

(B) A transaction entered into by any investment company (e.g., a mutual fund) of similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1% of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;²

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;³

² Attention is directed to section 9(b) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commissioner or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

³ Attention is directed to section 9(d) of the Commodity Exchange Act that provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock-index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735-18 of this Part for information regarding interpretative and advisory service by the General Counsel of the Commission.

Issued in Washington, DC on May 28, 1987, by the Commission

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-12479 Filed 6-1-87; 8:45 am]

BILLING CODE 6361-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 146, and 178

Harbor Maintenance Fee; Extension of Comment Period

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning interim amendments of the Customs Regulations to implement provisions of the Water Resources Development Act of 1986 (the Act) which authorizes the Customs Service to assess a harbor maintenance fee of 0.04 percent (.0004) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port within the definition of the Act. The harbor maintenance fee applies to port uses by commercial vessels which load or unload merchandise or passengers unless specifically exempted from the fee. The proceeds of the fee collected by Customs, together with certain other fees, are deposited in the Harbor Maintenance Trust Fund which is made available, subject to appropriations, to the U.S. Army Corps of Engineers for the improvement and maintenance of U.S. ports and harbors.

The amendments were made on an interim basis by the publication of T.D. 87-44 in the *Federal Register* of March 30, 1987 (52 FR 10199), due to the limited period of time available to initiate the changes before the law became effective on April 1, 1987. However, written comments were invited for consideration before a final rule is issued. Comments were to have been received on or before May 29, 1987. Customs has received several requests to extend the comment period because additional time is required to prepare reasonably responsive comments. Customs believes the request have merit. Accordingly, the period of time for the submission of comments is being extended 90 days.

DATE: Comments are requested on or before August 28, 1987.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2428, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Jean F. Maguire, Director, User Fee Task Force (202-566-5868).

Dated: May 28, 1987.

Harry B. Fox,

Acting Director, Office of Regulations & Rulings.

[FR Doc. 87-12615 Filed 5-29-87; 3:27 pm]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Removal of Physicians From Schedule A

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is amending its regulations relating to the certification of immigrant aliens for permanent employment in the United States. The amendments remove alien graduates of foreign medical schools from the *Schedule A* precertification list.

EFFECTIVE DATE: These amendments apply to applications for permanent alien labor certification received for processing on or after July 2, 1987. However, those alien graduates of foreign medical schools who: (1) Are in possession of a statement signed by the appropriate Regional Health Administrator (RHA), Department of Health and Human Services (HHS), required by 20 CFR 656.22(c)(2)(ii) (1986) of DOL's regulations, as of the effective date of the final rule; and (2) file a visa petition accompanied by the statement of the RHA, HHS, and the documentation required by 20 CFR 656.20(d) (1986) within one year of the date the statement of the RHA, HHS,

was signed, shall be allowed to complete the *Schedule A* process. Those aliens who have requested but have not received a shortage statement by the effective date of the final rule shall not be allowed to complete the *Schedule A* process.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certification. Telephone: 202-535-0163.

SUPPLEMENTARY INFORMATION: On January 24, 1986, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published in the *Federal Register* a Notice of Proposed Rulemaking proposing to amend ETA's regulations at 20 CFR Part 656 to remove alien graduates of foreign medical schools from the *Schedule A* precertification list (51 FR 3191). This document adopts final regulations based upon that January 24, 1986, 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 (INA), 8 U.S.C. 1182(a)(14). However, those alien physicians (and surgeons) who are of exceptional ability in a science or art will remain on *Schedule A*, Group II.

Permanent Alien Employment Certification Process

Pursuant to the Immigration and Nationality Act (INA), before the Department of State (DOS) and the Immigration and Naturalization Service (INS) 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

(b) 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).

Department of Labor Regulations

Pursuant to 8 U.S.C. 1182(a)(14), DOL has promulgated regulations at 20 CFR Part 656 to implement the labor certification process for the permanent employment of immigrant aliens in the United States.

The regulations at 20 CFR Part 656 set forth the fact-finding process designed to develop information sufficient to

support the granting or denial of a permanent labor certification. Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States, and the responsibilities of the alien beneficiaries of permanent alien labor certifications.

