and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports.

[FR Doc. 91–16735 Filed 7–12–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

July 8, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0053.

Form Number: CF 3299.

Type of Review: Extension.

Title: Declaration for Free Entry of Unaccompanied Articles.

Description: This form serves as a declaration for residents, non-residents, and military personnel who are attempting to enter their personal and household goods free of duty. This form is also applicable for tools of trade and professional books.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours Per Response/Recordkeeper: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 25,799 hours.

Clearance Officer: Ralph Meyer (202) 566–4019, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–16736 Filed 7–12–91; 8:45 am]

BILLING CODE 4820–02–M

Customs Service

[T.D. 91–59]

Revocation of Individual Broker License No. 5987; Albert Kazangian

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

ACTION: General notice.

SUMMARY: Notice is hereby given that on January 4, 1990, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.74 of the Customs Regulations, as amended (19 CFR 111.74), ordered the revocation of the individual broker license no. 5987 issued to Albert Kazangian. The stay of this revocation pursuant to 19 U.S.C. 1641(e)(5), was lifted by the Court of International Trade on June 27, 1991 (Court No. 90–04–00206), and is effective immediately (July 15, 1991). Hence, the temporary reinstatement dated April 26, 1990, (T.D. 90–40) is null and void, and the subject license is revoked.

Dated: July 8, 1991.

William J. Luebkert,

Acting Director, Office of Trade Operations.

[FR Doc. 91–16737 Filed 7–12–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed infomration collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 14, 1991.

Dated: July 9, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant, Secretary for Information Resources Policies and Oversight.

Extension

1. Application for Burial Benefits, VA Form 21–530.

2. The form is used to determine basic eligibility and whether the person who paid the veteran's burial expenses should be paid, or if expenses are unpaid, whether the creditor is to be paid.

3. Individuals or households; businesses or other for-profit.

4. 100,000 hours.

5. 20 minutes.

6. On occasion.

7. 300,000 respondents.

[FR Doc. 91–16720 Filed 7–12–91; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 56, No. 135
Monday, July 15, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 235, 245

Meal Supplements in the National School Lunch Program

Correction

In proposed rule document 91-15647 beginning on page 30339 in the issue of Tuesday, July 2, 1991, make the following corrections:

1. On page 30339, in the third column, in the last paragraph, in the eighth line, "contained" was misspelled.

§ 210.10 [Corrected]

2. On page 20342, in § 210.10:

a. In the first column, in paragraph (j)(2)(iii), in the fourth line, "Juice" was misspelled.

b. In the first table, in the fourth column, in the second entry from the bottom, "3/4 cup." should read "3/4 cup[3]."; and in the last line of the material under the table, "chopped" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-31-NG]

Utrade Gas Co. Application to Export Natural Gas to Mexico

Correction

In notice document 91-14978 beginning on page 28756 in the issue of Monday, June 24, 1991, make the following correction:

On page 28757, in the first column, in the sixth line from the bottom, "June 7, 1991" should read "June 17, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 85N-0331]

Cardiovascular Devices; Effective Date of Requirement for Premarket Approval; Replacement Heart Valve Allograft

Correction

In rule document 91-15216 beginning on page 29177 in the issue of Wednesday, June 26, 1991, make the following corrections:

1. On page 29178, in the second column, in the fourth paragraph, in the fifth line, "value" should read "valve".

2. On page 29179, in the first column, in the fourth line, "§ 812.380" should read "§ 812.30".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-070-7122-09-7410-10; COC-50893]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

Correction

In notice document 91-15885 beginning on page 30762 in the issue of Friday, July 5, 1991, make the following correction:

1. On page 30763, in the first column, in the last paragraph, in the ninth line following "date of" insert "publication of this notice, all persons who wish to submit comments,".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

Correction

In notice document 91-15730 beginning on page 30404 in the issue of Tuesday, July 2, 1991, make the following correction:

1. On page 30404, in the **SUMMARY**, in number 6, in the last line, "40,800,000." should read "4,800,000.".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454, STN 50-455, STN 50-456, AND STN 50-457]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

Correction

In notice document 91-15093 beginning on page 28934 in the issue of Tuesday, June 25, 1991, in the second column, in the second paragraph, in the first line, "July 25, 1981" should read "July 25, 1991".

BILLING CODE 1505-01-D

federal register

Monday
July 15, 1991

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States; Immigration Act of 1990; Implementation; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

RIN 1205-AA86

Labor Certification Process for the Permanent Employment of Aliens in the United States; Implementation of Immigration Act of 1990

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 amendments are necessary because of changes in the immigration laws brought about by the enactment of the Immigration Act of 1990 (Act). The new Act made significant changes in the employment-based preferences and increased the number of employment-based immigrants from 54,000 to 140,000 annually beginning October 1, 1991. The specific changes to the permanent labor certification process made by the Act are: (1) Requiring employers to provide notice to collective bargaining agents and U.S. workers of applications for certification; and (2) providing that third parties may submit information related to the application. Changes to Schedule A as a result of changes to the employment-based preference categories are also included in the proposed rulemaking. The labor market pilot project provided for by the Act is not included in this proposed rule and will be the subject of a separate Notice of Proposed Rulemaking to be published on or about October 1, 1991. Citation changes to the Immigration and Nationality Act are noted as well.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before August 14, 1991.

ADDRESSES: Submit written comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW.; Washington, DC 20210, Attention: Immigration Task Force, room N-4470.

