification for an occupation listed on *Schedule A* may apply for that labor certification pursuant to § 656.22.

#### Schedule A

##### (a) Group I

(1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the State in which they propose to practice physical therapy.

(2) Alien graduates of foreign medical schools who will be employed as physicians (or surgeons) in a geographic area which has been designated by the Secretary of Department of Health and Human Services (HHS) as a *Health Manpower Shortage Area* for the alien's medical specialty, or has been identified otherwise by the Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty, in accordance with section 906 of Health Education Assistance Act (8 U.S.C. 1162 note).

(3) Aliens who will be employed as professional nurses, and (i) who have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (ii) who hold a full and unrestricted license to practice professional nursing in the State of intended employment.

##### (4) Definitions of Group I Occupations:

(i) "Physical therapist" means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or surgeon).

(ii) "Physician (or surgeon)" is defined in § 656.50.

(iii) "Professional nurse" is defined in § 656.50.

##### (b) Group II

Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

##### (c) Group III

(1) Aliens who seek admission to the United States in order to perform a religious occupation, such as the preaching or teaching of religion; and

(2) Aliens with a religious commitment who seek admission into the United States in order to work for a nonprofit religious organization.

##### (d) Group IV:

(1) Aliens who have been admitted to the United States in order to work in, and who are currently working in, managerial or executive positions with the same international corporations or organizations with which they were continuously employed as managers or executives outside the United

States for one year before they were admitted.

(2) Aliens outside the United States who will be engaged in the United States in managerial or executive positions with the same international corporations or organizations with which they have been continuously employed as managers or executives outside the United States for the immediately prior year.

(3) For the purposes of this paragraph (d), the international corporation or organization must have been established and doing business in the United States for a period of at least one year prior to the submission of the application for the alien to qualify under *Schedule A*, Group IV. For the purposes of this paragraph (d), "doing business" shall mean a regular, systematic, and continuous course of conduct, including both the offer of and the provision of goods and/or services by the employer, and shall not be limited to the mere presence in the United States of an agent or office of the international corporation or organization.

##### § 656.11 - Schedule B.

(A) The Administrator has determined that there generally are sufficient United States workers who are able, willing, qualified and available for the occupations listed below on *Schedule B* and that the wages and working conditions of United States workers similarly employed will generally be adversely affected by the employment in the United States of aliens in *Schedule B* occupations. An employer seeking a labor certification for an occupation listed on *Schedule B* may petition for a waiver pursuant to § 656.23.

#### Schedule B

- (1) Assemblers
- (2) Attendants, Parking Lot
- (3) Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)
- (4) Automobile Service Station Attendants
- (5) Bartenders
- (6) Bookkeepers II
- (7) Caretakers
- (8) Cashiers
- (9) Charworkers and Cleaners
- (10) Chauffeurs and Taxicab Drivers
- (11) Cleaners, Hotel and Motel
- (12) Clerks, General
- (13) Clerks, Hotel
- (14) Clerks and Checkers, Grocery Stores
- (15) Clerk Typists
- (16) Cooks, Short Order
- (17) Counter and Fountain Workers
- (18) Dining Room Attendants
- (19) Electric Truck Operators
- (20) Elevator Operators
- (21) Floorworkers
- (22) Groundskeepers
- (23) Guards
- (24) Helpers, any industry
- (25) Hotel Cleaners
- (26) Household Domestic Service Workers
- (27) Housekeepers
- (28) Janitors
- (29) Key Punch Operators
- (30) Kitchen Workers

- (31) Laborers, Common
- (32) Laborers, Farm
- (33) Laborers, Mine
- (34) Loopers and Toppers
- (35) Material Handlers
- (36) Nurses' Aides and Orderlies
- (37) Packers, Markers, Bottlers and Related
- (38) Porters
- (39) Receptionists
- (40) Sailors and Deck Hands
- (41) Sales Clerks, General
- (42) Sewing Machine Operators and Handstitchers
- (43) Stock Room and Warehouse Workers
- (44) Streetcar and Bus Conductors
- (45) Telephone Operators
- (46) Truck Drivers and Tractor Drivers
- (47) Typists, Lesser Skilled
- (48) Ushers, Recreation and Amusement
- (49) Yard Workers

(b) *Descriptions of Schedule B occupations.* (1) "Assemblers" perform one or more repetitive tasks to assemble components and subassemblies using hand or power tools to mass produce a variety of components, products or equipment. They perform such activities as riveting, drilling, filing, bolting, soldering, spot welding, cementing, gluing, cutting and fitting. They may use clamps or other work aids to hold parts during assembly, inspect or test components, or tend previously set-up or automatic machines.

(2) "Attendants, Parking Lot" park automobiles for customers in parking lots or garages and may collect fees based on time span of parking.

(3) "Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)" perform a variety of routine tasks attending to the personal needs of customers at such places as amusement parks, bathhouses, clothing check-rooms, and dressing rooms, including such tasks as taking and issuing tickets, checking and issuing clothing and supplies, cleaning premises and equipment, answering inquiries, checking lists, and maintaining simple records.

(4) "Automobile Service Station Attendants" service automotive vehicles with fuel, lubricants, and automotive accessories at drive-in service facilities; may also compute charges and collect fees from customers.

(5) "Bartenders" prepare, mix, and dispense alcoholic beverages for consumption by bar customers, and compute and collect charges for drinks.

(6) "Bookkeepers II" keep records of one facet of an establishment's financial transactions by maintaining one set of books; specialize in such areas as accounts-payable, accounts-receivable, or interest accrued rather than a complete set of records.

(7) "Caretakers" perform a combination of duties to keep a private home clean and in good condition such as cleaning and dusting furniture and furnishings, hallways and lavatories; beating, vacuuming, and scrubbing rugs; washing windows, waxing and polishing floors; removing and hanging draperies; cleaning and oiling furnaces and other equipment; repairing mechanical and electrical appliances; and painting.

(8) "Cashiers" receive payments made by customers for goods or services, make change, give receipts, operate cash registers, balance cash accounts, prepare bank deposits and perform other related duties.

(9) "Charworkers and Cleaners" keep the premises of commercial establishments, office buildings, or apartment houses in clean and orderly condition by performing, according to a set routine, such tasks as mopping and sweeping floors, dusting and polishing furniture and fixtures, and vacuuming rugs.

(10) "Chauffeurs and Taxicab Drivers" drive automobiles to convey passengers according to the passengers' instructions.

(11) "Cleaners, Hotel and Motel" clean hotel rooms and halls, sweep and mop floors, dust furniture, empty wastebaskets, and make beds.

(12) "Clerks, General" perform a variety of routine clerical tasks not requiring knowledge of systems or procedures such as copying and posting data, proofreading records or forms, counting, weighing, or measuring material, routing correspondence, answering telephones, conveying messages, and running errands.

(13) "Clerks, Hotel" perform a variety of routine tasks to serve hotel guests such as registering guests, dispensing keys, distributing mail, collecting payments, and adjusting complaints.

(14) "Clerks and Checkers, Grocery Stores" itemize, total, and receive payments for purchases in grocery stores, usually using cash registers; often assist customers in locating items, stock shelves, and keep stock-control and sales-transaction records.

(15) "Clerk Typists" perform general clerical work which, for the majority of duties, requires the use of typewriters; perform such activities as typing reports, bills, application forms, shipping tickets, and other matters from clerical records, filing records and reports, posting information to records, sorting and distributing mail, answering phones and similar duties.

(16) "Cooks—Short Order" prepare and cook to order all kinds of short-preparation-time foods; may perform such activities as carving meats, filling

orders from a steamtable, preparing sandwiches, salads and beverages, and serving meals over a counter.

(17) "Counter and Fountain Workers" serve food to patrons at lunchroom counters, cafeterias, soda fountains, or similar public eating places; take orders from customers and frequently prepare simple items, such as desert dishes; itemize and total checks; receive payment and make change; clean work areas and equipment.

(18) "Dining Room Attendants" facilitate food service in eating places by performing such tasks as removing dirty dishes, replenishing linen and silver supplies, serving water and butter to patrons, and cleaning and polishing equipment.

(19) "Electric Truck Operators" drive gasoline- or electric-powered industrial trucks or tractors equipped with forklift, elevating platform, or trailer hitch to move and stack equipment and materials in a warehouse, storage yard, or factory.

(20) "Elevator Operators" operate elevators to transport passengers and freight between building floors.

(21) "Floorworkers" perform a variety of routine tasks in support of other workers in and around such work sites as factory floors and service areas, frequently at the beck and call of others; perform such tasks as cleaning floors, materials and equipment, distributing materials and tools to workers, running errands, delivering messages, emptying containers, and removing materials from work areas to storage or shipping areas.

