

installation of pollution prevention or waste minimization measures will significantly reduce the amount and/or toxicity of hazardous wastes entering the feedstream(s) of the hazardous waste combustor(s), and that you could not install the necessary control measures and comply with the emission standards and operating requirements of this subpart by the compliance date.

(b) \* \* \* (1) You must make your requests for an (up to) one-year extension in writing in accordance with § 63.6(i)(4)(B) and (C). The request must contain the following information:  
\* \* \* \* \*

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

8. The authority citation for part 270 continues to read as follows:

**Authority** : 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

9. Section 270.19 is amended by revising paragraph (e) to read as follows:

**§ 270.19 Specific part B information requirements for incinerators.**  
\* \* \* \* \*

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).

10. Section 270.22 is amended by revising the introductory text to read as follows:

**§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter

(*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).  
\* \* \* \* \*

11. Section 270.62 is amended by revising the introductory text to read as follows:

**§ 270.62 Hazardous waste incinerator permits.**

When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).  
\* \* \* \* \*

12. Section 270.66 is amended by revising the introductory text to read as follows:

**§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, of this chapter (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this

chapter documenting compliance with all applicable requirements of part 63, subpart EEE, of this chapter), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2).  
\* \* \* \* \*

[FR Doc. 02-31903 Filed 12-18-02; 8:45 am]  
BILLING CODE 6560-50-U

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**45 CFR Part 50**

**RIN: 0991-AB21**

**HHS Exchange Visitor Program; Request for Waiver of the Two-Year Foreign Residence Requirement**

**AGENCY:** Office of the Secretary, HHS.  
**ACTION:** Interim final rule with opportunity for public comment.

**SUMMARY:** This interim final rule with comment period amends the regulations governing requests for the waiver of the two-year foreign residence requirement of the Health and Human Services (HHS) Exchange Visitor Program. These revisions permit institutions and health care facilities to submit to HHS requests for waiver of the two-year home-country physical presence requirement for physician Exchange Visitors to deliver health care services in underserved areas.

**DATES:** These interim final regulations are effective December 19, 2002. As discussed below, comments on the regulations are invited but must be received by February 3, 2003.

**ADDRESSES:** Written comments should be addressed to Dr. William R. Steiger, Office of Global Health Affairs, 200 Independence Ave., SW., Room 639-H, Washington, DC 20201. All comments received will be available for public inspection and copying at the above address, weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 5:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dr. William R. Steiger, Office of Global

Health Affairs, 200 Independence Ave., SW., Room 639-H, Washington, DC 20201. Telephone: 202-690-6174; Fax: 202-690-7127.

**SUPPLEMENTARY INFORMATION:** The U.S. Exchange Visitor Program, administered by the Department of State, seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Under one facet of this program, foreign national physicians may come to the United States to participate in graduate medical education programs under J-1 visas.

Upon completion of the graduate medical education program and expiration of the visa and prior to pursuing permanent residency, the Exchange Visitor physician must return to his or her country of nationality or last country of legal permanent residence for a minimum of two years to share the benefit of the knowledge and experience gained in the United States. Under limited and exceptional circumstances, an Exchange Visitor may obtain a waiver of the requirement to return home. An avenue through which a waiver may be obtained is by a request made, on the Exchange Visitor's behalf, by an interested United States Government Agency (IGA). Numerous Federal agencies have sought waivers as IGAs.

The vast majority of IGA requests for waivers involve international medical graduates who entered the United States to pursue graduate medical education or training. Historically, HHS has restricted its activity as an IGA to requesting waivers for researchers whose research could have national or international significance. In contrast, the Department of Agriculture and the Appalachian Regional Commission have been the most active IGAs seeking waivers for physicians to provide services in Health Professional Shortage Areas (HPSAs) or Medically Underserved Areas and Populations (MUA/Ps). On April 16, 2002, the Department of Agriculture announced it would process its pending waiver requests and then cease participation as an IGA.

Pursuant to section 332 of the Public Health Service Act, HHS designates areas, facilities or population groups as HPSAs if they meet the criteria specified in 42 CFR part 5. HPSA designations are separated into three categories: those for shortages of primary medical care, dental, and mental health professionals. HHS publishes lists of the designated areas annually in the **Federal Register**, and publishes updates to the list on the HHS web site periodically. Pursuant to

Sec. 330(b)(3)-(6), HHS also designates areas and population groups as MUA/Ps based on established criteria that indicate a shortage of personal health services.