FOR FURTHER INFORMATION: David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue NW.; Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1990, the Immigration Act of 1990 (Act), Public Law 101-649, 104 Stat. 4978, was enacted. This new legislation makes major changes to and supplements the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), including amendments related to the admission of aliens to work in the United States. The Act generally takes effect on October 1, 1991. Public Law 101-649, sec. 161(a); 8 U.S.C. 1101 note.

The Act increases the number of employment-based immigrants from 54,000 to 140,000 annually, beginning October 1, 1991. The Act establishes five preference groups of employment-based immigration: (1) Priority Workers; (2) Professionals with Advanced Degrees and Aliens of Exceptional Ability; (3) Skilled Workers, Professionals and Other Workers; (4) Special Immigrants; and (5) Employment Creation. 8 U.S.C. 1153(b)(1)-(5). The Department of Labor (Department or DOL) has responsibility in two of these categories. They are Preference Groups 2 and 3.

Preference Group 2 includes immigrants who are members of the professions holding advanced degrees or their equivalent or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States and whose services in the sciences, arts, professions or business are sought by an employer in the United States. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from preference Group 1 (Priority Workers). A labor certification from the Secretary of Labor is required unless the Attorney General waives the requirement of a job offer when doing so is deemed in the national interest. 8 U.S.C. 1182(a)(5)(A).

Preference Group 3 includes immigrants who are capable, at the time of petitioning, of performing skilled labor requiring at least 2 years of training or experience, not of a temporary or seasonal nature; professionals who are qualified workers who hold baccalaureate degrees and who are members of the professions; and "other workers" who are qualified aliens who are capable at the time of petitioning of performing unskilled labor. Up to 40,000 visas may be issued to persons in this category, plus any unused visas from Preference Groups 1 and 2. No more than 10,000 visas will be issued to other workers on an annual basis. A labor certification from the Department is required. 8 U.S.C. 1153(b)(3)(C) and 1182(a)(5)(A).

Preference Group 5 includes immigrants who will invest the required amount of $1,000,000 in a new commercial enterprise that will employ at least 10 U.S. workers who are not family members. The Act also provides that the minimum investment can range from one-half to three times the required amount, depending upon certain circumstances. The required level of $1,000,000 may be adjusted by the Attorney General, after consultation with the Secretary of Labor and the Secretary of State. Up to 10,000 visas may be issued to persons in this category. No labor certification is made for Preference Group 5 immigrants. 8 U.S.C. 1153(b)(5); see 8 U.S.C. 1282(a)(5)(A).

Section 122 of the Act makes three changes in the statutory requirements for the permanent labor certification process. Section 122(a) of the Act requires the Department to test the use of labor market and other information as an alternative to the present case-by-case labor certification process under section 212(a)(5)(A) of the INA. See 8 U.S.C. 1182(a)(5)(A). This 3-year pilot program will test the concept and develop procedures for selecting up to ten shortage and/or surplus occupations. The Department is currently working on issues such as: The appropriate methodology to be used; the division (if any) between shortage and surplus occupations; the sources of data which may be used; the degree of occupational specificity to employ; and the impact on Schedule A, Group I, and on Schedule B. See 20 CFR 656.10, 656.11, 656.22, and 656.23; and 56 FR 11709 (March 20, 1991). A separate Notice of Proposed Rulemaking regarding this project will be published on or about October 1, 1991. Section 122(b) supplements the statutory basis for the permanent labor certification program, by requiring an employer to notify the appropriate collective bargaining representative, if one exists, that it filed a labor certification application. If there is no bargaining representative, all employees must be notified through conspicuous posting in the employer's facility. Section 122(b) of the Act also supplements the INA by mandating that DOL accept the submission of documentary evidence by third parties bearing on a permanent labor certification application, such as documentation on the availability of qualified workers for the job(s) in question, wages and working conditions.

and information about the employer's failure to meet terms and conditions of employment with respect to the employment of alien workers and U.S. co-workers.

The Employment and Training Administration's (ETA's) regulations for the certification of permanent employment of immigrant aliens are issued pursuant to section 122 of the Act and section 212(a)(5)(A) of the INA. 8 U.S.C. 1182(a)(5)(A) and 1182 note.

On March 20, 1991, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) summarizing the relevant provisions of the Act and raising issues and questions about which the Department invited public comment. 56 FR 11705. The comments received as a result of the ANPRM were reviewed and considered in developing this proposed rule.

II. Permanent Alien Employment Certification Process

Generally, an individual labor certification from the Department is required for employers to employ an alien under Preference Groups 2 and 3. 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 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 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 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 Act (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain available U.S. workers and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the 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) * * *.

III. 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).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment service offices to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the basis of information for the certification determinations. See also 20 CFR parts 651–658; and the Wagner-Peyser Act (29 U.S.C. chapter 4B).

Part 656 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.

IV. Advance Notice of Proposed Rulemaking

The ANPRM invited interested parties to submit written comments by April 19, 1991, on the various provisions of the Act that DOL is responsible for administering. These comments were considered in drafting this proposed rule. A variety of comments were received on a number of issues. The Department will consider these comments as well as those received pursuant to this Notice of Proposed Rulemaking (NPRM) in drafting a final rule (on an interim or other basis), scheduled to be published by September 1, 1991.

In the ANPRM, the Department indicated it was considering, in addition to the changes required by the Act, other changes to the regulations governing the issuance of permanent labor certifications at 20 CFR part 656, which may be needed to improve this process or clarify ambiguities. While the Department has decided to limit this proposed rule to implementing the changes made to the permanent labor certification process by the Act and to minor technical changes, it found the comments it received on other issues helpful in gaining insight into the way the public views the permanent labor certification program. These comments will be considered in the Department's deliberations on other needed improvements in the labor certification process.

