

guidance and examples of the appropriate methods for determination of the actual wage for purposes of the H-1B wage requirement. The underlying regulatory provisions at §§ 655.731(a)(1), 655.731(b)(2), and 655.760(a)(3) were not open for notice and comment.

In the Interim Final Rule preamble, the Department fully described and responded to the comments and stated:

After carefully considering all the comments, the Department has concluded that Appendix A—which was created in response to employers' requests for technical guidance—has not served its intended purpose and has, instead, caused some confusion. The Department has, therefore, decided that Appendix A will not be included in the Interim Final Rule. The controlling standards for determining and documenting an employee's "actual wage" are contained in the current regulation, 20 CFR 655.731(a)(1), 655.731(b)(2), and 655.760(a)(3) (none of which were opened for comment in the NPRM). If the need arises in the future, the Department, as appropriate, will provide compliance advice or technical assistance further explaining the current regulation.

[65 FR 80193]

Although this preamble discussion made the Department's intention perfectly clear, and the Table of Contents did not contain Appendix A, the Department neglected to include an explicit instruction in the regulatory text to delete Appendix A. It is, therefore, necessary that a correction Rule be issued to achieve the Interim Final Rule's intention. This Final Rule provides the needed correction, and removes Appendix A from the H-1B regulations.

Procedural Requirements

The Department is of the view that this correction to an inadvertent error in the Interim Final Rule is not a rule to which the procedural requirements of the Administrative Procedure Act or the various statutes and executive orders relating to rules apply. If this correction is a rule, however, notice and comment is not required. Interested parties have had two opportunities to comment on Appendix A. In addition, the Appendix was an interpretation of § 655.731 and, as required by the rules of the **Federal Register**, did not contain new requirements or restrictions. Furthermore, if the correction is a rule, the Department finds good cause not to provide further notice and comment. Such additional notice and comment would be unnecessary and contrary to the public interest since the public was advised in the preamble to the Interim Final Rule that the Appendix was deleted and unnecessary confusion

would result if this correction were not made immediately. For the same reasons, the correction is effective on January 19, 2001, the effective date of the Interim Final Rule.

This correction contains no paperwork requirements to which the Paperwork Reduction Act applies. In addition, this action, if a rule, is not a "significant regulatory action" within the meaning of Executive Order 12866. Furthermore, this action is not a "major rule" within the meaning of the Small Business Regulatory Enforcement Act or an "unfunded mandate" within the meaning of Title II of the Unfunded Mandates Reform Act of 1995. Finally, the action will not have federalism implications within the meaning of Executive Order 13132, and a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Accordingly, the Department makes the following correction to the interim final rule published on December 20, 2000. On page 80233, in the first column immediately preceding the heading for subpart I, insert instruction 21a to read as follows:

21a. Appendix A to subpart H of part 655 is removed.

Signed at Washington, DC, this 12th day of February, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary, Employment and Training Administration.

Thomas M. Markey,

Acting Administrator, Wage and Hour Division, Employment Standards Administration.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1215-AB09

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor, in concurrence with the Employment Standards Administration, Wage and Hour Division, Department of Labor.

ACTION: Interim final rule; OMB approval of information collection requirements.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL) are providing notice that on January 18, 2001, the Office of Management and Budget (OMB) approved under the Paperwork Reduction Act (PRA), the information collection requirements contained in Sections 655.700; 655.731; 655.736; 655.737(e)(1); 655.738(e); 655.739(i), and 655.760 of the subject regulation, under OMB No. 1205-0310.

DATES: These information collection requirements became effective on January 19, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693-0745 (this is not a toll-free number).

Dale M. Ziegler, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693-2942 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 20, 2000 (65 FR 80110), ETA and ESA jointly published an Interim Final Rule (IFR) governing the employment of H-1B nonimmigrants in the United States. The Department at the same time submitted an information collection request, in accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* and 5 CFR part 1320, seeking approval of the information collection requirements contained in that rule. These information collection requirements are contained in Sections 655.700; 655.731; 655.736; 655.737(e)(1); 655.738(e); 655.739(i); and 655.760 of that rule.

On January 18, 2001, OMB approved these information collections under the PRA and 5 CFR part 1320. The OMB control number assigned to these information collections is 1205-0310 and approval will expire January 31, 2004.

Signed at Washington, DC this 12th day of February, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary, Employment and Training Administration.

Thomas M. Markey,

Acting Administrator, Wage and Hour Division, Employment Standards Administration.

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