HHS is committed to increasing access to care for the nation's most medically underserved individuals. In accordance with this mission, HHS has decided to request waivers for physicians to provide primary care services in HPSAs and MUA/Ps and for psychiatrists to provide care in Mental Health HPSAs. In determining whether to request a waiver for an Exchange Visitor to deliver primary health care services, HHS will consider information from and coordinate with State Departments of Public Health (or the equivalent), other IGAs that request waivers, HHS programs such as the National Health Service Corps, and other relevant government agencies. This change in HHS's role requires amendment of the HHS regulations governing J-1 visa waiver requests.

The Secretary recognizes that the determination of need for health care services in specific geographic areas is affected by services provided by physicians holding nonimmigrant visas, as well as physicians assigned to these areas under HHS programs, such as the National Health Service Corps. On a related issue, during the first quarter of calendar year 2003, the Secretary intends to propose revisions to the regulations governing the designation of HPSAs and MUA/Ps.

HHS continues to endorse the philosophy that Exchange Visitors are committed to return to their country of nationality or last legal permanent residence home for at least two years after completing their program. Consistent with this philosophy, the regulations provide that the HHS Exchange Visitor Waiver Review Board may determine the appropriate numbers and geographic areas for waivers for the delivery of health care service. These determinations would be made based on data relating to the health care needs of the relevant areas.

The HHS eligibility criteria established under this rule are solely for the purpose of requesting HHS to act as an IGA and are consistent with the Department of State regulations governing such waiver requests. HHS eligibility requirement criteria for waiver requests are in addition to and independent of the existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor. HHS stresses that its waiver regulations do not relieve alien physicians from their

responsibility to comply with visa requirements on a timely basis to maintain lawful status. Nor should these HHS regulations be confused with criteria applicable to the waiver program implemented by state departments of health (the Conrad program).

Alien physicians are strongly encouraged to begin the waiver process as early as they possibly can while still in the residency training program. Early filing of the waiver request by the alien physician, coupled with timely processing of the request by the relevant government agencies, will facilitate the timely completion of the waiver process before the authorized J-1 admission expires, and the physician's subsequent application for change of nonimmigrant status from J-1 to H-1B.

HHS also notes that during the 12-month period following completion of the residency training program, an alien physician who has departed from the United States is still eligible to apply for an IGA waiver. He or she may pursue the waiver from abroad. If the waiver is granted, the alien physician may then procure an H-1B visa and seek admission to the United States to begin working in the location specified in the employment contract and approved by HHS.

The HHS criteria for waiver requests incorporate the requirements currently imposed by the Department of State regulations that govern waiver requests from IGAs based on the need for the delivery of health care services. In brief, the criteria for a waiver recommendation by HHS acting as an IGA are as follows:

1. Eligibility to apply for HHS waiver requests is limited to primary care physicians, and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than 12 months before the date of commencement of employment under the contract described in the paragraph below. This 12-month eligibility limitation is to ensure that the physicians' primary care training is current and they are not engaged in subspecialty training. This HHS eligibility requirement relates only to eligibility for an HHS waiver recommendation and does not relieve physicians of the responsibility to maintain their lawful status. Primary care physicians are defined as: physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology and who are willing to work in a primary care HPSA or MUA/P; and general psychiatrists willing to work in a Mental Health HPSA.

2. The petitioning health care facility must establish that it has recruited actively and in good faith for U.S. physicians in the recent past, but has been unable to recruit a qualified United States physician.

3. The head of a petitioning health care facility must execute a statement to confirm that the facility is located in a specific, designated HPSA or MUA/P, and that it provides medical care to Medicaid and Medicare eligible patients and the uninsured indigent.

4. The Exchange Visitor must execute a statement that he or she does not have pending, and will not submit, other IGA waiver requests while HHS processes the waiver request.

5. The employment contract must require the Exchange Visitor to practice a specific primary care discipline for a minimum of three years, 40 hours per week in a specified HPSA or MUA/P. It may not include a non-compete clause that limits the Exchange Visitor's ability to continue to practice in any HHS-designated primary care or mental health HPSA or MUA/P after the period of obligation. The contract must be terminable only for cause and not terminable by mutual agreement until completion of the three-year commitment, except that the contract may be assigned to another eligible employer, subject to approval by HHS and consistent with all applicable INS and Department of Labor requirements.