In the ANPRM, the Department sought comments on the transition provisions of the Act (see sections 161 (a) and (c)(1)(B); 8 U.S.C. 1101 note), especially whether applications initiated under current regulations and filed prior to the effective date of the Act, that are pending at the time the new regulations take effect, should be processed under the current regulations or under the regulations that will be effective on October 1, 1991.

Numerous comments were received on this transition issue. Virtually all took the position that labor certification applications filed before the October 1, 1991, effective date of the Act, should be processed under the current regulations and should be considered valid no matter when a determination on a labor certification is made.

The Department intends to process under the current regulations all

applications for alien employment certification filed with State Employment Security Agencies before October 1, 1991. The Department's current regulations provide, in relevant part at 20 CFR 656.30, that *a labor certification is valid indefinitely* (emphasis supplied). This proposed rule does not affect that regulation.

A related issue of considerable concern to commenters is whether the current method of establishing the alien's "priority date" for getting in line to obtain a visa will be retained. Currently, an alien's priority date is defined in INS regulations as the date an alien's Application for Alien Employment Certification (Form ETA 750) is filed with a local employment service office. See 8 CFR 204.1(d)(3) (1990 ed.). Many commenters were concerned that INS may change this definition in its regulations to the date the visa petition is filed with the appropriate INS office.

It should be noted, however, that the implementation of the transition provisions of the Act and the method of determining an alien's priority date are not issues DOL can resolve. However, as stated in the ANPRM, the Department will continue to work closely with the DOS and the INS in an effort to insure that any new regulations apply only to applications filed after October 1, 1991. It is intended for pre-October 1, 1991, applications that the current method of establishing the alien's "priority date" for getting in line to obtain a visa to immigrate to the United States be retained.

Discussion of other comments received pursuant to the ANPRM which are relevant to this NPRM are included in the discussion of the proposed amendments below.

V. Discussion of Regulatory Proposals

A. Schedule A

1. General

Schedule A is a list of precertified occupations for which the Director, U.S. Employment Service, has previously determined that there are not sufficient United States workers who are able, willing, qualified, and available and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in such occupations. 20 CFR 656.10 and 656.22. Schedule A applications are filed directly with INS or DOS, and those agencies determine whether an individual application falls within the scope of the precertified list of occupations. See, *e.g.*, 8 CFR 204.2(i)(4).

As a result of the Act's changes to the preference categories for employment-based immigrants, the Department is proposing to remove from Schedule A three of the four precertified occupational categories currently on Schedule A. As explained below, it is proposed that Groups II, aliens of exceptional ability in the sciences and arts; III, aliens immigrating to the United States to perform religious occupations or to work for a nonprofit religious organization; and IV, intracompany transferees; be eliminated. Only Group I, physical therapists and nurses, will remain on the precertified list of occupations under this proposal.

The Department's reasons for deleting each of these groups is discussed below.

2. Group II—Aliens of Exceptional Ability in the Sciences and Arts

The Department is proposing to delete Group II, aliens of exceptional ability in the performing arts, from Schedule A. Section 121 of the Act amends the INA, in relevant part, by establishing an employment-based preference category (Preference Group I) at INA section 203(b)(1)(A)(i) for aliens with extraordinary ability in the "sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation * * *." 8 U.S.C. 1153(b)(1)(A)(i). This new preference category, which does not require a labor certification (see 8 U.S.C. 1182(a)(5)(A)), is broader than the current Group II of Schedule A because it includes aliens of national as well as international renown (the former are not now included in Group II). The new statutory preference category also includes performing artists and athletes, occupations not now included in Group II. Therefore, since it appears to have been superseded, the Department believes that no useful purpose would be served in retaining Schedule A, Group II, and is therefore proposing that it be deleted as of October 1, 1991.

Further, it is the Department's understanding that the current criteria DOL uses to establish Group II eligibility at 20 CFR 656.22(d) are being incorporated into INS's proposed regulations for implementing the employment-based preference category for aliens with extraordinary ability. For these reasons, the Department also believes that the removal of Group II from the labor certification regulations is in consonance with Congressional intent.

However, the Department is concerned that it may be possible that certain aliens of exceptional ability that now qualify for Schedule A, Group II, will not be able to qualify as aliens of extraordinary ability. If this is true, as a result of the elimination of Group II, applications filed on behalf of any such aliens would have to be processed under the basic labor certification process at § 656.21 which requires that the labor market be tested for the availability of qualified U.S. workers. Since this is not the intended result of the recommendation to delete Group II, the Department invites comments on whether the elimination of Group II would result in the need to initiate an individual labor certification on behalf of aliens that do not need one under Group II.

3. Group III—Religious Occupations

The proposed regulations would also remove Group III, Religious Occupations, from Schedule A in view of the addition of religious workers by the Act to the special immigrant categories at section 101(a)(27)(C)(ii) (II) and (III) of the INA. 8 U.S.C. 1101(a)(27)(C)(ii) (II) and (III); see Public Law 101–649, secs. 151(a) and 162. Although the new special immigrant categories for religious occupations provided by the Act are not coextensive with Schedule A, Group III, and sunset on October 1, 1994, unless extended by Congress, the Department believes it would be inconsistent with Congressional intent to maintain Group III, in view of the limitation contained in the Act of 5,000 visas a year that may be made available to aliens to enter to work in religious occupations. See 8 U.S.C. 1153(b)(4).

The Department also believes that the impact of the special immigrant categories for religious occupations over the next three years can be better evaluated or tested to determine if they should be extended beyond October 1, 1994, if Group III is eliminated.

