including the situation of a homeless individual.

Another requirement for eligibility for SSI benefits is that an individual must be either a citizen or national of the U.S. or an alien lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law. Section 416.1610 of the regulations lists the various types of evidence that an individual can submit as proof that he or she is a citizen or national. Among the acceptable types of evidence for a U.S. citizen or national is a religious record of birth or baptism which shows the individual was born in the U.S. However, § 416.1610(a)(2) currently does not specify that the place of recordation must be in the U.S., nor does it set any time limits on when the record must have been established.

Prior SSA studies have shown that religious records of birth or baptism recorded in the U.S. within 3 months of birth are generally reliable. Records made after 3 months of birth are more prone to fraud. While not a foolproof fraud deterrent, this proposed regulation will help to limit fraud by lessening the chance of an individual later coming into the U.S. and using a fraudulent record to obtain SSI benefits.

Explanation of Revisions

We propose to revise § 416.1603(b) to define precisely what we mean by ''living within the geographical limits of the United States'' and to reflect the evidence required by § 416.1603(a). We also propose to revise § 416.1610(a)(2) to specify that, in addition to showing that the individual was born in the U.S., a religious record of birth or baptism must have been recorded in the U.S. within 3 months of birth.

In addition, we propose making a minor technical correction to the wording of the second sentence in § 416.1180 concerning income that is used or set aside to be used under a plan to become self-supporting to correct a typographical error.

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they only affect individuals who claim benefits under title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: April 4, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, we are proposing to amend subparts K and P of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat 154 (42 U.S.C. 1382 note).

2. Section 416.1180 is amended by revising the second sentence to read as follows:

§ 416.1180 General.

* * * If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income that you use or set aside to use under a plan to become self-supporting.* * *

Subpart P—[Amended]

3. The authority citation for subpart P of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614(a)(1)(B) and (e), and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c(a)(1)(B) and (e), and 1383); 8 U.S.C. 1254a; sec. 502, Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note).

4. Section 416.1603 is amended by revising paragraph (b) to read as follows:

§ 416.1603 How to prove you are a resident of the United States.

* * * * *

(b) *What ''resident of the United States'' means.* We use the term ''resident of the United States'' to mean a person who has established an actual dwelling place within the geographical limits of the United States with the intent to continue to live in the United States.

* * * * *

3. Section 416.1610 is amended by revising paragraph (a)(2) to read as follows:

§ 416.1610 How to prove you are a citizen or a national of the United States.

(a) * * *

(2) A certified copy of a religious record of your birth or baptism, recorded in the United States within 3 months of your birth, which shows you were born in the United States;

* * * * *

[FR Doc. 96–9676 Filed 4–19–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205–A152

Labor Certification Process for the Permanent Employment of Aliens; Researchers Employed by Colleges and Universities

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend its regulations relating to labor certification for permanent employment of immigrant aliens in the United States. The proposed amendments would change the way prevailing wage determinations are made for researchers employed by colleges and universities. The proposed rule also would change

the way prevailing wages are determined for colleges and universities. The proposed rule also would change the way prevailing wages are determined for colleges and universities filing H–1B labor condition applications on behalf of researchers, since the regulations governing prevailing wage determinations for the permanent program are followed by State Employment Security Agencies in determining prevailing wages for the H–1B program.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before May 22, 1996.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4456, Washington, DC 20210, Attention: John M. Robinson, Deputy Assistant Secretary.

FOR FURTHER INFORMATION CONTACT: Contact Denis M. Gruskin, Senior Specialist, Division of Foreign labor Certifications, Employment and Training Administration, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Permanent Alien Employment Certification Process

Before the Department of State (DOS) 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 (Secretary) first must 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 such aliens will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(5)(A).

If the Secretary, through the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) determines that there are no able, willing, qualified, and available U.S. workers, and that the 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 DOS, by issuing a permanent alien labor certification.

If DOL cannot make either of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make either of 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 20 CFR part 656. These recruitment requirements and procedural steps are designed to test the labor market for available U.S. workers. They include providing notice of the job opportunity to the bargaining representative (if any) or posting of the job opportunity on the employer's premises, placing an advertisement in an appropriate publication, and placing a job order for 30 days with the appropriate local Employment Service office.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA) [8 U.S.C. 1361], that is, the employer has not submitted sufficient evidence of attempts to obtain qualified, willing, able, and 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 INA 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 for such visa or such document, or is not subject to exclusion under any provision of (the INA) * * *.