6. Both the employer and the alien physician must submit information to HHS as the Secretary may reasonably require.

7. Both the employer and the alien physician must comply with all applicable Department of State, Department of Labor, INS, and HHS statutes, regulations and policies.

HHS notes that if an alien physician acquires H-1B nonimmigrant status following approval by the INS of a request for waiver, then he or she becomes subject not only to the terms and conditions of the waiver, but also the terms and conditions of the H-1B nonimmigrant status. Failure to comply with those conditions will make that physician subject to removal from the United States by the INS.

This rule also amends the HHS regulations by replacing references to the United States Information Agency (USIA) with the Department of State, following the consolidation of USIA and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998.

The amendments to 45 CFR Part 50 are as follows:

(1) Revise § 50.1 to replace the reference to "the United States

Information Agency" with "the Department of State" to reflect the reorganization of the two agencies.

(2) In § 50.2 revise paragraph (b) to delete the "s" in "Exchanges Visitor Program"; revise paragraph (c) to replace the reference to "Office of International Affairs" with the "Office of Global Health Affairs"; remove the parenthetical examples in sentence three and add a new sentence at the end to authorize the Exchange Visitor Waiver Review Board to establish a workgroup to review requests for waivers for the delivery of health care services; and redesignate and move former paragraph (d) to new § 50.6(a) entitled "Procedures for submission of application to HHS."

(3) In § 50.3 redesignate and move former paragraphs (a)(1) through (3) to new § 50.4 entitled "Waivers for research," and revise former § 50.3 to include policy for waivers for the delivery of health care services.

(4) Revise § 50.4 to redesignate, remove former paragraph (b) as unnecessary and move former paragraph (a) to make it paragraph (b) of new § 50.6. Retitle § 50.4 as "Waivers for research" and insert former paragraphs § 50.3 (a)(1) through (3) as new paragraphs (a) through (c). Revise new paragraph (a) to remove the sentence which reads "The Board will not request a waiver when the application demonstrates that the exchange visitor is needed merely to provide services for a limited geographical area and/or to alleviate a local community or institutional manpower shortage, however serious."

(5) Add a new § 50.5 entitled "Waivers for the delivery of health care service" to provide criteria for requests for waivers based on a need for the provision of health care service.

(6) Add new § 50.6 entitled "Procedures for Submission of application to HHS" and insert former paragraph § 50.2(d) as paragraph (a), and former paragraphs § 50.4(a) and (b) as paragraphs (b) and (c).

(7) Redesignate former § 50.5 as new § 50.7.

(8) Remove former § 50.6 as unnecessary.

(9) Add new § 50.8 entitled "Compliance" to note the enforcement authority of INS and the responsibility of the alien physician for compliance with the terms and conditions of both the applicable visa status and of the waiver.

#### **Justification for Omitting Notice of Proposed Rulemaking**

Notice and public comment and delayed effective date have been waived

for these amendments because it has been found for good cause in accordance with 5 U.S.C. 553 that notice and comment are "impracticable, unnecessary or contrary to the public interest."

Since the mid-1990's, the Department of Agriculture placed more than 3,098 physicians in underserved areas in 48 states through its J-1 visa waiver program. While the Department of Agriculture will no longer be doing so, there remains a critical need for physicians in many parts of the United States that HHS is prepared to help meet by expanding its role in the J-1 visa waiver program and improving coordination of the placement of physicians in these areas. Any delay in implementation of these regulations would harm the medical needs of these vulnerable populations. Health care entities which will apply for exchange-visitor waivers have been unable to recruit adequate numbers of physicians to provide health services within their geographic areas. While the health care needs of underserved areas have decreased through the success of programs such as the National Health Service Corps and waivers requested by state public health departments, chronic shortages of physicians continue in certain geographic areas. Without Exchange Visitor physicians to help fill this gap, the health care needs of the populations in these areas remain unmet.

Accordingly, the Secretary has determined, in accordance with 5 U.S.C. 553 and HHS policy, that it would be unnecessary and contrary to the public interest to follow proposed rulemaking procedures in the issuance of these regulations or to delay their effective date. However, comments will be accepted at the above listed address for a period of 45 days following the publication of these regulations.