(22) "Groundskeepers" maintain grounds of industrial, commercial, or public property in good condition by performing such tasks as cutting lawns, trimming hedges, pruning trees, repairing fences, planting flowers, and shoveling snow.

(23) "Guards" guard and patrol premises of industrial or business establishments or similar types of property to prevent theft and other crimes and prevent possible injury to others.

(24) "Helpers (any industry)" perform a variety of duties to assist other workers who are usually of a higher level of competency or expertness by furnishing such workers with materials, tools, and supplies, cleaning work areas, machines and equipment, feeding or offbearing machines, and/or holding materials or tools.

(25) "Hotel Cleaners" perform routine tasks to keep hotel premises neat and clean such as cleaning rugs, washing walls, ceilings and windows, moving furniture, mopping and waxing floors, and polishing metalwork.

(26) "*Household Domestic Service Workers*" perform a variety of tasks in private households, such as cleaning, dusting, washing, ironing, making beds, maintaining clothes, marketing, cooking, serving food, and caring for children or disabled persons. This definition, however, applies only to workers who have had less than one year of documented full-time paid experience in the tasks to be performed, working on a live-in or live-out basis in private households or in public or private institutions or establishments where the worker has performed tasks equivalent to tasks normally associated with the maintenance of a private household. This definition does not include household workers who primarily provide health or instructional services.

(27) "*Housekeepers*" supervise workers engaged in maintaining interiors of commercial residential buildings in a clean and orderly fashion, assign duties to cleaners (hotel and motel), charworkers, and hotel cleaners, inspect finished work, and maintain supplies of equipment and materials.

(28) "*Janitors*" keep hotels, office buildings, apartment houses, or similar buildings in clean and orderly condition, and tend furnaces and boilers to provide heat and hot water; perform such tasks as sweeping and mopping floors, emptying trash containers, and doing minor painting and plumbing repairs; often maintain their residence at their places of work.

(29) "*Keypunch Operators*", using machines similar in action to typewriters, punch holes in cards in such a position that each hole can be identified as representing a specific item of information. These punched cards may be used with electronic computers or tabulating machines.

(30) "*Kitchen Workers*" perform routine tasks in the kitchens of restaurants. Their primary responsibility is to maintain work areas and equipment in a clean and orderly fashion by performing such tasks as mopping floors, removing trash, washing pots and pans, transferring supplies and equipment, and washing and peeling vegetables.

(31) "*Laborers, Common*" perform routine tasks, upon instructions and according to set routine, in an industrial, construction or manufacturing environment such as loading and moving equipment and supplies, cleaning work areas, and distributing tools.

(32) "*Laborers, Farm*" plant, cultivate, and harvest farm products, following the instructions of supervisors, often working as members of a team. Their typical tasks are watering and feeding

livestock, picking fruit and vegetables, and cleaning storage areas and equipment.

(33) "*Laborers, Mine*" perform routine tasks in underground or surface mines, pits, or quarries, or at tipples, mills, or preparation plants such as cleaning work areas, shoveling coal onto conveyors, pushing mine cars from working faces to haulage roads, and loading or sorting material onto wheelbarrows.

(34) "*Loopers and Toppers*" (i) tend machines that shear nap, loose threads, and knots from cloth surfaces to give uniform finish and texture, (ii) operate looping machines to close openings in the toes of seamless hose or join knitted garment parts, (iii) loop stitches or ribbed garment parts on the points of transfer bars to facilitate the transfer of garment parts to the needles of knitting machines.

(35) "*Material Handlers*" load, unload, and convey materials within or near plants, yards, or worksites under specific instructions.

(36) "*Nurses' Aides and Orderlies*" assist in the care of hospital patients by performing such activities as bathing, dressing and undressing patients and giving alcohol rubs, serving and collecting food trays, cleaning and shaving hair from the skin areas of operative cases, lifting patients onto and from beds, transporting patients to treatment units, changing bed linens, running errands, and directing visitors.

(37) "*Packers, Markers, Bottlers, and Related*" pack products into containers, such as cartons or crates, mark identifying information on articles, insure that filled bottles are properly sealed and marked, often working in teams on or at end of assembly lines.

(38) "*Porters*" (i) carry baggage by hand or handtruck for airline, railroad or bus passengers, and perform related personal services in and around public transportation environments.

(ii) Keep building premises, working areas in production departments of industrial organizations, or similar sites in clean and orderly condition.

(39) "*Receptionists*" receive clients or customers coming into establishments, ascertain their wants, and direct them accordingly; perform such activities as arranging appointments, directing callers to their destinations, recording names, times, nature of business and persons seen and answering phones.

(40) "*Sailors and Deck Hands*" stand deck watches and perform a variety of tasks to preserve painted surfaces of ships and to maintain lines, running gear, and cargo handling gear in safe operating condition; perform such tasks as mopping decks, chipping rust,

painting chipped areas, and splicing rope.

(41) "*Sales Clerks, General*" receive payment for merchandise in retail establishments, wrap or bag merchandise, and keep shelves stocked.

(42) "*Sewing Machine Operators and Hand-Stitchers*" (i) operate single- or multiple-needle sewing machines to join parts in the manufacture of such products as awnings, carpets, and gloves; specialize in one type of sewing machine limited to joining operations; (ii) join and reinforce parts of articles, such as garments and curtains, sew button-holes and attach fasteners to such articles, or sew decorative trimmings on such articles, using needles and threads.

(43) "*Stock Room and Warehouse Workers*" receive, store, ship, and distribute materials, tools, equipment, and products within establishments as directed by others.

(44) "*Streetcar and Bus Conductors*" collect fares or tickets from passengers, issue transfers, open and close doors, announce stops, answer questions, and signal operators to start or stop.

(45) "*Telephone Operators*" operate telephone switchboards to relay incoming and internal calls to phones in an establishment, and make connections with external lines for outgoing calls; often take messages, supply information and keep records of calls and charges; often are involved primarily in establishing, or aiding telephone users in establishing, local or long distance telephone connections.

(46) "*Truck Drivers and Tractor Drivers*" (i) drive trucks to transport materials, merchandise, equipment or people to and from specified destinations, such as plants, railroad stations, and offices. (ii) Drive tractors to move materials, draw implements, pull out objects imbedded in the ground, or pull cables of winches to raise, lower, or load heavy materials or equipment.

(47) "*Typists, Lesser Skilled*" type straight-copy material, such as letters, reports, stencils, and addresses, from drafts or corrected copies. They are not required to prepare materials involving the understanding of complicated technical terminology, the arrangement and setting of complex tabular detail or similar items. Their typing speed in English does not exceed 52 words per minute on a manual typewriter and/or 60 words per minute on an electric typewriter and their error rate is 12 or more errors per 5 minute typing period on representative business correspondence.

(48) "*Ushers (Recreation and Amusement)*" assist patrons at entertainment events to find seats.

search for lost articles, and locate facilities.

(49) "Yard Workers" maintain the grounds of private residences in good order by performing such tasks as mowing and watering lawns, planting flowers and shrubs, and repairing and painting fences. They work on the instructions of private employers.

(c) *Requests for waivers from Schedule B.* Any employer who desires a labor certification involving a *Schedule B* occupation may request such a waiver by submitting a written request along with the *Application for Alien Employment Certification* form at the appropriate local employment service office pursuant to § 656.23.

(d) The Administrator may revise *Schedule B* from time to time on the Administrator's own initiative, upon the request of a Regional Administrator, Employment and Training Administration, or upon the written request of any other person which sets forth reasonable grounds therefor. Such requests should be mailed to the Administrator, United States Employment Service, Room 8000, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213.

### Subpart C—Labor Certification Process

#### § 656.20 General filing instructions.

(a) A request for a labor certification on behalf of any alien who is required by the Act to become a beneficiary of a labor certification in order to obtain permanent resident status in the United States may be filed as follows:

(1) Except as provided in paragraphs (a)(2) through (4) of this section, an application for a labor certification shall be filed pursuant to this section and § 656.21.

(2) An employer seeking a labor certification for an occupation designated for special handling shall apply for a labor certification pursuant to this section and § 656.21a.

(3) An alien seeking labor certification for an occupation listed on *Schedule A* may apply for a labor certification pursuant to this section and § 656.22.

(4) An employer seeking a labor certification for an occupation listed on *Schedule B* shall apply for a waiver and a labor certification pursuant to this section and §§ 656.21 and 656.23.

(b)(1) Aliens and employers may have agents represent them throughout the labor certification process. If an alien and/or an employer intends to be represented by an agent, the alien and/or the employer shall sign the statement set forth on the *Application for Alien Employment Certification* form: That the

agent is representing the alien and/or employer and that the alien and/or employer takes full responsibility for the accuracy of any representations made by the agent.

