does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection and no attestations were or are necessary for the loading and unloading of such cargo.

The Department published final regulations in the Federal Register on September 8, 1992, (57 FR 40966) to implement the prevailing practice exception under IMMACT 90. The fishing industry and the carriers worked together to comply with the law by filing the necessary attestations to qualify under the prevailing practice exception. The International Longshore and Warehousemen's Union responded to protect the jurisdiction of U.S. longshore workers by filing complaints pursuant to the attestations and seeking cease and desist orders to halt the performance of longshore work by the carrier's alien crewmembers.

The basic problem was that the prevailing practice exception was apparently designed for established port areas. A lack of flexibility in the remote areas of Alaska where the longshore work needed to be performed, in some cases, prevented carriers from complying with Departmental regulations. As a result, even where there were no U.S. longshore workers available for the particular employment, employers in some of these remote areas were prohibited from performing the necessary longshore work, resulting in potential adverse impacts on the Alaskan fishing industry including the loss of American jobs. In order to remedy the situation, Congress consulted with representatives of the longshoremen's unions and the carriers and enacted special provisions recognizing the unique character of Alaskan ports.

The Coast Guard Act amended the INA by establishing a new Alaska exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. The Alaska exception provides that the prohibition does not apply where the longshore work is to be performed at a particular location in the State of Alaska and an attestation with accompanying documentation has been filed by the employer with the Department of Labor. The INA provides, however, that longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall continue to be governed by section 258(c) of the INA (8 U.S.C. 1288(c)), even at locations in the State of Alaska. If, however, it is determined that an attestation is required for longshore work at locations in the State

of Alaska consisting of the use of automated equipment, *i.e.*, because the Administrator has determined, pursuant to a complaint, that it is not the prevailing practice to use alien crewmembers to perform the longshore activity(ies) through the use of the automated equipment, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation, the required attestation shall be filed by the employer under the Alaska exception and not under the prevailing practice exception. The amended INA provides that the prevailing practice exception no longer applies in case of longshore work to be performed at a particular location in the State of Alaska. As a result, U.S. ports in the State of Alaska which were previously listed in Appendix A, "U.S. Seaports," have been removed from the Appendix in this interim final rule.

The Alaska exception is intended to provide a preference for hiring United States longshoremen over the employer's alien crewmembers. The employer must attest that, before using alien crewmen to perform the activity specified in the attestation, the employer will make a bona fide request for and employ United States longshore workers who are qualified and available in sufficient numbers from contract stevedoring companies and private dock operators. The employer must also provide notice of filing the attestation to such contract stevedoring companies and private dock operators, and to labor organizations recognized as exclusive bargaining representatives of United States longshore workers. Finally, the employer must attest that the use of alien crewmembers to perform longshore work is not intended or designed to influence the election of a bargaining representative for workers in the State of Alaska.

The Coast Guard Act provides that the Secretary of Labor shall prescribe such regulations as may be necessary to carry out the amendments to the INA. The INA further provides that attestations previously filed pursuant to the prevailing practice exception at section 258(c) of the INA (8 U.S.C. 1288(c)) would not expire at the expiration of their respective validity periods but would remain valid until 60 days after the date of issuance of final regulations by the Secretary. Absent a final rule for attestations under this program, employers are precluded from using alien crewmembers for longshore activity at a particular location in the

State of Alaska unless an employer had a valid attestation for the location on file with ETA on the date of the Act's enactment. Thus, even where there are no qualified United States longshore workers available at a particular location in the State of Alaska, such an employer is prohibited from utilizing alien crewmembers to perform the necessary longshore work. This program affects a limited class of individuals and entities in Alaska. The Department consulted with representatives of all relevant parties in the development of this interim final rule and, for good cause, has determined that issuance of a proposed rule is unnecessary. 5 U.S.C. 553(b)(B).

Further, there is ongoing longshore work being performed off the coast of Alaska in connection with the fishing industry. Since delay in the issuance of an interim final rule precludes employers from filing attestations in Alaska in order to use the "Alaska exception", such employers may be encouraged by economic exigencies to utilize foreign crewmembers in longshore work illegally or to reflag their vessels to qualify for the reciprocity exception for vessels under the flags of countries which permit U.S. crewmembers to perform longshore work. Either of these actions by shippers would diminish employment opportunities for Alaskan stevedores, contrary to the purposes of the Act. Indeed, DOL has received information that further delay in implementing the Alaska exception could adversely impact the employment opportunities for Alaskan workers seeking longshore work. The Department, for good cause, has determined that this potential harm makes it impracticable and contrary to the public interest to delay implementation by publishing the rule as a proposed rule. 5 U.S.C. 553(b)(B).

Nevertheless, the Department is very interested in receiving comments on the interim final rule. These comments will be considered in the development of a final rule.

III. Attestation Process and Requirements

The regulations for the attestation program for employers using alien crewmembers for longshore work in the United States are published at 20 CFR part 655, subparts F and G, and 29 CFR part 506, subparts F and G, 57 FR 40966 (September 8, 1992).

A. When and Where to File

The regulations require that, to be acceptable, any attestation under the Alaska exception must be filed with ETA at least 30 days prior to the first