#### **Economic and Regulatory Impact**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA of 1980), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of

alternatives of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that the resources required to implement the requirement in these regulations are minimal. Therefore, according to the RFA and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies this action will not impose a significant burden on a substantial number of small entities. The Secretary has also determined that this action does not meet criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy of Federal expenditures.

We have determined that the rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, the rule will not have effects on State, local and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the action herein under the threshold criteria of Executive Order 13132, Federalism, and have determined that this action would not have substantial direct effects on the rights, roles and responsibilities of States.

#### **Paperwork Reduction Act of 1995**

This rule at 45 CFR Part 50 contains collection of information requirements subject to Office of Management and Budget (OMB) Review under the Paperwork Reduction Act (PRA) of 1995. These collection of information requirements are necessary to carry out the provisions of the Exchange Visitor program. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;

- The accuracy of the agency's estimate of the information collection burden;

- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 50.4 of the rule contains information collection requirements currently approved under OMB Control Number 0990-0001.

Sections 50.5(e)(4) and (5) of the rule contain disclosure requirements.

Section 50.5(e)(4) requires facilities or practices sponsoring an Exchange Visitor waiver request for the delivery of health care to post a notice of the charges for services. On an annual basis it is estimated that it will take 300 practices one hour each to prepare and post such notices. The total annual burden associated with this requirement is 300 hours.

Section 50.5(e)(5) of the rules contains the requirements for the submission of evidence that the applicant made unsuccessful efforts to recruit a U.S. physician. The burden associated with these requirements is the time and effort necessary for an applicant to submit the documentation. On an annual basis it is estimated that it will take 300 applicants two hours each to and submit this documentation. The total annual burden associated with this requirement is 600 hours.

The Department will submit a copy of this Rule to the Office of Management and Budget (OMB) for its review of the information collection requirements described above. These requirements are not effective until OMB has approved them.

If you comment on any of these information collection requirements, please mail copies directly to the following:

Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, HHS Desk Officer.

#### **National Health Objectives for the Year 2010**

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010. This is an HHS-led effort to set priorities for national attention. The activities covered by these amendments are

related to the priority area (Access to Quality Health Services) in Healthy People 2010, which is available online at <http://www.health.gov/healthypeople>.

#### **Smoke-Free Workplace**

This program is not subject to the Public Health Systems Reporting Requirements.

#### **List of Subjects in 45 CFR Part 50**

Cultural exchange programs, Immigration, Health care, Medical care, Health professions, Health facilities, aliens.

Dated: September 20, 2002.

**William R. Steiger,**

*Director, Office of Global Health Affairs.*

Approved: September 27, 2002.

**Tommy G. Thompson,**

*Secretary.*

Accordingly, 45 CFR Part 50 is amended as follows:

#### **PART 50—U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT**

**Paragraph 1.** The authority citation for part 50 continues to read as follows:

**Authority:** 75 Stat. 527, 22 U.S.C. 2451 *et seq.*, 84 Stat. 116, 8 U.S.C. 1182 (e).

**Par. 2.** Section 50.1 is revised to read as follows:

#### **§ 50.1 Authority**

Under the authority of Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. 116), the Department of Health and Human Services is an "interested United States Government agency" with the authority to request the Department of State to recommend to the Attorney General waiver of the two-year foreign residence requirement for Exchange Visitors under the Mutual Educational and Cultural Exchange Program. HHS eligibility requirement criteria for waivers are in addition to and independent of the existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor. The waiver regulations described in this part do not relieve alien physicians seeking a waiver of the 2-year foreign residence requirement from complying with the terms and conditions imposed on their admission to the United States.

**Par. 3.** Section 50.2 is amended by:

1. Revising paragraphs (b) and (c).
2. Removing paragraph (d).

The revisions read as follows:

**§ 50.2 Exchange Visitor Waiver Review Board.**

\* \* \* \* \*

(b) *Functions.* The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications submitted by institutions, acting on behalf of Exchange Visitors, to HHS for a favorable recommendation to the Department of State that the two-year foreign residence requirement for Exchange Visitors under the Exchange Visitor Program be waived.