B. Department of Labor Regulations

The Department 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 section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

These regulations 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 service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the primary basis of developing information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 655 sets forth the responsibility of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service System, and by other specified means. The purpose is to assure an adequate test of the availability of qualified, willing and able 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.

C. Prevailing Wages and Researchers

Covered employers wishing to employ immigrant workers must recruit for U.S. workers at prevailing wages. State employment security agencies (SESA's or State agencies) survey prevailing wage rates on behalf of DOL. The permanent labor certification regulations at § 656.40 specify how State agencies are to calculate prevailing wages. The prevailing wage methodology set forth is used not only in determining prevailing wages for job opportunities involved in applications for permanent employment certification, but is also followed in determining prevailing wages for the H–2B temporary nonagricultural certification program, the H–1B labor condition application (LCA) program, and the F–1 student off-campus employment program. See 20 CFR part 655, subparts A, H, and J, respectively. In each of these programs, the applicable legislative and/or regulatory history require that prevailing wages be determined in accordance with the requirements of the permanent labor certification regulations at 20 CFR 656.40.

The INA requires that the wages paid to an H–1B professional worker be the higher of the actual wage paid to workers in the occupation or the prevailing wage for the occupational classification in the area of employment. The H–1B regulations incorporate the language of 20 CFR 656.40 (as required by H.R. Conference Report, No. 101–955, October 26, 1990, page 122) and provide employers filing H–1B applications the option of obtaining a prevailing wage determination from the SESA, using an independent authoritative source, or other legitimate

source, as defined at § 655.731(a)(2)(iii)(B) and (C) of the H–1B regulations.

Section 656.40 of the permanent labor certification regulations requires that in the absence of a wage determination issued under the Davis-Bacon Act, the Service Contract Act, or a collective bargaining agreement, the prevailing wage shall be the weighted average rate of wages paid to workers similarly employed in the area of intended employment, *i.e.*, ''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.'' Section 656.40(b) further provides that ''similarly employed'' is defined as having substantially comparable jobs in the occupational category in the area of intended employment.

D. Effects of Hathaway Children's Services on Prevailing Wages

Under the *en banc* decision of the Board of Alien Labor Certification Appeals (hereinafter referred to as BALCA or Board) in *Hathaway Children's Service* (91–INA–388, February 4, 1994), prevailing wages are calculated by using wage data obtained by surveying employers across industries in the occupation in the area of intended employment. In *Hathaway,* BALCA overruled its decision in *Tuskegee University,* 87–INA–561, Feb. 23, 1988, *en banc,* which interpreted § 656.40 to permit an examination of the nature of the employer's business in ascertaining the appropriate prevailing wage. 87–INA–561 at 4. In *Tuskegee* the Board said, in relevant part:

> Thus to be ''similarly employed'' for purpose of a prevailing wage determination, it is not enough that the jobs being compared are in the same occupational category they must also be ''substantially comparable.'' Accordingly, it is wrong to focus only on the job title or duties; the totality of the job opportunity must be examined * * *.
>
> It is clear that it is not only the job titles, but the nature of the business or institution where the jobs are located—for example, public or private, secular or religious, profit or non-profit, multinational corporation or individual proprietorship—which must be evaluated in determining whether the jobs are ''substantially comparable.''

In *Hathaway,* the Board declined to make an exception for maintenance repairers employed by non-profit institutions, analogous to the exception it had made in *Tuskegee*. The employer in *Hathaway,* a non-profit United Way affiliate, urged that the Board's decision in *Tuskegee* should be dispositive. The employer argued that the rationale in *Tuskegee* necessarily extends to non-profit employers, thereby differentiating them from for-profit employers.