(2) Aliens and employers may have attorneys represent them. Each attorney shall file a notice of appearance on Immigration and Naturalization Service (INS) Form G-28, naming the attorney's client or clients. Whenever, under this Part, any notice or other document is required to be sent to an employer or alien, the document shall be sent to their attorney or attorneys who have filed notices of appearance on INS Form G-28, if they have such an attorney or attorneys.

(3)(i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for the alien participate in interviewing or considering U.S. workers for the job offered the alien. As the beneficiary of a labor certification application, the alien cannot represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative as described in paragraph (b)(3)(ii) of this section.

(ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien shall be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien, but which do not involve labor certifications.

(4) No person under suspension or disbarment from practice before the United States Department of Justice's Board of Immigration Appeals pursuant to 8 CFR 292.3 shall be permitted to act as an agent, representative, or attorney for an employer and/or alien under this Part.

(c) Job offers filed on behalf of aliens on the *Application for Alien Employment Certification* form must clearly show that:

(1) The employer has enough funds available to pay the wage or salary offered the alien;

(2) The wage offered equals or exceeds the prevailing wage determined pursuant to § 656.40, and the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work;

(3) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis;

(4) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

(5) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(6) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or

(ii) At issue in a labor dispute involving a work stoppage;

(7) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law; and

(8) The job opportunity has been and is clearly open to any qualified U.S. worker.

(9) The conditions of employment listed in paragraphs (c) (1) through (8) of this section shall be sworn (or affirmed) to, under penalty of perjury pursuant to 28 U.S.C. 1746, on the *Application for Alien Employment Certification* form.

(d) If the application involves labor certification as a physician (or surgeon) (except a physician (or surgeon) of international renown), the labor certification application shall include the following documentation:

(1)(i) Documentation which shows clearly that the alien has passed Parts I and II of the National Board of Medical Examiners Examination (NBME), or the Visa Qualifying Examination (VQE) offered by the Educational Commission for Foreign Medical Graduates (ECFMG); or

(ii) Documentation which shows clearly that:

(A) The alien was on January 9, 1977, a doctor of medicine fully and permanently licensed to practice medicine in a State within the United States;

(B) The alien held on January 9, 1977, a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties; and

(C) The alien was on January 9, 1977, practicing medicine in a State within the United States; or

(iii) The alien is a graduate of a school of medicine accredited by a body or bodies approved for the purpose by the Secretary of Education or that Secretary's designee (regardless of whether such school of medicine is in the United States).

(e) Whenever any document is submitted to a State or Federal agency pursuant to this Part, the document either shall be in the English language or shall be accompanied by a written translation into the English language, certified by the translator as to the accuracy of the translation and his/her competency to translate.

(f) The forms required under this Part for applications for labor certification are available at U.S. Consular offices abroad, at INS offices in the United States, and at local offices of the State, job service agencies. The forms will contain instructions on how to comply with the documentation requirements for applying for a labor certification under this Part.

#### § 656.21 Basic labor certification process:

(a) Except as otherwise provided by §§ 656.21a and 656.22, an employer who desires to apply for a labor certification on behalf of an alien shall file, signed by hand and in duplicate, a Department of Labor *Application for Alien Employment Certification* form and any attachments required by this Part with the local Job Service office serving the area where the alien proposes to be employed. The employer shall set forth on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(1) A statement of the qualifications of the alien, signed by the alien;

(2) A description of the job offer for the alien employment, including the items required by paragraph (b) of this section; and

(3) If the application involves a job offer as a live-in household domestic service worker:

(i) A statement describing the household living accommodations;

(ii) Two copies of the employment contract, each signed and dated by both the employer and the alien (not by their agents). The contract shall clearly state:

(A) The wages to be paid on an hourly and weekly basis;

(B) Total hours of employment per week, and exact hours of daily employment;

(C) That the alien is free to leave the employer's premises during all non-work hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(D) That the alien will reside on the employer's premises;

(E) Complete details of the duties to be performed by the alien;

(F) The total amount of any money to be advanced by the employer with details of specific items, and the terms

of repayment by the alien of any such advance by the employer;

(G) That in no event shall the alien be required to give more than two weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least two weeks' notice before terminating employment;

(H) That a duplicate contract has been furnished to the alien;

(I) That a private room and board will be provided at no cost to the worker; and

(J) Any other agreement or conditions not specified on the *Application for Alien Employment Certification* form; and

(iii)(A) Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week or month. The total paid experience must be equal to one full year's employment on a full-time basis. For example, two year's experience working half-days is the equivalent of one year's full time experience. Time spent in a household domestic service training course cannot be included in the required one year of paid experience.

(B) Each statement must contain the name and address of the person who signed it and show the date on which the statement was signed. A statement not in the English language shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation, and as to the translator's competency to translate.

(b) Except for labor certification applications involving occupations designated for special handling (see § 656.21a) and *Schedule A* occupations (see §§ 656.10 and 656.22), the employer may submit, as a part of every labor certification application, on the *Application for Alien Employment Certification* form or in attachments, as appropriate, the following clear documentation:

(1) If the employer has attempted to recruit U.S. workers prior to filing the application for certification, the employer shall document the employer's reasonable good faith efforts to recruit U.S. workers without success through the Job Service System and/or through other labor referral and recruitment sources normal to the occupation;

(i) this documentation shall include documentation of the employer's

recruitment efforts for the job opportunity which shall:

(A) List the sources the employer may have used for recruitment, including, but not limited to, advertising; public and/or private employment agencies; colleges or universities; vocational, trade, or technical schools; labor unions; and/or development or promotion from within the employer's organization;

(B) Identify each recruitment source by name;

(C) Give the number of U.S. workers responding to the employer's recruitment;

(D) Give the number of interviews conducted with U.S. workers;

(E) Specify the lawful job-related reasons for not hiring each U.S. worker interviewed; and

(F) Specify the wages and working conditions offered to the U.S. workers; and

(ii) If the employer advertised the job opportunity prior to filing the application for certification, the employer shall include also a copy of at least one such advertisement.

(2) The employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements:

(i) The job opportunity's requirements, unless adequately documented as arising from business necessity:

(A) Shall be those normally required for the job in the United States;

(B) Shall be those defined for the job in the *Dictionary of Occupational Titles (D.O.T.)* including those for subclasses of jobs;

(C) Shall not include requirements for a language other than English.

(ii) If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and or the combination job opportunity is based on a business necessity.

(iii) If the job opportunity involves a requirement that the worker live on the employer's premises, the employer shall document adequately that the requirement is a business necessity.

(iv) If the job opportunity has been or is being described with an employer preference, the employer preference shall be deemed to be a job requirement for purposes of this paragraph (b)(2).

(3) Except for job opportunities for private households, the employer shall document that it has posted notices of the job opportunity at its place of business:

(i) Notices of the job opportunity posted by the employer shall contain the information required for advertisements by paragraph (g)(3) through (g)(8) of this section, except that they shall direct applicants to report to the employer, not the local employment service office;

(ii) Notices of the job opportunity shall be posted by the employer for at least 10 consecutive business days; shall be clearly visible and unobstructed while posted; and shall be posted in conspicuous places, where the employer's U.S. workers readily can read the posted notice on the way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(4) The employer shall document that its other efforts to locate and employ U.S. workers for the job opportunity, such as recruitment efforts by means of private employment agencies, labor unions, advertisements placed with radio or TV stations, recruitment at trade schools, colleges, and universities or attempts to fill the job opportunity by development or promotion from among its present employees, have been and continue to be unsuccessful. Such efforts may be required after the filing of an application if appropriate to the occupation.

(5) If unions are customarily used as a recruitment source in the area or industry, the employer shall document that they were unable to refer U.S. workers.

(6) The employer shall document that its requirements for the job opportunity, as described, represent the employer's actual minimum requirements for the job opportunity, and the employer has not hired workers with less training or experience for jobs similar to that involved in the job opportunity or that it is not feasible to hire workers with less training or experience than that required by the employer's job offer.

(7) If U.S. workers have applied for the job opportunity, the employer shall document that they were rejected solely for lawful job-related reasons.

(c) The local job service office shall determine if the application is for a labor certification involving *Schedule A*. If the application is for a *Schedule A* labor certification, the local job service office shall advise the employer that the forms must be filed with an INS or Consular Office pursuant to § 656.22, and shall explain that the Administrator has determined that U.S. workers in the occupation are unavailable throughout

the United States (unless a geographic limitation is applicable) and that the employment of the alien in the occupation will not adversely affect U.S. workers similarly employed.

(d) The local office shall date stamp the application (see § 656.30 for the significance of this date), and shall make sure that the *Application for Alien Employment Certification* form is complete. If it is not complete the local office shall return it to the employer and shall advise the employer to refile it when it is completed.