(c) *Membership.* The Exchange Visitor Waiver Review Board consists of no fewer than three members and two alternates, of whom no fewer than three will consider any particular application. The Director of the Office of Global Health Affairs, Office of the Secretary, is an ex officio member of the Board and serves as its Chairman. The Director may designate a staff member of the Office of the Secretary to serve as member and Chairman of the Board in the Director's absence. The Assistant Secretary for Health appoints two regularly assigned members and two alternates to consider applications concerning health, biomedical research, and related fields. The Chairman may request the heads of operating divisions of the Department to appoint additional members to consider applications in other fields of interest to the Department. The Board may obtain expert advisory opinions from other sources. The Board may establish a workgroup from the operating divisions of the Department to consider applications for waivers based on the need for the delivery of health care services to underserved populations.

**Par. 4.** Section 50.3 is revised to read as follows:

**§ 50.3 Policy.**

(a) *Policy for waivers.* The Department of Health and Human Services endorses the philosophy that Exchange Visitors are committed to return home for at least two years after completing their program. This requirement was imposed to prevent the Program from becoming a stepping stone to immigration and to ensure that Exchange Visitors make available to their home countries their new knowledge and skills obtained in the United States. The Department will request waivers for the delivery of health care service to carry out the Department's mission to increase access to care for the nation's most medically underserved individuals. However, in keeping with the philosophy of the Program, the Exchange Visitor Waiver Review Board may determine the appropriate numbers and geographic

areas for waivers for the delivery of health care service.

(b) *Criteria for waivers.* The Exchange Visitor Waiver Review Board carefully applies stringent and restrictive criteria to its consideration of requests that it support waivers for Exchange Visitors. Each application is evaluated individually based on the facts available.

(c) *Waiver for members of Exchange Visitor's family.* Where a decision is made to request a waiver for an Exchange Visitor, a waiver will also be requested for the spouse and children, if any, if they have J-2 visa status. When both members of a married couple are Exchange Visitors in their own right (*i.e.*, each has J-1 visa status), separate applications must be submitted for each of them.

**Par. 5.** Section 50.4 is revised to read as follows:

**§ 50.4 Waivers for research.**

In determining whether to request a waiver for an Exchange Visitor engaged in the conduct of research, the Board considers the following key factors:

(a) The program or activity at the applicant institution or organization in which the Exchange Visitor is employed must be of high priority and of national or international significance in an area of interest to the Department.

(b) The Exchange Visitor must be needed as an integral part of the program or activity, or of an essential component thereof, so that loss of his/her services would necessitate discontinuance of the program, or a major phase of it. Specific evidence must be provided on how the loss or unavailability of the individual's services would adversely affect the initiation, continuance, completion, or success of the program or activity. The applicant organization/institution must clearly demonstrate that a suitable replacement for the Exchange Visitor cannot be found through recruitment or any other means. The Board will not request a waiver when the principal problem appears to be one of administrative, budgetary, or program inconvenience to the institution or other employer.

(c) The Exchange Visitor must possess outstanding qualifications, training and experience well beyond the usually expected accomplishments at the graduate, postgraduate, and residency levels, and must clearly demonstrate the capability to make original and significant contributions to the program. The Board will not request a waiver simply because an individual has specialized training or experience or is

occupying a senior staff position in a university, hospital, or other institution.

**§ 50.5 [Redesignated as § 50.7]**

**Par. 6.** Redesignate § 50.5 as § 50.7

**Par. 7.** New section § 50.5 is added to read as follows:

**§ 50.5 Waivers for the delivery of health care service.**

In determining whether to request a waiver for an Exchange Visitor to deliver health care service, the Board will consider information from and coordinate with State Departments of Public Health (or the equivalent), other "interested government agencies" which request waivers, and other relevant agencies. The Board requires the following criteria for requests for waivers for the delivery of health care service:

(a) The Exchange Visitor must submit a statement that he or she does not have pending and will not submit any other "interested government agency" waiver request while HHS processes the waiver request being submitted.

(b) Waivers are limited to primary care physicians and general psychiatrists who have completed their primary care or psychiatric residency training programs no more than 12 months before the date of commencement of employment under the contract described in subparagraph (d). This 12-month eligibility limitation is to ensure that the physicians' primary care training is current and they are not engaged in subspecialty training. This HHS eligibility requirement relates only to eligibility for an HHS waiver request and does not relieve physicians of the responsibility to maintain lawful status. Alien physicians are strongly encouraged to begin the waiver process as early as they possibly can while still in the residency training program. Early filing of the waiver request by the alien physician, coupled with timely processing of the request by the relevant government agencies, will facilitate the timely completion of the waiver process before the authorized J-1 admission expires, and the physician's subsequent application for change of nonimmigrant status from J-1 to H-1B.