4. Group IV—Intracompany Transferees

The proposed regulations remove Group IV, Intracompany Transferees, from Schedule A. The Act has included a section for "certain multinational executives and managers" in the INA's first employment-based preference category (*i.e.*, priority workers) and this section is similar to Group IV of Schedule A. See 8 U.S.C. 1153(b)(1)(C). For the most part, this is a broader category than Schedule A, Group IV. To qualify for the new employment-based preference category established for multinational executives and managers, the alien only has to have worked for the international entity for one out of the

last three years and not the immediately preceding year as now required for Group IV of Schedule A at 20 CFR 656.10(d) of the Department's regulations. The definitions of "managerial capacity" and "executive capacity", added as section 101(a)(44)(A) and (B), respectively, of the INA by section 123 of the Act also effectively broaden the category in 8 U.S.C. 1153(b)(1)(C) for "certain multinational executives and managers" beyond the scope of Group IV. 8 U.S.C. 1101(a)(44)(A) and (B). The new definitions of "managerial capacity" and "executive capacity" are broader than the definitions the INS had been using in administering Schedule A, Group IV.

It is the Department's understanding that the Schedule A, Group IV, criteria used to establish Group IV eligibility at 20 CFR 656.10(f) are being incorporated into INS's proposed regulations to implement the employment-based preference category for "certain multinational executives and managers". Therefore, this preference category, as administered by INS, is likely to be coextensive with the current Schedule A, Group IV.

5. Applications for Schedule A Occupations

The procedures for filing Schedule A applications in 20 CFR 656.22 are revised to reflect the proposed deletion of Groups II, III, and IV from Schedule A; the deletion of the nonpreference category (under which labor certification applications could be filed with a Consular Officer) from the INA by the Act; and the Department's understanding that, under the proposed regulations of the INS, aliens will not be able to file visa petitions on their own behalf under either the second or third employment-based preference.

B. Special Handling Provisions for College and University Teachers and Aliens Represented To Have Exceptional Ability in the Performing Arts

The special handling provisions at 20 CFR 656.21a apply, in relevant part, to applications submitted to employ an alien as a college or university teacher or an alien represented to have exceptional ability in the performing arts. The special handling procedures 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. These procedures do not require that a job order be placed with the local Employment Service office; nor do they require that an advertisement be placed over the name of the Employment Service; rather, it may be published in the name of the employer. Another major difference between the special handling procedures and the basic process, is that the DOL Certifying Officer must determine (pursuant to 8 U.S.C. 1182(a)(5)(A)(i)(I) and (a)(5)(A)(II)) that the U.S. applicant is at least as qualified (equally qualified) as the alien for the labor certification application before a labor certification can be denied because a U.S. worker is available for the employer's job opportunity. Under the basic labor certification process, which applies to all other occupations for which labor certifications are processed by the Department, the Certifying Officer need find only that the U.S. applicant is qualified (or meets the employer's minimum job requirements) regardless of whether or not the alien is more qualified, to deny a labor certification because qualified U.S. workers are available. See 20 CFR 656.21.

The Act's inclusion of performing artists in the employment-based preference category of "aliens with extraordinary ability" (8 U.S.C. 1153(b)(1)), combined with a review of the regulatory history that led to the development of the special handling provisions for aliens represented to have exceptional ability in the performing arts, has led the Department to conclude that performing artists should be deleted from the special handling provisions. The INS proposed rule implementing the preference category for "aliens with extraordinary ability" is expected to include performing artists. Since a labor certification is not required for a performing artist to be admitted to the U.S. under the first employment-based preference category, which includes "aliens with extraordinary ability", there does not appear to be a need to keep the special handling provisions for aliens of exceptional ability in the performing arts. See 8 U.S.C. 1153(b)(1)(A) and 1182(a)(5)(A)).

With the deletion of Schedule A, Group II (20 CFR 656.10(b) and 656.22(d)), discussed above, and the special handling provisions for performing artists (20 CFR 656.21a(a)(1)(iv)) from the permanent labor certification regulations at 20 CFR part 656, the Department will apply the "equally qualified" provision in section 212(a)(5)(A)(i)(I) of the INA only in cases submitted under the special handling procedures for college and university teachers. 8 U.S.C. 1182(a)(5)(A)(i)(I); see 8 U.S.C. 1182(a)(5)(A)(ii). In all other labor certification cases the U.S. worker will only have to be minimally qualified to be considered for the employer's job opportunity.

However, the Department is concerned that it may be possible that certain aliens of exceptional ability in the performing arts that now qualify for the current special handling procedures will not be able to qualify as aliens of extraordinary ability. If the special handling procedures for aliens represented to have exceptional ability in the performing arts were eliminated, applications filed on behalf of any such aliens would have to be processed under the basic labor certification process at § 656.21 which requires that the labor market be tested for the availability of qualified U.S. workers. Since this is not the intended result of the recommendation to delete the special handling procedures for aliens of exceptional ability in the performing arts, the department invites comments on whether the elimination of these procedures would result in the need to initiate an individual labor certification on behalf of aliens that do not need one under the special handling procedures.

c. Notice Provisions

Section 122(b)(1) of the Act supplements the INA, by requiring that an employer applying for permanent alien labor certification send a notice of the application to its employees' bargaining representatives, or, if no such representative exists, to its employees directly through posting of the notice at conspicuous locations at the worksite in the area of intended employment. 8 U.S.C. 1182 note. This is a slight extension to current practice under the existing rule, which does not mandate notice to a union, but which requires the employer to post a notice of the job opportunity. The current rule does not require such notice to indicate that an application has been filed for alien employment certification. 20 CFR 656.21(b)(3). Section 122(b)(2) of the Act also gives persons the right to submit documentary evidence bearing on the application for certification.