(e) The local Job Service office shall calculate, to the extent of its expertise using wage information available to it, the prevailing wage for the job opportunity pursuant to § 656.40 and shall put its finding into writing. If the local office finds that the rate of wages offered is below the prevailing wage, it shall advise the employer in writing to increase the amount offered. If the employer refuses to do so, the local office shall advise the employer that the refusal is a ground for denial of the application by the Certifying Officer; and that if the denial becomes final, the application will have to be refiled at the local office as a new application.

(f) The local Job Service office, using the information on job offer portion of the *Application for Alien Employment Certification* form, shall prepare and process a Job Service job order:

(1) If the job offer is acceptable, the local office, in cooperation with the employer, then shall attempt to recruit United States workers for the job opportunity for a period of thirty days, by placing the job order into the regular Job Service recruitment system.

(2) If the employer's job offer is discriminatory or otherwise unacceptable as a job order under the Job Service (JS) Regulations (as defined at § 651.7 of this chapter), the local office, as appropriate, either shall contact the employer to try to remedy the defect or shall return the *Application for Alien Employment Certification* form to the employer with instructions on how to remedy the defect. If the employer refuses to remedy the defect, the local office shall advise the employer that it is unable to recruit U.S. workers for the job opportunity and that the application will be transmitted to the Certifying Officer for determination.

(g) In conjunction with the recruitment efforts under paragraph (f) of this section, the employer shall place an advertisement for the job opportunity in a newspaper of general circulation or in a professional, trade, or ethnic publication, whichever is appropriate to the occupation and most likely to bring responses from able, willing, qualified,

and available U.S. workers. The employer may request the local office's assistance in drafting the text. The advertisement shall:

(1) Direct applicants to report or send resumes, as appropriate for the occupation to the local Job Service office for referral to the employer;

(2) Include a local office identification number and the complete address or telephone number of the local office, but shall not identify the employer;

(3) Describe the job opportunity with particularity;

(4) State the rate of pay, which shall not be below the prevailing wage for the occupation, as calculated pursuant to § 656.40;

(5) Offer prevailing working conditions;

(6) State the employer's minimum job requirements;

(7) Offer training if the job opportunity is the type for which employers normally provide training;

(8) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien; and

(9) If published in a newspaper of general circulation, be published for at least three consecutive days; or, if published in a professional, trade, or ethnic publication, be published in the next published edition.

(h) The employer shall supply the local office with required documentation or requested information in a timely manner. If documentation or requested information is not received within 45 calendar days of the date of the request the local office shall return the *Application for Alien Employment Certification* form, and any supporting documents submitted by the employer and/or the alien, to the employer to be filed as a new application.

(i) The Certifying Officer may reduce the employer's recruitment efforts required by paragraphs (b)(3), (f), and/or (g) of this section if the employer satisfactorily documents that the employer has adequately tested the labor market with no success at least at the prevailing wage and working conditions; but no such reduction may be granted for job offers involving occupations listed on *Schedule B*.

(1) To request a reduction of recruitment efforts pursuant to this paragraph (i), the employer shall file a written request along with the *Application for Alien Employment Certification* form at the appropriate local Job Service office. The request shall contain:

(i) Documentary evidence that within the immediately preceding six months the employer has made good faith

efforts to recruit U.S. workers for the job opportunity, at least at the prevailing wage and working conditions, through sources normal to the occupation; and

(ii) Any other information which the employer believes will support the contention that further recruitment will be unsuccessful.

(2) Upon receipt of a written request for a reduction in recruitment efforts pursuant to this paragraph (i), the local office shall date stamp the request and the application form and shall review and process the application pursuant to this § 656.21, but without regard to paragraphs (b)(3), (f), and (g), and (j)(1) of this section (i.e., the internal notice, advertisement, and job order; and the wait for results).

(3) After reviewing and processing the application pursuant to paragraph (i)(2) of this section, the local office (and the State Job Service office) shall process the application pursuant to paragraphs (j)(2) and (k) of this section.

(4) The Certifying Officer shall review the documentation submitted by the employer and the comments of the local office. The Certifying Officer shall notify the employer and the local (or State employment service) office of the Certifying Officer's decision on the request to reduce partially or completely the recruitment efforts required of the employer.

(5) Unless the Certifying Officer decides to reduce completely the recruitment efforts required of the employer, the Certifying Officer shall return the application to the local (or State) office so that the employer might recruit workers to the extent required in the Certifying Officer's decision, and in the manner required by paragraphs (b)(3), (f), (g), and (j)(1) of this section (i.e., by internal notice, employment service job order, and advertising; and a wait for results). If the Certifying Officer decides to reduce completely the recruitment efforts required of the employer, the Certifying Officer then shall determine, pursuant to § 656.24 whether to grant or to deny the application.

(j)(1) The employer shall provide to the local office a written report of the results of all the employer's post-application recruitment efforts during the 30-day recruitment period; except that for job opportunities advertised in professional and trade, or ethnic publications, the written report shall be provided *no less than* 30 calendar days from the date of the publication of the employer's advertisement. The report of recruitment results shall:

(i) Identify each recruitment source by name;

(ii) State the number of U.S. workers responding to the employer's recruitment;

(iii) State the names, addresses, and provide resumes (if any) of the U.S. workers interviewed for the job opportunity and job title of the person who interviewed each worker; and

(iv) Explain, with specificity, the lawful job-related reasons for not hiring each U.S. worker interviewed.

(2) If, after the required recruitment period, the recruitment is not successful, the local office shall send the application, its prevailing wage finding, copies of all documents in the particular application file, and any additional appropriate information (such as local labor market data), to the Job Service agency's State office or, if authorized, to the regional Certifying Officer.

(k) A Job Service agency's State office which receives an application pursuant to paragraph (i)(2) of this section may add appropriate data or comments, and shall transmit the application promptly to the appropriate Certifying Officer.

**§ 656.21a Applications for labor certifications for occupations designated for special handling.**

(a) An employer shall apply for a labor certification to employ an alien as a college or university teacher or an alien represented to be of exceptional ability in the performing arts by filing, in duplicate, an *Application for Alien Employment Certification* form, and any attachments required by this Part, with the local Job Service office serving the area where the alien proposes to be employed.

(1) The employer shall set forth the following on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(i) The employer shall submit a statement of the qualifications of the alien, signed by the alien.

(ii) The employer shall submit a full description of the job offer for the alien employment.

(iii) If the application involves a job offer as a college or university teacher, the employer shall submit documentation to show clearly that the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the alien was found to be more qualified than any of the United States workers who applied for the job. For purposes of this paragraph (a)(1)(iii), evidence of the "competitive recruitment and selection process" shall include:

(A) A statement, signed by an official who has actual hiring authority, from the employer outlining in detail the

complete recruitment procedure undertaken; and which shall set forth:

(1) The total number of applicants for the job opportunity;

(2) The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

(3) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process;

(B) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(C) Evidence of all other recruitment sources utilized; and

(D) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

(E) Applications for permanent alien labor certification which are filed after December 31, 1981, for job opportunities as college and university teachers, shall be filed within 18 months after a selection is made pursuant to a competitive recruitment and selection process.

(iv) If the application is for an alien represented to have exceptional ability in the performing arts, the employer shall document that the alien's work experience during the past twelve months did require, and the alien's intended work in the United States will require, exceptional ability; and shall submit:

(A) Documentation to show this, exceptional ability, such as:

(1) Documents attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally recognized prizes or awards for excellence;

(2) Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date, and author of such material shall be indicated);

(3) Documentary evidence of earnings commensurate with the claimed level of ability;

(4) Playbills and starbillings;

(5) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the alien has appeared, or is scheduled to appear; and/or

(6) Documents attesting to the outstanding reputation of repertory companies, ballet troupes, orchestras, or

other organizations in which or with which the alien has performed during the past year in a leading or starring capacity; and

(B) A copy of at least one advertisement placed in a national publication appropriate to the occupation (and a statement of the results of that recruitment) which shall:

(1) Identify the employer's name, address, and the location of the employment, if other than the employer's location;

(2) Describe the job opportunity with particularity;

(3) State the rate of pay, which shall not be below the prevailing wage for the occupation, as calculated pursuant to § 656.40.

(4) Offer prevailing working conditions;

(5) State the employer's minimum job requirements;

(6) Offer training if the job opportunity is the type for which employers normally provide training; and

(7) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien; and

(C) Documentation that unions, if customarily used as a recruitment source in the area or industry, were unable to refer equally qualified U.S. workers.

(2) The local Job Service office, upon receipt of an application for a college or university teacher or an alien represented to have exceptional ability in the performing arts, shall follow the application processing and prevailing wage determination procedures set forth in §§ 656.21 (d) and (e), and shall transmit a file containing the application, the local office's prevailing wage findings, and any other information it determines is appropriate, to the State Job Service agency office, or if authorized by the State office, to the appropriate Certifying Officer.