Schedule A Precertification List

DOL has published, at 20 CFR 656.10, a list of occupations (*Schedule A*) for which the Director, U.S. Employment Service, has determined that there are not sufficient United States workers who are able, willing, qualified, and available, and that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens. DOL has delegated to the DOS and the INS the authority to determine if an alien falls within one of the occupational categories on *Schedule A*, and, if so, to issue a permanent alien labor certification for the alien. 20 CFR 656.22. The *Schedule A* determination of the INS or Department of State is not appealable within DOL. 20 CFR 656.22(h)(2).

Alien Graduates of Medical Schools

Regulations at 20 CFR 656.10(a)(2) and 20 CFR 656.22(b) (1986) provide for the precertification of alien graduates of medical schools in specific shortage areas for specific medical specialties as designated by the Department of Health and Human Services (HHS). ETA is amending these regulations by deleting alien graduates of foreign medical schools from the DOL's *Schedule A* precertification list. Physicians (and surgeons) will still, however, be allowed to be the beneficiaries of permanent labor certification applications. No change is made by this rule in DOL's regulations which allow employers to file applications for labor certification under the basic labor certification process at 20 CFR 656.21. Further, alien physicians (and surgeons) of exceptional ability in a science or art will remain on *Schedule A*. 20 CFR 656.10(b).

Under the regulations prior to this revision, a signed statement is required from the appropriate Regional Health Administrator (RHA), Public Health Service (PHS) Regional Office, HHS, as documentation of a physician's (and surgeon's) *Schedule A* eligibility. 20 CFR 656.22(c)(2) (1986). The signed statement from the RHA certifies that the area in which the alien intends to be employed is a geographic area which has been designated by the Secretary of HHS as a Health Manpower Shortage Area (HMSA) 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 (hereinafter referred to as an inadequately served area).

In August 1984, HHS wrote to the Assistant Secretary of Labor for Employment and Training informing him that as a result of an internal HHS study of the current labor certification program, HHS had come to the conclusion that major changes in HHS participation in the program were warranted. HHS proposed discontinuing, beginning with Fiscal Year 1985, making labor shortage certifications through PHS regional offices. The reasons for this proposal were as follows:

- Less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified;
- Methodological problems exist in developing and keeping accurate information for inadequately served areas for other than the primary care specialties;
- Neither the Congress nor HHS recognizes the existence of a national shortage of physicians in the United States;
- The recent HHS report to the President and the Congress on the Status of Health Personnel in the United States indicated that the aggregate number of physicians in the United States is projected to exceed requirements in 1990 and 2000; and
- Scarce HHS resources for this activity, given its apparent limited utility.

HHS recommended removal of physicians from *Schedule A*, or, in the alternative, leaving only those physicians on *Schedule A* that are to be employed in the HMSAs. The HMSA lists, which are maintained only for primary care physicians and psychiatrists, according to HHS have a high degree of currency and reliability, are published annually in the *Federal Register*, and are widely recognized as being accurate and correct. In addition, to date, 90 percent of all positive certifications issued by PHS have been based on the lists of HMSAs and only 10 percent have been based on the lists of inadequately served areas. However, as indicated above, less than one-third of the physicians certified for direct patient care work in the shortage areas or specialties for which they obtained certification for any length of time. Thus, the labor certification program has not had significant effect in alleviating the

shortage of physicians in the HMSAs or in the inadequately served areas. Consequently, DOL proposed to remove physicians (and surgeons) from *Schedule A*.

Comments on Proposed Rule

The Notice of Proposed Rulemaking (NPRM) invited interested parties to submit written comments on the proposed amendments on or before February 24, 1986. Comments on the NPRM were received from six different organizations and individuals, including the American Immigration Lawyers Association (AILA). The following issues were raised by the commenters:

- Insufficient data were provided to support the statement in the preamble to the NPRM that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified. AILA also stated that the data supporting this reason for removing physicians from *Schedule A* should be made public.
- Data with respect to HMSAs for primary care physicians is current and reliable; therefore, only the other areas and specialties should be deleted from *Schedule A*.
- That neither Congress nor HHS recognizes the existence of a national shortage of physicians is irrelevant to the present regulation since *Schedule A* does not provide for precertification on a national basis, but only for area shortages by specialty.
- Projections that the aggregate number of physicians in the United States is expected to exceed requirements in 1990 and 2000 is irrelevant with respect to specific shortage areas, and, therefore, does not support removing physicians from *Schedule A*.
- Scarcity of HHS resources as a reason for removing physicians from *Schedule A* was questioned since only 103 *Schedule A* certifications on behalf of physicians were issued in Fiscal Year 1984. Further, removing physicians from *Schedule A* merely shifts the administrative burden to the State employment service and Regional Certifying Officers of DOL.
- Two commenters suggested as an alternative to removing physicians from *Schedule A*, that the certification be contingent upon a commitment of the physician to provide medical services in the shortage area for a specified length of time.
- Two commenters inquired as to what effect the proposed rule would have on *Schedule A* applications that were in process as of its effective date.