The Board stated in *Hathaway,* that its holding in *Tuskegee* was ill-advised and should be explicitly overruled. The Board went on to say that:

> The underlying purpose of establishing a prevailing wage rate is to establish a minimum level of wages for workers employed in jobs requiring similar skills and knowledge levels in a particular locality. It follows that the term ''similarly employed'' does not refer to the nature of the employer's business as such; on the contrary, it must be determined on the basis of the similarity of the skills and knowledge required of the job offered. Of course the nature of the employer's business may be reflected in that determination, to the extent it bears on the knowledge and skills required to perform the duties of the job * * *. But neither the record in *Tuskegee* nor the record before us today [in *Hathaway,*], suggests that the skills and knowledge required to perform the duties of the job opportunity being offered are any different depending upon the employer's financial ability to pay the going rate. Specifically, there is no evidence to suggest that the duties of the job offered, either as an associate professor of physics in *Tuskegee* or as a maintenance repairman in the present case [*Hathaway,*], differed as between charitable non-profit institutions and businesses operated for a profit. We find no basis, under the Act or its implementing regulations, for allowing this Employer to hire an alien so that it can pay sub-standard wages to its maintenance repairer or other workers, on the ground that it cannot pay the prevailing wage, while we tell the Mom-and-Pop shop next door or around the corner that ''There is no provision in the law or regulations which allows for waiver of the prevailing wage requirements on the basis of an Employer's financial hardship'' [citing *Norberto La Rosa* (89–INA–287), March 27, 1991] * * *.

In accordance with the holding in *Hathaway,* SESA's were instructed to survey all employers, without regard to the nature of the employer, in the area of intended employment in determining prevailing wages for an occupation.

It has since been asserted that implementation of this policy resulted in considerably higher prevailing wage determinations for research positions in colleges and universities. The higher education community maintains that this policy will jeopardize its ability to recruit foreign researchers with talents and skills not readily available in the U.S. Further, the Department has received comments and inquiries from Congress and other Federal agencies and organizations, such as the Council of Economic Advisers (CEA), National Science Foundation (NSF), the Department of Defense, Defense Research Engineering (DRE), Office of Science and Technology Policy (OSTP), National Institutes of Health (NIH), National Aeronautics and Space Administration (NASA), United States Department of Agriculture (USDA), United States Geological Survey (USGS), Department of Energy (DOE), and Department of Transportation (DOT), expressing concern about the Department's change of policy in determining prevailing wages for researchers employed by universities.

E. Basis for Proposed Rule

The Department believes there are substantial policy reasons to propose an exception whereby prevailing wage determinations for researchers employed by colleges and universities should be based solely on the wages paid by such institutions. These policy reasons are discussed below.

1. Existing Precedent

Congress established precedent in the INA for treating colleges and universities differently in their employment of talented, highly qualified scholars who are members of the teaching profession. Special procedures in DOL regulations were established for college and university teachers because of the provisions at 8 U.S.C. 1182(a)(5)(A)(i) (I) and (II) which require, in relevant part, that DOL must determine in cases involving aliens that are members of the teaching profession that the U.S. applicant is at least as qualified (equally qualified) as the alien before a labor certification can be denied because a U.S. worker is available for the job opportunity. For all other occupations, the DOL Certifying Officer need only find that the U.S. applicant is qualified or meets the employer's minimum job requirements. The ''special handling'' procedures for college and university teachers provide for a more limited test of the labor market than the basic process at 20 CFR 656.21 to successfully apply for a labor certification.

The ''equally qualified'' language was added to section 212(a)(14) of the INA [now at section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A)] on October 20, 1976, by the Immigration and Nationality Act Amendments of 1976, Pub. L. 94–571, Section 5, 90 Stat. 2705. The Judiciary Committee of the House of Representatives stated, on passage of the bill, that:

> The Committee believes that the Department of Labor has impeded the efforts of colleges and universities to acquire outstanding educators or faculty members who posses specialized knowledge or a unique combination of administrative and teaching skills. As a result, this legislation includes an amendment to section 212(a)(14) which requires the Secretary of Labor to

determine that ''equally qualified'' American workers are available in order to deny a labor certification for members of the teaching profession * * *.
(H. Rep. No. 1553, 945h Cong., 2d Sess. 11 (Sept 15, 1976))

Prevailing wage determinations for college and university teachers are necessarily based solely on the wages paid by colleges and universities, since such teachers are employed only by institutions of higher education. Research positions are closely related to teaching (faculty) positions and often involve teaching duties, albeit not in a classroom setting. As stated in a letter dated July 25, 1995, which the Department received from the Association of American Universities (AAU):