(3) If the local Job Service office transmits the file described in paragraph (a)(3) of this section to the State office, the State office shall follow the procedures set forth at § 656.21(k).

(b)(1) An employer shall apply for a labor certification to employ an alien (who has been employed legally as a nonimmigrant shepherd in the United States for at least 33 of the preceding 36 months) as a shepherd by filing an *Application for Alien Employment Certification* form, and any attachments required by this paragraph (b), directly with a Department of State Consular Officer or with a District Office of INS, not with a local or State office of a State Job Service agency, and not with an

office of DOL. The documentation for such an application shall include:

(i) A completed *Application for Alien Employment Certification* form, including the Job Offer for Alien Employment, and the Statement of Qualification of Alien; and

(ii) A signed letter or letters from all U.S. employers who have employed the alien as a shepherd during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a shepherd, for at least 33 of the immediately preceding 36 months.

(2) An Immigration Officer, or a Consular Officer, shall review the application and the letters attesting to the alien's previous employment as a shepherd in the United States, and shall determine whether or not the alien and the employer(s) have met the requirements of this paragraph (b).

(i) The determination of the Immigration or Consular Officer pursuant to this paragraph (b) shall be conclusive and final. The employer(s) and the alien, therefore, may not make use of the review procedures set forth at §§ 656.26 and 656.27.

(ii) If the alien and the employer(s) have met the requirements of this paragraph (b), the Immigration or Consular Officer shall indicate on the *Application for Alien Employment Certification* form the occupation, the immigration or consular office which made the determination pursuant to this paragraph (b), and the date of the determination (see § 656.40 for the significance of this date). The Immigration or Consular Officer then shall forward promptly to the Administrator copies of the *Application for Alien Employment Certification* form, without the attachments.

(c) If an application for a college or university teacher, an alien represented to be of exceptional ability in the performing arts, or a shepherd does not meet the requirements for an occupation designated for special handling under this § 656.21a, the application may be filed pursuant to § 656.21.

#### § 656.22 Applications for labor certifications for Schedule A occupations.

(a) An alien or agent of an alien shall apply for a labor certification for a Schedule A occupation by filing an *Application for Alien Employment Certification* form in duplicate with a U.S. Consular office abroad or with an INS office in the United States, not with the Department of Labor or a State job service local office.

(b) An alien whose occupation is on Schedule A and who is seeking a third or sixth preference, as described in § 656.2(d)(1) (ii) and (iii), shall show evidence of prearranged employment by having an employer complete, and sign, the job offer description portion of the *Application for Alien Employment Certification* form. There is, however, no need for the employer to provide the other documentation required under this Part for non-Schedule A occupations.

(c) Aliens seeking labor certifications under Group I of Schedule A shall file as part of their labor certification applications documentary evidence of the following:

(1) Aliens seeking Schedule A labor certifications as physical therapists (§ 656.10(a)(1)) shall file as part of their labor certification applications a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this § 656.22, and not pursuant to §§ 656.21, 656.21a, or § 656.23.

(2) Aliens seeking Schedule A labor certifications as physicians (or surgeons) (§ 656.10(a)(2)) shall file, as part of their labor certification applications, the following:

(i) Documentation required by § 656.20(d); and

(ii) A statement signed by the appropriate Regional Health Administrator of the Department of Health and Human Services (HHS) stating:

(A) That the job opportunity is located within a designated Health Manpower Shortage Area for the alien's medical (or surgical) specialty; or

(B) That the job opportunity is located within an area which has an insufficient number of physicians (or surgeons) in the alien's medical specialty.

(iii) Aliens seeking Schedule A labor certification as physicians (or surgeons), shall request the applicable shortage statements described in paragraph (c)(2)(ii) of this section, by making a written request to the appropriate Regional Health Administrator of HHS (Addresses of appropriate HHS Regional Health Administrators are listed at § 656.61). The written request shall include:

(A) The alien's name;

(B) The alien's medical (or surgical) specialty;

(C) The complete name and address of the alien's intended employer; and

(D) The names of the county and State where the job opportunity is located.

(3) Aliens seeking *Schedule A* labor certifications as professional nurses (§ 656.10(a)(3)) shall file as part of their labor certification applications, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or that the alien holds a full and unrestricted license to practice professional nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this § 656.22(a)(3), and not pursuant to §§ 656.21, 656.21a, or § 656.23.

(d) Aliens seeking labor certifications under Group II of *Schedule A* shall file as part of their labor certification applications documentary evidence testifying to the current widespread acclaim and international recognition accorded them by recognized experts in their field; and documentation showing that their work in that field during the past year did, and their intended work in the United States will, require exceptional ability. In addition, the aliens must file, as part of their labor certification applications, documentation from at least two of the following seven groups:

(1) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

(2) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their disciplines or fields;

(3) Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

(5) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

(6) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional

journals with an international circulation; and/or

(7) Evidence of the display of alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(e) Aliens seeking a labor certification under Group III of *Schedule A* shall file as part of their labor certification applications documentary evidence showing that they have been primarily engaged in the religious occupation or in working for the nonprofit religious organization for the previous two years, and they will be principally engaged (more than 50 percent of working time) in the United States in performing the religious occupation or working for the non-profit religious organization.

(f)(1) Aliens seeking labor certifications under Group IV of *Schedule A* shall meet, at the time of filing the application, the eligibility requirements of the Immigration and Nationality Act for an L-1 nonimmigrant visa classification as a manager or an executive. See 8 U.S.C. 1101(a)(15)(L); and 8 CFR 214.2(1). However, persons who are eligible for an L-1 visa on the basis of specialized knowledge, but not managerial or executive experience, do not meet the requirements for Group IV of *Schedule A*. The actual filing of an L-1 visa petition is not required.

(2) Aliens seeking labor certifications under Group IV of *Schedule A* shall file as part of their labor certification applications a written verification of employment statement, signed by an authorized officer of the international corporation or organization which will employ the alien in the United States. The written verification of employment statement shall set forth:

(i) The dates of the alien's employment with the international corporation or organization;

(ii) The name(s) of the component(s) of that employer for which the alien has been and/or is being employed, inside and outside the United States;

(iii) Unless such information has been entered on the *Application for Alien Employment Certification* form, a description of the positions held by the alien within the international corporation or organization, and the dates the alien held each position; and

(iv) The dates the international corporation or organization was established and has been doing business in the United States prior to the submission of the application. The term "doing business" is defined in paragraph (d)(3) of *Schedule A* (§ 656.10(d)(3)).

(g) If the alien is requesting a preference described at § 656.2(d) and if the alien has filed an *Application for Alien Employment Certification* form at

a Consular office, the Consular Officer shall review the form as appropriate and shall then forward the application to the INS in accordance with the procedures of the Department of State and the INS.

(h) An Immigration Officer or Consular Officer (except as provided in paragraph (g) of this section), shall determine whether the alien has met the applicable requirements of this section and of *Schedule A* (§ 656.10), shall review the application and shall determine whether or not the alien is qualified for and intends to pursue the *Schedule A* occupation.

(1) The Immigration or Consular Officer may request an advisory opinion as to whether the alien is qualified for the *Schedule A* occupation from the Division of Labor Certifications, United States Employment Service, 601 D Street, N.W., Washington, D.C. 20213.

(2) The *Schedule A* determination of the INS or Department of State shall be conclusive and final. The alien, therefore, may not make use of the review procedures set forth at § 656.26.

(i) If the alien qualifies for the occupation, the Immigration or Consular Officer shall indicate the occupation on the *Application for Alien Employment Certification* form. The Consular or Immigration Officer shall then promptly forward a copy of the *Application for Alien Employment Certification* form, without attachments, to the Administrator, indicating thereon the occupation, the Immigration or Consular office which made the *Schedule A* determination and the date of the determination (see § 656.30 for the significance of this date).

**§ 656.23 Applications for labor certifications for *Schedule B* occupations; requests for waivers from *Schedule B***

(a) Occupations listed on *Schedule B* require little or no education or experience, and employees can be trained quickly to perform them satisfactorily. In addition, many of these occupations are entry jobs in their industries which offer opportunities for high school graduates and other U.S. workers who otherwise would have difficulty finding their first employment and gaining work experience. The Administrator has determined that there is generally a nationwide surplus of U.S. workers who are available for and who can qualify for *Schedule B* job opportunities which offer prevailing wages and working conditions.

(b) Some of the occupations on *Schedule B* are also often characterized by relatively low wages, long and irregular working hours, and poor working conditions which lead to excessive turnover. In most instances,

the Administrator has determined through past experience that the employment of aliens has failed to resolve such employment problems since the aliens, like U.S. workers, often quickly move to other jobs. This results in an adverse effect upon the wages and working conditions of U.S. workers who are employed in occupations which require similar education and experience.