An analysis of the comments is presented below in the same order they were presented above.

Less Than One-Third of the Physicians Certified Remain in Shortage Areas for any Significant Length of Time

The Bureau of Health Professions, Health Resources and Service Administration, HHS, has recently issued a report entitled *Labor Certification of Foreign Physicians Under Schedule A—An Assessment of Program Impact* which supports the statements made in the preamble that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified.

This statement is documented in the above cited report published in 1986 by HHS's Health Resources and Services Administration, Bureau of Health Professions, Office of Data Analysis and Management. The report describes a study of those physicians certified under the program in 1981 and 1982. The study was carried out in 1984 by the Public Health Service regional office personnel who had done the staff work on shortage/underserved area certifications for *Schedule A* labor certification purposes. The study concluded that:

(1) The 436 shortage/underserved area certifications issued in 1981 and 1982 represented, at most, 382 different physicians. (Some physicians requested multiple certifications for different areas.)

(2) Of these 382 physicians, at least 145 were seeking residency of other training positions, rather than positions in direct patient care. (To remedy this, beginning in 1983 HHS required verification that the positions sought were not training positions before issuing area certifications.)

(3) Of the remaining 237 physicians, 227 were identified as having sought positions in direct patient care; whether the positions sought by the other 10 were for training or direct patient care could not be determined.

(4) Of the 227 physicians who sought positions in direct patient care, it was determined that 141 (or 63 percent) actually served for some period of time in a shortage/underserved area for which he/she had obtained a certification.

(5) Of these 141 physicians, 66 were still practicing at the certified location in 1984. This represents 29 percent (or less than one-third) of the 227 who originally requested certification for positions in direct patient care (and 17 percent of the total 382 physicians certified).

Copies of the report can be obtained by writing to the Director, Office of Data Analysis and Management, BHPR, HRSA, Parklawn Building Room 8-41, 5600 Fishers Lane, Rockville, Md. 20857.

Reliability of Data on HMSAs and Inadequately Served Areas

The possibility of deleting only those physicians from *Schedule A* that would be employed in inadequately served areas was discussed and rejected in the preamble to the proposed rule. As indicated above, the distribution of physicians has improved significantly over the past few years and can be expected to continue to improve as the number of physicians in the United States is expected to exceed requirements in 1990 and 2000. Further, as indicated above, less than one-third of the physicians certified remain for direct patient care work in the shortage areas and specialties for which they were certified for any length of time. Thus, the labor certification program has not had significant effect in alleviating the shortage of physicians in the HMSAs or in the inadequately served areas.

Absence of National Shortage

The distribution of physicians has improved substantially since Congress in section 906 of the Health Professions Educational Assistance Act (HPEAA, Pub. L. 94-484) directed DOL and then Health, Education and Welfare (renamed Health and Human Services) to work together so that DOL could make equitable determinations with regard to applications for permanent labor certification by alien graduates of medical schools. The improved distribution has been reflected in a significant number of areas being deleted from the list of HMSAs published by HHS in the *Federal Register*. The distribution of physicians is now such that the inclusion of shortage area physicians in the *Schedule A* labor certification program can no longer be justified. This is especially so in light of the fact that less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified. It should also be noted, that the National Health Service Corps which is provided for by section 331 of the HPEAA continues to exist. Under section 331 of the HPEAA, medical school graduates, in return for scholarship aid to complete medical school, agreed to provide medical services in shortage areas for a specified length of time.

Further, as noted above, the basic labor certification process at 20 CFR 656.21 is not affected by these amendments. Employers can, as for any other occupation, file an individual labor certification on behalf of a physician (or surgeon). The reduction in recruitment provisions of the basic process at 20 CFR 656.21(i) of course, would, be available to employers desiring to employ physicians in shortage areas, if the employer satisfactorily documents that it has adequately tested the labor market with no success at least at the prevailing working conditions.