The proposed rule amends the current posting regulation at 20 CFR 656.21(b)(3) to implement the notice requirements of the Act. The amended rule also specifies that the notice required by the Act should be posted in conjunction with the 30-day job order that must be placed with the local Employment Service office in accordance with paragraph (f) of 20 CFR 656.21. In the case of private households, notice is required only if a household employs U.S. one or more workers at the time an application is filed with a local Employment Service office.

The ANPRM published on March 20, 1991, invited comment on whether an employer should be required to submit to DOL documentation of the bargaining representative's receipt of the notice and representative's comments (if any) on such notice. Virtually all comments that addressed this issue were uniform in indicating that the employer should be required to document only that notice was provided to the bargaining representative. By requiring copies of an exchange of correspondence, the bargaining representative would be in a position to delay the processing of the Application for Alien Employment Certification by not responding to the employer's notice or by taking an inordinate amount of time to respond to the notice provided by the employer. The proposed rule is consistent with the posting requirements of the current posting regulations.

A paragraph has been added to the General Filing Instructions at 20 CFR 656.20 to provide that any person may submit documentary evidence bearing on an application for certification filed under 20 CFR 656.21 and 656.21a to the Employment Service local office or the Certifying Officer and that such information will be considered by the Certifying Officer in making the determination. The regulations do not specify any particular form that has to be followed for submission of documentary evidence. It can be submitted, for example, by letter, telegram, or facsimile transmission. The Act, in fact, permits no more than existing DOL practice. Currently, such information is accepted and considered; and will continue to be considered, under the proposed rule. However, DOL interprets the Act as not requiring that any person who submits information be given the right to appeal determinations made on labor certification applications to the Board of Alien Labor Certification Appeals, and the Act does not give so-called "third parties" standing to challenge certifications before the Board or in court.

D. Technical and Clarifying Amendments

The regulations at 20 CFR part 656 have not been amended since December 1980. Therefore, a variety of technical and clarifying amendments are made by these amendments to reflect changes in the immigration laws and procedures that are not of a substantive nature. These include, for example, changes in the alternative forms of documentation required for physicians by 20 CFR 656.209(d), to make them consistent with the 1981 amendments to other exclusionary provisions of the INA (Pub. L. 97–116), and updating regional office addresses. See 8 U.S.C. 1182(a)(32).

Regulatory Impact

This rule affects only those employers seeking immigrant workers for permanent employment in the United States. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR 1981 Comp., p. 127, 5 U.S.C. 601 note.

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 significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This document contains no paperwork requirements which mandate clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Catalog of Federal Domestic Assistance

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

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

Proposed Rule

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

Authority

1. The Authority citation for part 656 is revised 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.

§ 656.1 [Amended]

2. Section 656.1 is amended as follows:

a. In the introductory text of paragraph (a), the phrase "section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14))" is removed and the phrase "section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A))" is added in lieu thereof.

b. In paragraph (c), the phrase "Division of Labor Certifications, United States Employment Service, 601 D Street NW., Washington, DC 20213" is removed and the phrase "Division of Foreign Labor Certifications, United States Employment Service, Department of Labor, Washington, DC 20210." is added in lieu thereof.

3. Section 656.2 is revised to read as follows:

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

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 111 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

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

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

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

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

(c) *Role of the Department of Labor.* (1) The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

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

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

(2) The certification is referred to in this part as a "labor certification".

(3) The Department of Labor issues labor certifications in two instances: for

the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii) pursuant to regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(4) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. The Department also administers attestation programs relating to the admission and/or work authorization of the following nonimmigrants: Registered nurses (H–1A visas), professionals (H–1B visas), crewmembers performing longshore work (D visas), and students (F–1 visas), classified under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1101(a)(15)(H)(i)(b), 1101(a)(15)(D), and 1101(a)(15)(F), respectively. See also 8 U.S.C. 1184 (c), (m) and (n), and 1288; and Public Law 101–649 section 221, 8 U.S.C. 1184 note. The regulations under this part apply only to labor certifications for permanent employment.

§ 656.10 [Amended]

4. Section 656.10 is amended as follows:

a. In the introductory text of § 656.10, the phrase "Administrator, United States Employment Service (Administrator)," is removed and the phrase "Director, United States Employment Service (Director)" is added in lieu thereof;

b. Paragraphs (b), (c), and (d) of schedule A are removed and reserved.

§ 656.11 [Amended]

5. Section 656.11 is amended as follows:

a. In the introductory text of § 656.11, the word "Administrator" is removed and the word "Director" is added in lieu thereof.

§ 656.20 [Amended]

6. Section 656.20 is amended as follows:

a. In paragraph (d)(1)(i), the phrase "Visa Qualifying Examination (VQE)" is removed and the phrase "Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS)" is added in lieu thereof.

b. In paragraph (d)(1)(ii)(A), the year "1977" is removed and the year "1988" is added in lieu thereof.

c. Paragraph (d)(1)(ii)(B) is removed and paragraph (d)(1)(ii)(C) is redesignated as new paragraph (d)(1)(ii)(B).

d. A new paragraph (g) is added to read as follows:

§ 656.20 General filing instructions.

* * * * *

(g) Any person may submit documentary evidence to the local employment service office or to the Certifying Officer bearing on the Application for Alien Employment Certification, such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers.