(c) Therefore, the Administrator has determined that for occupations listed on *Schedule B* U.S. workers are generally available throughout the United States, and that the employment of aliens in *Schedule B* occupations will generally adversely affect the wages and working conditions of U.S. workers similarly employed.

(d) An individual employer or the employer's attorney or agent may petition the regional Certifying Officer for the geographic area in which the job opportunity is located for a *Schedule B* waiver on behalf of an alien with respect to a specific job opportunity. The petition shall be submitted to the local Job Service office serving the geographic area of intended employment. The petition shall include a written request for a *Schedule B* waiver, a completed *Application for Alien Employment Certification* form, and the following documentation:

(1) The documentation required by §§ 656.20(b), (c), (e), and (f) and 656.21; and

(2) Documentary verification, which the employer has obtained from the local job service office which contains the job opportunity in its administrative area, that the employer has had a job order for the same job on file with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

(e) The regional Certifying Officer, using the procedures and standards set forth in § 656.24, shall either grant or deny the waiver and shall inform the employer of the determination in writing.

(f) If the waiver is granted, the regional Certifying Officer shall issue a labor certification.

(g) If the waiver is denied, the regional Certifying Officer shall follow the procedures set forth at paragraphs (c) through (f) of § 656.25.

#### § 656.24 Labor certification determinations.

(a) If the labor certification presents a special or unique problem, the regional Certifying Officer may refer the application to the national Certifying

Officer for determination. If the Administrator has directed that certain types of applications or specific applications be handled in the USES national office, the regional Certifying Officer shall refer such applications to the national Certifying Officer.

(b) The regional or national Certifying Officer, as appropriate, shall make a determination either to grant the labor certification or to issue a *Notice of Findings* on the basis of whether or not:

(1) The employer has met the requirements of this Part. However, where the Certifying Officer determines that the employer has committed harmless error, the Certifying Officer nevertheless may grant the labor certification, *Provided*, That the labor market has been tested sufficiently to warrant a finding of unavailability of and lack of adverse effect on U.S. workers. Where the Certifying Officer makes such a determination, the Certifying Officer shall document it in the application file.

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity according to the following standards:

(i) The Certifying Officer, in judging whether a U.S. worker is willing to take the job opportunity, shall look at the documented results of the employer's and the job-service office's recruitment efforts, and shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers.

(ii) The Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed, except that, if the application involves a job opportunity as a college or university teacher, or for an alien whom the Certifying Officer determines to be currently of exceptional ability in the performing arts, the U.S. worker must be at least as qualified as the alien.

(iii) In determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as are appropriate and shall look to the nationwide system of public employment offices (the "Job Service") as one source.

(iv) In determining whether a U.S. worker is available at the place of the job opportunity, the Certifying Officer shall consider U.S. workers living or working in the area of intended

employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expenses, or, if the prevailing practice among employers employing workers in the occupation in the area of intended employment is to pay such relocation expenses, at the employer's expense.

(3) The employment of the alien will have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer shall consider such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours, in the occupation.

#### § 656.25 Procedures following a labor certification determination.

(a) After making a labor certification determination, the Certifying Officer shall notify the employer in writing of the determination and shall send a copy of the notice to the alien.

(b) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.28.

(c) If a labor certification is not granted, the Certifying Officer shall issue to the employer, with a copy to the alien, a *Notice of Findings*, as defined in § 656.50. The *Notice of Findings* shall:

(1) Contain the date on which the *Notice of Findings* was issued;

(2) State the specific bases on which the decision to issue the *Notice of Findings* was made;

(3) Specify a date, 35 calendar days from the date of the *Notice of Findings*, by which documentary evidence and/or written argument may be submitted to cure the defects or to otherwise rebut the bases of the determination, and advise that if the rebuttal evidence and/or argument have not been mailed by certified mail by the date specified:

(i) The *Notice of Findings* shall automatically become the final decision of the Secretary denying the labor certification;

(ii) Failure to file a rebuttal in a timely manner shall constitute a refusal to exhaust available administrative remedies; and

(iii) The administrative-judicial review procedure provided in § 656.20 shall not be available; and

(4) Quote the rebuttal procedures set forth at paragraphs (d), (e), and (f) of this section.

(d) Written rebuttal arguments and evidence may be submitted:

(1) By the employer; and

(2) By the alien, but only if the employer also has submitted a rebuttal.

(e)(1) Documentary evidence and/or written arguments to rebut all of the bases of a *Notice of Findings*, which may include evidence that the defects noticed therein have been cured, shall be mailed by certified mail on or before the date specified in the *Notice of Findings* to the Certifying Officer who issued the *Notice of Findings*.

(2) Failure to file a rebuttal in a timely manner shall constitute a failure to exhaust available administrative appellate remedies.

(3) All findings in the *Notice of Findings* not rebutted shall be deemed admitted.

(f) If a rebuttal, as described above, is submitted on time, the Certifying Officer shall review that evidence in relation to the evidence in the file, and shall then either grant or deny the labor certification pursuant to the standards set forth in § 656.24(b).

(g) The Certifying Officer shall send a *Final Determination* form to the employer, and shall send a copy to the alien.

(1) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.23.

(2) If the labor certification is denied, the *Final Determination* form shall:

- (i) Contain the date of the determination;
- (ii) State the reasons for the determination;
- (iii) Quote the request for review procedures at § 656.26 (a) and (b); and
- (iv) Advise that, if a request for review is not made within the specified time, the denial shall become the final determination of the Secretary.

**§ 656.26 Administrative-judicial review of denials of labor certification.**

(a) If a labor certification is denied, a request for an administrative-judicial review of the denial may be made:

- (1) By the employer; and
- (2) By the alien, but only if the employer also requests such a review.

(b)(1) The request for review shall be in writing and shall be mailed by certified mail to the Certifying Officer who denied the application within 35 calendar days of the date of the determination, that is, by the date specified on the *Final Determination* form; shall clearly identify the particular labor certification determination from which review is sought; shall set forth the particular grounds for the request; and shall include all the documents which accompanied the *Final Determination* form.

(2) Failure to file a request for review in a timely manner shall constitute a failure to exhaust available administrative remedies.

(3) If the denial of labor certification involves an application for a job opportunity as a college or university teacher or an application on behalf of an alien represented to be of exceptional ability in the performing arts, the employer may designate the names and addresses of persons or organizations of specialized competence which the employer has asked to submit *amicus* briefs.

(4) The request for review, statements, briefs, and other submissions of the parties and *amicus curiae* shall contain only legal argument and only such evidence that was within the record upon which the denial of labor certification was based.

(c) Upon the receipt of a request for review, the Certifying Officer shall immediately assemble an indexed Appeal File:

(1) The Appeal File shall be in chronological order, shall have the index on top followed by the most recent document, and shall have numbered pages. The Appeal File shall contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The Certifying Officer shall send the Appeal File to the Chief Administrative Law Judge, Office of Administrative Law Judges, Suite 700—Vanguard Building, 1111 20th Street NW., Washington, D.C. 20036.

(3) In denials involving college and university teachers and aliens represented to be of exceptional ability in the performing arts, two additional copies of the Appeal File shall be sent to the Chief Administrative Law Judge.

(4) The Certifying Officer shall send a copy of the Appeal File to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Suite N2101—Frances Perkins Bldg., 200 Constitution Avenue NW., Washington, D.C. 20210.

(5) Unless the certification was denied by the national Certifying Officer, the Certifying Officer shall send a copy of the Appeal File to the Administrator.

(6) The Certifying Officer shall send copies of the index to the Appeal File to the employer and to the alien. The Certifying Officer shall afford the employer and the alien the opportunity to examine the complete Appeal File at the office of the Certifying Officer, for the purpose of satisfying the employer and the alien as to the contents. The employer and/or the alien may furnish

or suggest directly to the Administrative Law Judge the addition of any documentation which is not in the Appeal File, but which was submitted prior to the issuance of the *Final Determination* form. The employer and/or the alien shall submit such documentation in writing, and shall send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(d) An administrative Law Judge, designated by the Chief Administrative Law Judge, shall afford all parties, including the Solicitor, 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor shall be represented solely by attorneys within the Office of the Solicitor of Labor. In the cases of denials involving college and university teachers and aliens represented to be of exceptional ability in the performing arts, if the employer has designated a person or organization which the employer has asked to submit an *amicus* brief, the Administrative Law Judge shall afford the person or organization 21 days to submit an *amicus* brief. Briefs, statements, and *amicus* briefs submitted pursuant to this paragraph shall be deemed timely if either mailed or delivered to the Administrative Law Judge on or before the end of the 21-day period set forth in this paragraph; and shall be consistent with the requirements of paragraph (b)(4) of this section.