> Teaching is a primary mission of universities and occurs in all university settings. Teaching and research are inextricably intermingled in universities with research extending into undergraduate education, and teaching extending into postdoctoral education. Academic research scientists are expected to operate as teachers as well as researchers. University teaching includes a wide range of activities beyond the traditional classroom lecture, such as seminars, advising and other forms of mentoring. Some of the most effective teaching about research is carried out by doing research, and university research personnel often operate as student and teacher at the same time in the same setting: a postdoctoral fellow is instructed by the faculty researchers with whom he or she is working at the same time he or she serves as a teacher for graduate and undergraduate students working in the same lab.

2. Impact of Hathaway and Reinstatement of Previous Practice

The proposed rule would merely reinstate the practice that existed before the decision in *Hathaway* of basing prevailing wage determinations for researchers employed by colleges and universities solely on the basis of the wages paid by such institutions. *Hathaway* has had the greatest impact on colleges and universities wishing to file H–1B LCA's or permanent labor certification applications on behalf of researchers. Prior to *Hathaway*, SESA's in conducting prevailing wage surveys for researchers employed by colleges and universities consistently limited prevailing wage surveys to colleges and universities. ETA is not aware of any other situation in which a similar practice was consistently followed in determining prevailing wages for an occupation found in a variety of industries.

The application of the policy resulting from the *Hathaway* decision to the determination of prevailing wages for researchers has resulted in markedly higher prevailing wage determinations than those made previously. It has been alleged, for example, that prevailing wage determinations post-*Hathaway* have been 34 to 93 percent in excess of the actual wages paid to certain positions. Additionally, Representative Lamar Smith stated in a letter to the Secretary of Labor that:

> Major research universities would clearly suffer if required to pay industry-scale wages to researchers. They pay research associates about $25,000 a year, as opposed to salaries of approximately $65,000 in industry. Since the amount universities pay under federal research grants is strictly limited by the federal government, they would be effectively barred from using immigrants in these positions. Even in instances where the schools found it feasible to pay the higher salaries out of their own funds, this would create discord with American employees and divert badly needed resources. The end result could be dramatically impeded scientific and technological progress in the United States.

Colleges and universities have also maintained that it would be untenable for them to pay international staff more than their counterparts who are United States citizens and lawful permanent residents, and they would be forced to either increase the wages of similarly employed U.S. citizens or stop hiring international faculty and researchers on H–1B visas.

3. Nonproprietary Nature of Academic Research

It has also been advanced that a significant reason for basing prevailing wage determinations for researchers employed by colleges and universities solely on the wages paid by such institutions relates to the nonproprietary nature of the research performed in an academic setting as opposed to that performed in a private, for-profit setting. The research product delivered by researchers in private, for-profit organizations is proprietary in nature and can be appropriated by the employing institution for commercial purposes. As pointed out by the AAU in its July 25, 1995, letter:

> Academic research scientists are expected to disseminate the results of their research promptly and widely through publication in peer-reviewed scientific journals; indeed, in the highly competitive marketplace of fundamental research, professional recognition is accorded to the first to publish a new discovery.
>
> Industrial scientists are expected to apply the results of their research to product development *within their company* (emphasis in original); often, meeting this objective in a competitive marketplace will require the industrial scientist to withhold publishing research results of proprietary information either indefinitely or at least until that information has been incorporated into the company's development process.
>
> This difference in application of the results of research is so fundamental that it constitutes one of the greatest barriers to cooperation between academic and industrial research programs. Most universities have rules prohibiting the withholding of research results, and many companies are reluctant to permit industry-sponsored research results to be freed from proprietary restraints on dissemination * * *.

The AAU went on to summarize the difference between academic research scientists and industrial scientists, in relevant part, as follows:

> Academic research scientists must be able to expand the frontiers of knowledge through an independently initiated and sustained fundamental research program and be able to translate the underlying body of knowledge, theories, principles and research procedures to succeeding generations of researchers. In contrast, industrial scientists must be able to translate basic discoveries into a program of applied research and development that has a reasonably high probability of producing marketable products and processes as end results.

The Department specifically requests comments on whether there are attributes of academic research that distinguish it from research conducted by private, for-profit employers.