§ 656.21 [Amended]

7. Section 656.21 is amended as follows:

a. In the introductory text of paragraph (b)(1), the phrase "Job Service System" is removed and the phrase "Employment Service System" is added in lieu thereof.

b. In paragraph (c), the phrase "local job service office" is removed and the phrase "local office" is added in lieu thereof.

c. In paragraph (e), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof.

d. In paragraph (f) introductory text, the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof; and the phrase "a Job Service job order:" is removed and the phrase "an Employment Service job order:" is added in lieu thereof.

e. In paragraph (f)(1), the phrase "regular Job Service recruitment system." is removed and the phrase "regular Employment Service recruitment system." is added in lieu thereof.

f. In paragraph (f)(2), the phrase "Job Service (JS) Regulations (as defined at § 651.7 of this chapter)" is removed and the phrase "Employment Service (ES) Regulations (20 CFR parts 651–658)" is added in lieu thereof.

g. In paragraph (j)(2), the word "Job" is removed and the word "Employment" is added in lieu thereof.

h. In paragraph (k), the word "Job" is removed and the word "Employment" is added in lieu thereof.

i. Paragraph (b)(3) is revised to read as follows:

§ 656.21 Basic labor certification process.

* * * * *

(b) * * *

(3) The employer shall provide notice of the filing of the Application for Alien Employment Certification:

(i) To the bargaining representative (if any) of the employer's employees in the occupational classification and area in which the alien is sought; or

(ii) If there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations for at least 10 consecutive days and shall contain the information required for advertisements by paragraph (g)(3) through (g)(8) of this section. The notice shall be clearly visible and unobstructed while posted and shall be posted in conspicuous places where the employer's U.S. workers readily can read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate vicinity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a).

(iii) In the case of private households, notice is required only if a household employs one or more U.S. workers at the time the application for labor certification is filed with a local Employment Service office.

Notice of the job opportunity required by this paragraph (b)(3) shall be provided in conjunction with the recruitment required under paragraph (f) of this section and shall contain the information required for advertisements by paragraphs (g)(3) through (g)(8) of this section, except that such notice shall state that applicants should report to the employer, not to the local Employment Service office, and shall state that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity.

§ 656.21a [Amended]

8. Section 656.21a is amended as follows:

a. In the introductory text of paragraph (a) the phrase "or an alien represented to be of exceptional ability in the performing arts" is removed; and also in the introductory text of paragraph (a) the word "Job" is removed and the word "Employment" is added in lieu thereof.

b. In paragraph (a)(1)(ii), the phrase "The employer shall submit a full description" is removed; and the phrase "A full description" is added in lieu thereof.

c. In paragraph (a)(1)(iii)(E), the phrase "which are filed after December 31, 1981," and the comma between the word "teachers" and the phrase "shall be filed" are removed;

d. Paragraph (a)(1)(iv) is removed.

e. In paragraph (a)(2), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof; and the phrase "teacher or an alien represented to have exceptional ability in the performing arts," is

removed and the word "teacher" is added in lieu thereof.

f. In paragraph (a)(3), the phrase "local Job Service office" is removed and the phrase "local office" is added in lieu thereof.

g. In paragraph (b)(1), the phrase "Job Service" is removed and the phrase "Employment Service" is added in lieu thereof.

h. In paragraph (b)(2)(ii), the word "Administrator" is removed from the second sentence and the word "Director" is added in lieu thereof; and the phrase "of this part" is added between the citation "§ 656.30" and the phrase "for the significance".

i. In paragraph (c), the phrase ", an alien represented to be of exceptional ability in the performing arts," is removed.

9. Section 656.22 is revised to read as follows:

§ 656.22 Applications for labor certification for Schedule A occupations.

(a) An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification with the appropriate Immigration and Naturalization Service Office, not with the Department of Labor or a State employment service office.

(b) The Application for Alien Employment Certification form shall show evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form. There is, however, no need for the employer to provide the other documentation required under this part for non-Schedule A occupations.

(c) An alien seeking labor certification under Group I of Schedule A shall file as part of his or her labor certification application documentary evidence of the following:

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

(2) An alien seeking Schedule A labor certification as a professional nurse (§ 656.10(a)(2) of this part) shall file as part of his or her labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this § 656.22(a)(2), and not pursuant to §§ 656.21, 656.21a, or § 656.23 of this part.

(d) An Immigration Officer shall determine whether the alien has met the applicable requirements of this section and of Schedule A (§ 656.10 of this part), shall review the application and shall determine whether or not the alien is qualified for and intends to pursue the Schedule A occupation.

(1) The Immigration Officer may request an advisory opinion as to whether the alien is qualified for the Schedule A occupation from the Division of Foreign Labor Certifications, United States Employment Service, Washington, DC 20210.

(2) The Schedule A determination of the INS shall be conclusive and final. The employer, therefore, may not make use of the review procedures at § 656.26 of this part.

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

§ 656.23 [Amended]

10. Section 656.23 is amended as follows:

a. In paragraph (a), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

b. In paragraph (b), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

c. In paragraph (c) the word "Administrator" is removed and the word "Director" is added in lieu thereof.

d. In the introductory text to paragraph (d), the phrase "local Job Service office" is removed and the phrase "local Employment Service office" is added in lieu thereof; and the phrase "the following documentation:" is removed and the phrase "the following:" is added in lieu thereof.

§ 656.24 [Amended]

11. Section 656.24 is amended as follows:

a. In paragraph (a), the word "Administrator" is removed and the word "Director" is added in lieu thereof.

b. In paragraph (b)(2)(i), the phrase "job service office's" is removed and the phrase "Employment Service office's" is added in lieu thereof.

c. In paragraph (b)(2)(iii), the parenthetical phrase "(the "Job Service")" is removed and the parenthetical phrase "(the "Employment Service")" is added in lieu thereof.