(e) The Administrative Law Judge shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review and any legal briefs submitted and shall:

- (1) Affirm the denial of the labor certification; or
- (2) Direct the Certifying Officer to grant the certification; or
- (3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or
- (4) Direct that a hearing be held on the case.

(f) The Administrative Law Judge shall notify the employer, the alien, the Certifying Officer, and the Solicitor of the determination, and shall return the record to the Certifying Officer unless the case has been set for hearing.

(g) If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration, make a new determination, and issue a new *Final Determination* form.

(h) If the case has been set for hearing, the Administrative Law Judge shall notify the employer, the alien, the Certifying Officer and the Solicitor:

(1) Of the date, time, and place of the hearing; and

(2) That the hearing may be rescheduled upon written request and for good cause shown.

(i) If a labor certification has been ordered granted, the Certifying Officer shall grant the certification and shall follow the document transmittal procedures set forth at § 656.28.

#### § 656.27 Hearings.

(a) If a hearing has been ordered by the Administrative Law Judge pursuant to § 656.26 (e)(4) of this Part, the Administrative Law Judge:

(1) May reschedule the hearing, as appropriate;

(2) Shall regulate the course of the hearing;

(3) Shall assure that all relevant issues are considered;

(4) Shall rule on the introduction of evidence and testimony;

(5) Shall rule on appropriate motions; and

(6) Shall take any other action, consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded and transcribed except to the extent the substance thereof is stipulated for the record.

(c) The Department of Labor shall be represented by the Solicitor of Labor.

(d) The parties shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(e) The Administrative Law Judge may elicit testimony from witnesses, but shall not act as advocate for any party.

(f) The Administrative Law Judge may receive and make part of the record documentary evidence offered by any party. Copies thereof shall be made available to the other interested parties by the party submitting the evidence.

(g) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(h) The hearing shall be conducted in accordance with sections 5-8 of the Administrative Procedures Act, 5 U.S.C. 553 *et seq.*

(i) Technical rules of evidence shall not apply, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied where

reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable in any hearing conducted under this part to the extent that the Administrative Law Judge concludes that their use would promote the efficient advancement of the hearing.

(k) When a public officer is a respondent in a hearing in the officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor shall be automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(l) The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law, but shall not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(m) The Administrative Law Judge may rule:

(1) That the case is improperly before the Administrative Law Judge, that is, that there is a lack of jurisdiction over the case;

(2) That the request for review has been withdrawn in writing;

(3) That reasonable cause exists to believe that the request for review has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question.

(n) The Administrative Law Judge shall prepare a written decision and order. The decision shall state its legal and/or factual bases. The Administrative Law Judge shall send a copy of the decision and order to the employer, the alien, the Certifying Officer, the Administrator, and the Solicitor. The Administrative Law Judge may order the labor certification granted, affirm the denial of the certification, or remand the case to the Certifying Officer for further fact-finding.

(o) Except when a case is remanded to the Certifying Officer for further fact-

finding, the decision of the Administrative Law Judge shall be the final decision of the Secretary of Labor.

#### § 656.27a Published decisions.

(a) From time to time, the Office of Administrative Law Judges shall designate decisions of an Administrative Law Judge (or previous decisions of Hearing Officers) under §§ 656.26 and/or 656.27 to be printed and published. The Office of Administrative Law Judges will arrange to make such decisions available for sale to the general public.

(b) The Administrator shall provide to all Certifying Officers copies of all decisions published pursuant to paragraph (a) of this section.

#### § 656.28 Document transmittal following the grant of a labor certification.

If a labor certification is granted, except for labor certifications for occupations listed on *Schedule A* (§ 656.10) and for employment as a shepherd pursuant to § 656.21a(b), the Certifying Officer shall:

(a) If the employer already has indicated in writing that it will file a petition for a preference described at § 656.2(d)(1), send the certified application containing the official labor certification stamp, supporting documents, and complete *Final Determination* form to the employer or, if appropriate, to the employer's agent. The *Final Determination* form shall indicate that the employer should submit all the documents to the appropriate INS office.

(b) If the employer has not indicated in writing whether or not it will, or that it will not, file a petition for a preference described at § 656.2(d)(1):

(1) If the alien is abroad and non-preference numbers are currently available, send the certified application containing the official labor certification stamp, supporting documents, and complete *Final Determination* form to the appropriate Consular office;

(2) If the alien is in the U.S. and preference or non-preference numbers are currently available, send the certified application containing the official labor certification stamp, supporting documentation, and complete *Final Determination* form to the employer, or, if appropriate, to the employer's agent. The *Final Determination* form shall indicate that the employer should submit all the documents to the appropriate INS office; and

(3) Whether the alien is abroad or in the U.S., if preference or non-preference numbers are not currently available, send the certified application containing

the official labor certification stamp, supporting documentation, and complete *Final Determination* form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all the documents with the appropriate INS office.

**§ 656.29 Filing of a new application after the denial of a labor certification.**

(a) A new application for labor certification by the same employer involving the same occupation may be filed at any time after the expiration of 6 months from the date of a denial of certification by the Certifying Officer, except that, if the certification was denied solely because the wage or salary offered was below the prevailing wage, the employer may reapply immediately pursuant to §§ 656.21, 656.21a, or 656.23, as appropriate.

(b) An alien who is denied a labor certification for a *Schedule A* occupation, except for employment as a physical therapist or as a professional nurse, may at any time have an employer file for a labor certification on the alien's behalf pursuant to § 656.21. Labor certifications for professional nurses and for physical therapists shall be considered only pursuant to §§ 656.10 and 656.22.

**§ 656.30 Validity of, and invalidation of labor certifications.**

(a) Except as provided in paragraph (d) of this section, a labor certification is valid indefinitely. Labor certifications for Household Domestic Service Workers and teachers which were granted under the previous regulations at 29 CFR Part 60 and which lapsed after one year, shall be deemed automatically revalidated on the effective date of this Part.

(b)(1) Labor certifications involving job offers shall be deemed validated as of the date of the local job service office date stamped the application; and

(2) Labor certifications for *Schedule A* occupations shall be deemed validated as of the date the applications were dated by the Immigration or Consular Officer.

(c)(1) A labor certification for a *Schedule A* occupation is valid only for the occupation set forth on the *Application for Alien Employment Certification* form and throughout the United States unless the certification contains a geographic limitation.

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the *Application for Alien Employment Certification* form.

(d) After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

(e) Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an employer or alien's agent, therefore, may petition an Immigration or Consular Officer to request a duplicate from a Certifying Officer.

**§ 656.31 Labor certification applications involving fraud or willful misrepresentation.**

(a) If possible fraud or willful misrepresentation involving a labor certification is discovered prior to a final labor certification determination, the Certifying Officer shall refer the matter to the INS for investigation, shall notify the employer in writing, and shall send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General. If 90 days pass without the filing of a criminal indictment or information, the Certifying Officer shall continue to process the application.

(b) If it is learned that an application is the subject of a criminal indictment or information filed in a Court, the processing of the application shall be halted until the judicial process is completed. The Certifying Officer shall notify the employer of this fact in writing and shall send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General.

(c) If a Court finds that there was no fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute, the Certifying Officer shall not deny the labor certification application on the grounds of fraud or willful misrepresentation. The

application, of course, may be denied for other reasons pursuant to this Part.

(d) If a Court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application shall be deemed invalidated, processing shall be terminated, a notice of the termination and the reason therefor shall be sent by the Certifying Officer to the employer, and a copy of the notification shall be sent by the Certifying Officer to the alien, and to the Department of Labor's Office of Inspector General.

**§ 656.32 Fees for services and documents.**

(a) No Department of Labor or State job service agency employee shall charge a fee in connection with the filing, determination, reconsideration, or review of applications for labor certification. Such employees, on request, shall advise applicants on the completion of applications and on procedures set forth in this Part without charge. No charge shall be made for the issuance or transmission of a labor certification.

(b) The Department of Labor's regulations under the Freedom of Information Act at 29 CFR Part 70 on the Examination and Copying of Labor Department Documents provide that fees may be charged for special searching and copying services. These fees shall be applicable to requests to the Department for copies of documents in the custody of the Department which were produced pursuant to this Part, except for official copies of labor certification documents.

**Subpart D—Determination of Prevailing Wage**

**§ 656.40 Determination of prevailing wage for labor certification purposes.**

(a) Whether the wage or salary stated in a labor certification application involving a job offer equals the prevailing wage as required by § 656.21(b)(3), shall be determined as follows:

(1) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a et seq., 29 CFR Part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 et seq., 29 CFR Part 4, the prevailing wage shall be at the rate required under the statutory determination. Certifying Officers shall request the assistance of the DOL Employment Standards Administration wage specialists if they

need assistance in making this determination.