(c) Primary care physicians are defined as: physicians practicing general internal medicine, pediatrics, family practice or obstetrics/gynecology willing to work in a primary care Health Professional Shortage Area (HPSA) or Medically Underserved Area or Population (MUA/P); and general psychiatrists who are willing to work in a Mental Health HPSA. Note: these HHS eligibility criteria for waivers are in addition to and independent of the

existing waiver and visa criteria established by the Immigration and Naturalization Service (INS), the Department of State, and the Department of Labor.

(d) The Exchange Visitor must have entered a contract with the applicant employer. This contract must:

(1) Require the Exchange Visitor to provide primary medical care in a facility physically located in an HHS-designated primary care HPSA or MUA/P, or general psychiatric care in a Mental Health HPSA.

(2) Require the Exchange Visitor to complete a term of employment of not less than three years providing primary care health services for not less than 40 hours per week.

(3) Require the Exchange Visitor to:

(i) Be licensed by the State where he or she will practice;

(ii) Have completed a residency in one of the following specialties: family practice, general pediatrics, obstetrics/gynecology, general internal medicine, or general psychiatry; and

(iii) Be either board certified or board eligible in the relevant primary care discipline.

(4) Be terminable only for cause until completion of the three-year commitment, except that, with the agreement of the alien physician, the employer may assign the contract to another eligible employer with the prior approval of HHS and compliance with all applicable INS and Department of Labor requirements. Prior to approving an assignment of the contract, HHS will review and consider the health care needs of the alien physician's current and proposed new locations, as well as the reasons for the request.

(5) Not contain a restrictive covenant or non-compete clause which prevents or discourages the physician from

continuing to practice in any HHS-designated primary care HPSA or MUA/P or Mental Health HPSA after the period of obligation under the contract has expired.

(6) Provide that any amendment to the contract complies with all applicable Federal statutes, regulations and HHS policy.

(7) Be consistent with all applicable Federal statutes, regulations and HHS policy.

(e) The facility or practice sponsoring the physician:

(1) Must provide health services to individuals without discriminating against them because either they are unable to pay for those services or payment for those health services will be made under Medicare or Medicaid.

(2) May charge no more than the usual and customary rate prevailing in the geographic area in which the services are provided.

(3) Must provide care on a sliding fee scale for persons at or below 200 percent of poverty income level. Persons with third-party insurance may be charged the full fee for service.

(4) Must post a notice in a conspicuous location in the patient waiting area at the practice site to notify patients of the charges for service as required in this paragraph.

(5) Must provide evidence that the applicant facility made unsuccessful efforts to recruit a physician who is a United States physician for the position to be filled by the Exchange Visitor.

(6) Must provide a statement by the head of the facility to confirm the facility is located in a specific, designated HPSA or MUA/P, and that it provides medical care to Medicaid and Medicare eligible patients and to the uninsured indigent.

(f) The employer and the alien physician must submit information to

the Secretary at the times and in the manner that the Secretary may reasonably require.

**Par. 8.** Revise § 50.6 to read as follows:

**§ 50.6 Procedures for Submission of application to HHS.**

(a) The Exchange Visitor Waiver Review Board will review applications submitted by private or non-federal institutions, organizations, or agencies or by a component agency of HHS. The Board will not accept applications submitted by Exchange Visitors or, unless under extenuating and exceptional circumstances, other U.S. Government Agencies.

(b) Applications, instruction sheets and information are available from the Executive Secretary, Exchange Visitor Waiver Review Board. An authorized official of the applicant institution (educational institution, hospital, laboratory, corporation, etc.) must sign the completed application. The applicant institution must send the completed application to the address indicated on the instruction sheet.

**Par. 10.** New section 50.8 is added to read as follows:

**§ 50.8 Compliance.**

If an alien physician acquires H-1B nonimmigrant status following approval by the INS of a request for waiver, then he or she becomes subject not only to the terms and conditions of the waiver, but also the terms and conditions of the H-1B nonimmigrant status. Failure to comply with those conditions will make that physician subject to removal from the United States by the INS.

[FR Doc. 02-31972 Filed 12-17-02; 8:45 am]

BILLING CODE 4165-15-P