§ 656.26 [Amended]

12. Section 656.26 is amended by removing from paragraph (c)(5) the word "Administrator" and adding in lieu thereof the word "Director".

§ 656.30 [Amended]

13. Section 656.30 is amended by removing from paragraph (b)(1) the phrase "local job service office date stamped" and adding in lieu thereof "local employment service office date-stamped".

§ 656.50 [Amended]

14. Section 656.50 is amended as follows:

a. The definition of "Administrator" is removed.

b. In the definition of "Area of Intended Employment", the phrase "Standard Metropolitan Statistical Area (SMSA), any place within the SMSA" is removed from the second sentence and the phrase "Metropolitan Statistical Area (MSA), any place within the MSA" is added in lieu thereof.

c. In the definition of "Certifying Officer", paragraph (2) is removed and paragraphs (3) and (4) are redesignated as paragraphs (2) and (3), respectively.

d. In the definition of "Local Job Service Office", the phrase "Job Service" is removed the four times it appears therein and the phrase "Employment Service" is added in lieu thereof in each instance; and the parenthetical phrase "(also known as a State employment service)" is removed and the parenthetical phrase "(also known as a State Employment Security Agency (SESA))" is added in lieu thereof.

e. In the definition of "Schedule A," the word "Administrator" is removed and the word "Director" is added in lieu thereof.

f. In the definition of "Schedule B," the word "Administrator" is removed and the word "Director" is added in lieu thereof.

g. The definition of "HHS" is removed.

h. In the definition of "United States Employment Service (USES)" the phrase "of 1933" is removed; and the parenthetical phrase "(the Job Service (JS)" is removed and the parenthetical phrase "(the Employment Service (ES) System)" is added in lieu thereof.

i. A definition of "Director" is added in alphabetical order to read as follows:

§ 656.50 Definition, for the purposes of this part, of terms used in this part.

* * * * *

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

* * * *

§ 656.50 [Redesignated as § 656.3]

15. Section 656.50 is redesignated as § 656.3 of Subpart A.

Subpart E [Removed]

16. Subpart E is removed and reserved.

§ 656.60 [Amended]

17. Section 656.60 is amended as follows:

a. In the address of Region II, the phrase "and Puerto Rico): Room 3713, 1515 Broadway, New York, NY 10036." is removed and the phrase "Puerto Rico, and the Virgin Islands): 201 Varick Street, room 775, New York, NY 10014." is added in lieu thereof.

b. In the address of Region VI, the number "555" is removed and the number "525" is added in lieu thereof.

c. In the address of Region IX, the phrase "Box 36084, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102" is removed and the phrase "71 Stevenson Street, Room 830, San Franc sco, CA 94119" is added in lieu thereof.

Signed at Washington, DC this 8th day of July, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–16583 Filed 7–12–91; 8:45 am]

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Monday
July 15, 1991

Part III

Department of Labor

Wage and Hour Division

29 CFR Part 870
Restriction on Garnishment; Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 870

RIN 1215-AA63

Restriction on Garnishment

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The enactment of the Fair Labor Standards Amendments of 1989 increased the statutory minimum wage from $3.35 per hour to $3.80 per hour effective April 1, 1990, and to $4.25 per hour effective April 1, 1991. The Federal Wage Garnishment Law restricts the amount of an individual's disposable earnings which can be garnished in any workweek. The largest amount which can be garnished in any workweek may not exceed the lesser of either: (1) 25 percent of an individual's disposable earnings for that workweek or, (2) the amount by which an individual's disposable earnings for that workweek exceed thirty times the statutory minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act (FLSA), in effect at the time the earnings are payable. Accordingly, 29 CFR part 870 needs to be updated so that the garnishment restrictions in the regulations will reflect the minimum wage increases resulting from the 1989 Amendments.

EFFECTIVE DATE: This rule is effective July 15, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Wage Garnishment Law, 15 U.S.C. 1671, *et seq.*, section 303(a) of title III of the Consumer Credit Protection Act (CCPA), limits the amount of an individual's disposable earnings which can be garnished in any workweek. The maximum amount which can be garnished in any workweek may not exceed the lesser of either: (1) 25 percent of an individual's disposable earnings for that workweek, or (2) the amount by which an individual's disposable earnings for that workweek exceed thirty times the statutory minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, that is in effect at the time the earnings are payable.

On November 17, 1989, the 1989 Amendments to FLSA (Pub. Law 101–157) were enacted. These Amendments provide, in part, that the statutory minimum wage required under section 6(a)(1) of the FLSA increases from $3.35 per hour to $3.80 per hour effective April 1, 1990, and to $4.25 per hour effective April 1, 1991. Accordingly, 29 CFR part 870, Restriction on Garnishment, is revised to reflect the minimum wage increases resulting from the 1989 Amendments.

II. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

III. Summary of Rule

As a result of the enactment of the 1989 Amendments to the FLSA which increased the statutory minimum wage, the amounts listed in § 870.10(b), (c), and (d), are increased to reflect the $3.80 an hour minimum wage for the period beginning April 1, 1990, and to reflect the $4.25 an hour minimum wage effective April 1, 1991.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq., pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in final form without prior notice-and-comment in order to reflect the 1989 Amendments as these Amendments relate to the garnishment of an individual's earnings under Regulations, 29 CFR part 870. The changes to the existing regulations are minor clarifying revisions needed to reflect statutory increases in the federal minimum wage.

Accordingly, the Secretary, for good cause, finds pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 870

Wages, Minimum wages, Garnishment of wages.

For the reasons set forth above, 29 CFR part 870 is amended as set forth below.