(2) If the job opportunity is in an occupation which is not covered by a prevailing wage determined under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, the prevailing wage for labor certification purposes shall be:

(i) The average rate of wages, that is, the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages; or

(ii) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it shall be considered the "prevailing wage" for labor certification purposes.

(b) For purposes of this section, "similarly employed" shall mean "having substantially comparable jobs in the occupational category in the area of intended employment," except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" shall mean:

(1) "Having jobs requiring a substantially similar level of skills within the area of intended employment"; or

(2) If there are no substantially comparable jobs in the area of intended employment, "having substantially comparable jobs with employers outside of the area of intended employment."

(c) A prevailing wage determination for labor certification purposes made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

#### Subpart E—Definitions

§ 656.50 Definitions, for purposes of this Part, of terms used in this Part.

"Act" means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 et seq.

"Administrative Law Judge" means an official appointed pursuant to 5 U.S.C. 3105.

"Administrator" means the chief official of the United States Employment Service or the Administrator's designee.

"Agent" means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

"Application" means an *Application for Alien Employment Certification* form and any other documents submitted by an alien and/or employer (or their agents) in applying for a labor certification under this Part.

"Area of intended employment" means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

"Assistant Secretary" means the Assistant Secretary of Labor for Employment and Training, the chief official of the Employment and Training Administration.

"Attorney" means any person who is a member in good standing of the bar of the highest court of any State,

Possession, Territory, or Commonwealth of the United States, or the District of Columbia, and who is not under any order of any court or of the Board of Immigration Appeals suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

"Attorney General" means the chief official of the U.S. Department of Justice or the designee of the Attorney General.

"Certifying Officer" means a Department of Labor official who makes determinations about whether or not to grant applications for labor certifications:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A regional Certifying Officer designated by the Administrator makes such determinations for the Virgin Islands;

(3) A national Certifying Officer makes such determinations in the national office of the USES.

(4) The addresses of the regional Certifying Officers are set forth in § 656.60 of this Part.

"Chief Administrative Law Judge" means the chief official of the Office of Administrative Law Judges of the Department of Labor.

"Consular Officer" means an official of the U.S. Department of State who handles applications for labor certifications pursuant to this Part.

"Employment" means permanent full-time work by an employee for an employer other than oneself. For purposes of this definition an investor is not an employee.

"Employment and Training Administration (ETA)" means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

"Employer" means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters.

"Final Determination form" means the form used by the Certifying Officer to notify employers (and aliens) of labor certification determinations (and was formerly known as the "Determination and Transmittal form").

"HHS" means the U.S. Department of Health and Human Services.

"Immigration and Naturalization Service (INS)" means the agency within the U.S. Department of Justice which administers that Department's principal functions under the Act.

"Immigration Officer" means an official of the Immigration and Naturalization Service (INS) who handles applications for labor certifications pursuant to this Part.

"INS", see Immigration and Naturalization Service.

"Job opportunity" means a job opening for employment at a place in the United States to which U.S. workers can be referred.

"Labor certification" means the certification to the Secretary of State and to the Attorney General of the determination by the Secretary of Labor pursuant to section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)):

(1) That there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work; and

(2) That the employment of the alien will not adversely affect the wages and

working conditions of similarly employed U.S. workers.

"Local Job Service office" and "local office" mean a full-time office of a State Job Service agency (also known as a State employment service), which is maintained for the purpose of providing placement and other services of the Job Service System, and which serves a particular geographic area within a State. Unless specified otherwise in this Part, the local office performing the functions required by this Part shall be the local Job Service office serving the area where the job opportunity is located.

"Notice of Findings" means a notice which sets for the bases upon which a Certifying Officer intends to deny a labor certification unless the bases are satisfactorily rebutted.

"Occupation designated for special handling" means an occupation, described at § 656.21a, for which DOL has determined that special labor market tests are appropriate.

"Physicians (and/or surgeons)" means persons who apply the art and science of medicine or surgery primarily in patient care to the diagnosis, prevention, and treatment of human diseases, disorders of the mind, and pregnancy. This definition includes persons practicing medicine, surgery, osteopathy, psychiatry, and ophthalmology. The physician or surgeon may specialize in treating a specific area of the body, or a particular disease, sex, or age group.

"Professional nurses" means persons who apply the art and science and nursing, which reflects comprehension of principles derived from the physical, biological, and behavioral sciences. Professional nursing generally includes the making of clinical judgements concerning the observation, care, and counsel of persons requiring nursing care; and administering of medicines and treatments prescribed by the physician or dentist; the participation in activities for the promotion of health and the prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as: obstetrics, surgery, pediatrics, psychiatry, and medicine. This definition includes only those occupations within Occupational Group No. 075 of the *Dictionary of Occupational Title* (4th ed.)

"Regional Administrator, Employment and Training Administration (RA)" means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

"Regional Health Administrator" means the chief official of the Public

Health Service Regional Office, Department of HHS, in each HHS region, or the Regional Health Administrator's designee. The addresses of the appropriate Regional Health Administrators for *Schedule A* employment as a physician (or surgeon) are listed at § 656.61.

"Schedule A" means the list of occupations set forth at § 656.10, with respect to which the Administrator has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

"Schedule B" means the list of occupations set forth in § 656.11, with respect to which the Administrator has determined that there are generally sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will generally adversely affect the wages and working conditions of the United States workers similarly employed.

"Secretary" means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

"Secretary of Health and Human Services (HHS)" means the chief official of the U.S. Department of Health and Human Services (HHS) or the Secretary of HHS' designee.

"Secretary of State" means the chief official of the U.S. Department of State or the Secretary of State's designee.

"United States," when used in a geographic sense, means the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

"United States Employment Service (USES)" means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act of 1933 (29 U.S.C. 49 *et seq.*), which is charged with administering the national system of public employment offices (the "Job Service (JS)") and with carrying out the functions of the Secretary under section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)).

"United States worker" means any worker who, whether U.S. citizen or alien, is legally permitted to work permanently within the United States.

#### Subpart F—Addresses

##### § 656.60 Addresses of Department of Labor regional offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): Room 1707, J. F.

Kennedy Federal Building, Government Center, Boston, MA 02203.

Region II (New York, New Jersey, and Puerto Rico): Room 3713, 1515 Broadway, New York, NY 10036.

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia): P.O. Box 8796, Philadelphia, PA 19101 (3535 Market Street. Do not use street address for mailing purposes.)

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): Room 405, 1371 Peachtree Street, NE, Atlanta, GA 30309.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 S. Dearborn Street, Chicago, IL 60604.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): Room 317, 555 Griffin Square Building, Griffin and Young Streets, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, and Nebraska): Room 1000, Federal Building, 911 Walnut Street, Kansas City, MO 64106.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, Denver, CO 80202.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): Box 36084, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, and Washington): Room 1145 Federal Office Building, 909 First Avenue, Seattle, WA 98174.

Virgin Islands—First National City Bank Building, Veterans Drive, St. Thomas, V.I. 00801.

##### § 656.61 Addresses of Regional Health Administrators, Public Health Service Regional Offices, of HHS.

For the purposes of § 656.22(c)(2) the addresses of the appropriate Regional Health Administrators for each State are as follows:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): Regional Health Administrator, Department of HHS, J. F. Kennedy Federal Building, Government Center, Boston, MA 02203.

Region II (New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands): Regional Health Administrator, Department of HHS, 26 Federal Plaza, New York, NY 10007.

Region III (Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Regional Health Administrator, Department of HHS, P.O. Box 13716, (3535 Market Street. Do not use street address for mailing purposes.), Philadelphia, PA 19101.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): Regional Health

Administrator, Department of HHS, 101 Marietta Tower, Atlanta, GA 30323.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): Regional Health Administrator, Department of HHS, 300 South Wacker Drive, Chicago, IL 60606.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): Regional Health Administrator, Department of HHS, 1200 Main Tower Building, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, and Nebraska): Regional Health Administrator, Department of HHS, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): Regional Health Administrator, Department of HHS, Federal Office Building, 1961 Stout Street, Denver, CO 80294.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): Regional Health Administrator, Department of HHS, Federal Office Building, 50 United Nations Plaza, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, and Washington): Regional Health Administrator, Department of HHS, Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101.

**§ 656.62 Locations of Immigration and Naturalization Service Offices.**

For the purposes of §§ 656.21a(b) and 656.22, the locations of INS offices in the United States are listed at 8 CFR 100.4

Signed at Washington, D.C., this 16th day of December 1980.

Ray Marshall,

Secretary of Labor.

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