4. Concern of Other Federal Agencies

As indicated above, other Federal agencies and organizations, with an interest in the research talent, knowledge, abilities and skills available to the U.S. academic community, have expressed concerns that the *Hathaway* decision could interfere with the ability of institutions of higher education to obtain the services of talented foreign scholars and researchers. These agencies which included, as stated above, the CEA, NSF, DRE, OSTP, NIH, NASA, USDA, USGS, DOE, and DOT, expressed the view that prevailing wage determinations for researchers employed by institutions of higher education should not include wage data from private sector employers.

Similarly, the Department is aware that Congress is examining legislative options to address the concerns of the research community on this matter. These options would extend the concept discussed in this proposed rule to prevailing wage rates in other employment, such as researchers employed by (a) institutions of higher education (as proposed above), and (b) federal research agencies and their affiliated nonprofit research institutions which are engaged in basic research and which employ postdoctoral fellows and visiting scientists in a manner similar to colleges and universities. While this

proposed rule would cover the college and university researchers, at this time the Department has insufficient information on whether extending the rule change to researchers in other employment is supportable. Commenters, therefore, are invited to submit comments about such a regulatory change and the Department will consider those and any other comments in the development of the final rule.

5. Non-Pecuniary Factors

The academic community and others believe that intangible, non-pecuniary incentives to working in an academic environment should be considered in determining prevailing wages for researchers employed by institutions of higher education. Such intangible benefits, according to the CEA, ''may include autonomy in choice of research, contact with students, immersion in an educational environment, and other types of participation in a university environment.'' The Department is interested in comments that specify the nature of these intangible benefits and how they are unique to higher education.

Executive Order 12866

The Department has determined that this proposed rule is not an ''economically significant regulatory action'' within the meaning of Executive Order 12866, in that it will not have an economic effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

While it is not economically significant, the Office of Management and Budget reviewed the proposed rule because of the novel legal and policy issues raised by the rulemaking.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a substantial impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule would create no collection of information requirements.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.203. ''Certification for Immigrant Workers.''

List of Subjects in 20 CFR Part 656

Adminstrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Gaum, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Wages, Working conditions.

Proposed Rule

Accordingly, it is proposed to amend part 656 of Chapter V of title 20, Code of Federal Regulations, as follows:

PART 656—[AMENDED]

1. The Authority citation for Part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.

§ 656.40 [Amended]

2. Section 656.40 is amended as follows:

a. In the introductory language in paragraph (b), the phrase ''except for researchers employed by colleges and universities'' is added immediately after the phrase ''For purposes of this section,''.

b. Paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

* * * * *

(c) For purposes of this section, ''similarly employed'' in the case of researchers employed by colleges and universities in the area of intended employment.'' If no researchers are employed by colleges and universities other than the employer applicant, researchers employed by colleges and universities outside the area of intended employment shall be considered ''similarly employed.''

* * * * *

Signed at Washington, DC, this 16th day of April 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–9911 Filed 4–19–95; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, and 521

[INTL-O62–90; INTL–0032–93; INTL–52–86; INTL–52–94]

RINS 1545–AO27; 1545–AR90; 1545–AL99; 1545–AT00

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the withholding of income tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related collection, refunds, and credits of withheld tax under sections 1461 through 1463 and section 6402. Additionally, this document contains proposed regulations relating to the statutory exemption under sections 871(h) and 881(c) for portfolio interest. This document proposes to remove certain temporary employment tax regulations under the Interest and Dividend Compliance Act of 1983 and to amend existing regulations under sections 6041A and 6050N. This document also proposes changes to proposed regulations contained in project number INTL–52–86, published on February 29, 1988 (53 FR 5991) under sections 6041, 6042, 6045, and 6049. This document proposes related changes to the regulations under sections 163(f), 165(j), 3401, 3406, 6114, and 6413 and proposes further changes to the proposed regulations under section 6109 contained in project number IL–0024–94 published on June 8, 1995 (60 FR 30211). This document proposes to remove certain regulations under income tax treaties. The IRS and Treasury have reviewed current withholding and reporting procedures applicable to cross-border flows of income and have concluded that changes are necessary in view of the substantial growth in such flows over