Signed at Washington, DC, on this 8th day of July, 1991.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

Accordingly, title 29 chapter V, subchapter D, of the Code of Federal Regulations is amended as follows:

PART 870—RESTRICTION ON GARNISHMENT

1. The authority citation for part 870 continues to read as follows:

Authority: Secs. 303, 305, 306, 82 Stat. 163, 164; 15 U.S.C. 1673, 1675, 1676, unless otherwise noted.

2. Section 870.10, paragraphs (b), (c) (2) through (5) and (d) are revised to read as follows:

§ 870.10 Maximum part of disposable earnings subject to garnishment.

* * * * *

(b) Weekly pay period. The statutory exemption formula applies directly to the aggregate disposable earnings paid or payable for a pay period of 1 workweek, or a lesser period. Its intent is to protect from garnishment and save to an individual earner the specified amount of compensation for his personal services rendered in the workweek, or a lesser period. Thus:

(1) The amount of an individual's disposable earnings for a workweek or lesser period which may not be garnished is 30 times the Fair Labor Standards Act minimum wage. If an individual's disposable earnings for

such a period are equal to or less than 30 times the minimum wage, the individual's earnings may not be garnished in any amount. (When the minimum wage increases, the proportionate amount of earnings which may not be garnished also increases.) On April 1, 1991, the minimum wage increased to $4.25. Accordingly, the amount of disposable weekly earnings which may not be garnished is $127.50 effective April 1, 1991. (For the period April 1, 1990 through March 31, 1991, the amount that may not be garnished is $114 (30×$3.80).)

(2) For earnings payable on or after April 1, 1991, if an individual's disposable earnings for a workweek or lesser period are more than $127.50, but less than $170.00, only the amount above $127.50 is subject to garnishment. (For earnings payable during the period April 1, 1990, through March 31, 1991, when the Fair Labor Standards Act minimum wage was $3.80, this range computes to more than $114.00, but less than $152.00.)

(3) For earnings payable on or after April 1, 1991, if an individual's disposable earnings for a workweek or lesser period are $170.00 or more, 25 percent of his/her disposable earnings is subject to garnishment. (The weekly figure was $152.00 (40×$3.80) for the period April 1, 1990 through March 31, 1991.)

(c) * * *

(1) * * *

(2) The following formula should be used to calculate the dollar amount of disposable earnings which would not be subject to garnishment: The number of workweeks, or fractions thereof, should be multiplied times the applicable Federal minimum wage and that amount should be multiplied by 30. For example, for the period April 1, 1990 through March 31, 1991 when the Federal minimum wage was $3.80 per hour, the formula should be calculated based on a minimum wage of $3.80 ($3.80 multiplied by 30 equals $114; $114 multiplied by the number of workweeks (or fractions thereof) equals the amount that cannot be garnished). As of April 1, 1991, the $4.25 Federal minimum wage replaces $3.80 in the formula (and the amount which cannot be garnished would then be $127.50 multiplied by the number of workweeks (or fractions thereof)). For purposes of this formula, a calendar month is considered to consist of 4⅓ workweeks. Thus, during the period April 1, 1990 through March 31, 1991 when the Federal minimum hourly wage was $3.80 an hour, the amount of disposable earnings for a 2-week period is $228.00 (2×30×$3.80); for a monthly period, $494.00 (4⅓×30×$3.80). Effective April 1, 1991, such amounts increased as follows: for a two-week period, $255.00 (2×30×$4.25); for a monthly period, $552.50 (4⅓×30×$4.25). The amount of disposable earnings for any other pay period longer than 1 week shall be computed in a manner consistent with section 303(a) of the act and with this paragraph.

(3) Absent any changes to the rate set forth in section 6(a)(1) of the Fair Labor Standards Act, disposable earnings for individuals paid weekly, biweekly, semimonthly, and monthly may not be garnished unless they are in excess of the following amounts:

Date	Minimum amount	Weekly amount	Biweekly amount	Semi-monthly amount	Monthly rate
Jan. 1, 1981	$3.35	$100.50	$201.00	$217.75	$435.50
Apr. 1, 1990	3.80	114.00	228.00	247.00	494.00
Apr. 1, 1991	4.25	127.50	255.00	276.25	552.50

(4) Absent any changes to the rate set forth in section 6(a)(1) of the Fair Labor Standards Act, if the disposable earnings are less than the following figures, only the difference between the appropriate figures set forth in paragraph (c)(3) of this section and the individual's disposable earnings may be garnished.

Date	Minimum amount	Weekly amount	Biweekly amount	Semi-monthly amount	Monthly rate
Jan. 1, 1981	$3.35	$134.00	$268.00	$290.33	$4580.67
Apr. 1, 1990	3.80	152.00	304.00	329.33	658.67
Apr. 1, 1991	4.25	170.00	340.00	368.33	736.67

For example, in April of 1990, if an individual's disposable earnings for a biweekly pay period are $274.00, the difference between $228.00 and $274.00 (i.e., $46.00) may be garnished.

(5) If disposable earnings are in excess of the figures stated in paragraph (c)(4) of this section, 25% of the disposable earnings may be garnished.

(d) Date wages paid or payable controlling. The date that disposable earnings are paid or payable, and not the date the Court issues the garnishment order, is controlling in determining the amount of disposable earnings that may be garnished. Thus, a garnishment order in November 1990, providing for withholding from wages over a period of time, based on exemptions computed at the $3.80 per hour minimum wage then in effect, would be modified by operation of the change in the law so that wages paid after April 1, 1991, are subject to garnishment to the extent described in paragraphs (b) and (c) of this section on the basis of a minimum rate of $4.25 per hour. This principle is applicable at the time of the enactment of any further increase in the minimum wage.

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