There are a number of occupations which are probably in short supply for one or more areas, although the national supply/demand factors are in approximate balance. However, physicians are the only occupational group on *Schedule A* which provides for certification by shortage area rather than on a national basis. It is preferable that employers meet the needs of shortage areas under the basic process rather than under *Schedule A*.

Projections That The Aggregate Number of Physicians Is Expected To Exceed Requirements

Discussed above under "Absence of National Labor Shortage."

Scarcity of Resources

The amount of work HHS has to do to administer its part of the *Schedule A* labor certification program is considerably larger than was expected at the time physicians were added to *Schedule A*. The HHS Has to respond to a large volume of general information requests received each year, and respond in writing to all written requests for shortage statements. This includes cases where the alien's intended area of employment is not a shortage area, as well as those cases where the alien's area of employment is a shortage area. This workload will no longer exist after physicians are removed from *Schedule A*.

On the other hand, DOL will probably experience some increase in its workload as it is expected that those employers who previously filed under *Schedule A* for physicians will in the future use the basic labor certification process. However, DOL will readily be able to accommodate any expected increase in applications within its current labor certification structure in its 10 regional offices, including existing staffing and procedures.

Issuance of Certification Contingent Upon Commitment of Alien Physician To Provide Medical Services in Shortage Area for a Specified Length of Time

Issuing contingent certifications was considered and rejected at the time DOL developed the regulations prior to this revision which placed physicians on *Schedule A*. DOL had serious reservations concerning its authority to issue certifications contingent upon conditions being fulfilled after the alien began the certified employment. Further, DOL does not have the resources to enforce such a contingency provision at this time even if questions regarding the authority of DOL to issue such a regulation were answered affirmatively.

Effect of Final Rule on Alien Medical Graduates Who Have Begun Schedule A Process

Those alien graduates of foreign medical schools who: (1) Are in possession of a statement signed by the appropriate RHA, HHS, required by 20 CFR 656.22(c)(2)(ii) (1986) of DOL's regulations as of the effective date of the final rule; and (2) file a visa petition accompanied by the statement of the RHA, HHS, and the documentation required by 20 CFR 656.20(d) (1986) within one year of the date the statement of the RHA, HHS, was signed shall be allowed to complete the *Schedule A* process. Those aliens who have requested but have not received a shortage statement by the effective date of the final rule shall not be allowed to complete the *Schedule A* process.

Regulatory Impact

The economic and other impact of this proposed rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See Executive Order No. 12291, 3 CFR, 1981 comp., p. 127 (February 17, 1981).

The rule would not have a significant impact on a substantial number of small entities. It would only affect those few employers who petition for foreign medical graduates pursuant to DOL's *Schedule A* precertification list. For that reason at the time of publication of the proposed rule, the Department of Labor had certified to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act, that the rule would not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.203, "Certification for Immigration Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, Wages.

Final Rule

Accordingly, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is amended as follows:

PART 656—[AMENDED]

1. The authority citation for Part 656 is revised to read as follows, and the separate authority citations following the sections in Part 656 are removed:

Authority: 8 U.S.C. 1182(a)(14); 29 U.S.C. 49 *et seq.*

§ 656.10 [Amended]

2. Section 656.10 is amended by removing paragraphs (a)(2) and (a)(4)(ii) from *Schedule A*, and by redesignating the remaining paragraphs in § 656.10(a) as set forth in the following redesignation table:

Old section	New section
656.10(a)(3).....	656.10(a)(2)
656.10(a)(4) introductory text.....	656.10(a)(3) introductory text
656.10(a)(4)(i).....	656.10(a)(3)(i)
656.10(a)(4)(iii).....	656.10(a)(3)(ii)

§ 656.22 [Amended]

3. Section 656.22 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(3) as paragraph (c)(2).

§ 656.50 [Amended]

4. Section 656.50 is amended by removing the definitions for "Regional Health Administrator" and "Secretary of Health and Human Services (HHS)".

§ 656.61 [Removed]

5. Section 656.61 is removed.

Signed at Washington, DC, this 27th day of May, 1987.

William E. Brock,
Secretary of Labor.

[FR Doc. 87-12446 Filed 6-1-87; 8:45 am]

BILLING CODE 4510-30-M