

TABLE OF CHANGES – FORM
Form ETA 9035CP, General Instructions for the 9035 & 9035E
OMB Number: 1205-0310
Expiration Date: 05/31/2018

Reason for Form Revision:

This form revision will assist the Department with collecting information needed for program administration, transparency, and enforcement. This form revision will assist the public with clarity of information requested, clarity of program obligations, and streamlining the collection.

| Current Page Number and Section | New Page Number and Section | Current Text | Proposed Text | Time Burden Reduction or Increase estimate | Justification |
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| Page 1, Important Note | N/A | <p>Please read these instructions carefully before completing the ETA Form 9035 or 9035E –Labor Condition Application for Nonimmigrant Workers. These instructions contain full explanations of the questions and attestations that make up the ETA Form 9035 and 9035E.</p> <p>In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor. If the employer received approval by the Department to submit this form non-electronically <u>ALL</u> required sections, fields and items must be completed as well as any sections, fields and items where is a response is conditioned on the response to another required section/ field or</p> | <p>Please read these instructions carefully before completing the Form ETA 9035 or 9035E –Labor Condition Application (LCA) for Nonimmigrant Workers. These instructions contain full explanations of the questions and attestations that make up the LCA, Form ETA 9035 and 9035E, with further information about the employer’s obligations provided in 20 CFR 655 Subpart H.</p> <p>If the employer plans to file non-electronically, which is allowed only for certain reasons set out below, <u>ALL</u> required fields and items containing an asterisk (*) must be completed as well as any fields and items where a response is conditioned on the response to another required section/ field or item as</p> | 0 | This change is for clarity of instructions. |

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| | | <p>item.</p> <p>Anyone, who knowingly and willingly furnishes any false information in the preparation of ETA Forms 9035 or 9035E and any supporting documentation, or aids, abets, or counsels another to do so is committing a Federal offense 18 U.S.C. §§ 2, 1001).</p> <p>OMB Notice: These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply are mandatory (Immigration and Nationality Act, Section 212(n) and (t) and 214(c). Public reporting burden for this collection of information, which is to assist with program management and to meet Congressional and statutory requirements is estimated to average 45 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.</p> <p>Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing</p> | <p>indicated by the section (§) symbol.</p> <p>In accordance with 20 CFR 655.740, once an LCA has been received from an employer, a determination will be made by the ETA Certifying Officer whether to certify the LCA or return it to the employer not certified. Where all items on the Form ETA 9035 or 9035E are complete and do not contain obvious inaccuracies, the ETA Certifying Officer will certify the LCA within 7 working days of the date the LCA is received and date-stamped by the Department. If the LCA is not certified pursuant to 20 CFR 655.740(a)(2)(i) or (ii), the ETA Certifying Officer will return it to the employer, or the employer's authorized agent or representative, explaining the reason(s) for such return without certification. Except in the case of a disqualification issued by the Wage Hour Administrator, the employer may submit a corrected LCA to the Department for review, which shall be treated as a new LCA and processed on a "first come, first served" basis.</p> <p>Anyone who knowingly and willingly furnishes false information in the</p> | | |
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| | | <p>this burden, to the U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW, , Washington, DC, 20210. (Paperwork Reduction Project OMB 1205-0310.</p> | <p>preparation of the Form ETA9035 or 9035E and any supplement thereto, or aids, abets, or counsels another to do so is committing a Federal offense under 18 U.S.C. 1001) or other provisions of law.</p> <p>OMB Notice: These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply are mandatory (Immigration and Nationality Act (INA)), Section 212(n) and (t) and 214(c). Public reporting burden for this collection of information, which is to assist with program management and to meet Congressional and statutory requirements is estimated to average XXX minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.</p> <p>Send comments regarding this burden estimate or any other aspect of this collection of information, including</p> | | |
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| | | | <p>suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Ave., NW, Suite PPII 12-200, Washington, DC, 20210. (Paperwork Reduction Project OMB 1205-0310).</p> | | |
| Page 1, HOW TO FILE, A., Who May File | N/A | <p>A. A United States (U.S.) employer who desires to apply for an LCA on behalf of a nonimmigrant worker(s) must file the Form ETA 9035 (paper) or Form ETA 9035E (electronic).</p> | <p>A. A United States (U.S.) employer who desires to apply for an LCA on behalf of a nonimmigrant worker(s) must file the Form ETA 9035 (paper) or Form ETA 9035E (electronic).</p> | 0 | This change is for clarity of instructions. |
| Page 1, HOW TO FILE, B., How to File and Retention of Records | N/A | <p>B. 1. For all occupations, online filing of the ETA Form 9035E is required through the accessible at . Employers with physical disabilities that prevent them from filing electronic applications or employers without Internet access can file the LCA by U.S. mail. These employers MUST obtain permission to file their application by U.S. mail by submitting a written request to the following address:</p> <p>Office of Foreign Labor Certification Employment & Training Administration U.S. Department of Labor 200 Constitution Avenue, NW- Room C4312 Washington, DC 20210</p> | <p>B. 1. Online filing of the Form ETA 9035E is required through the iCERT Visa Portal System (iCERT System), which is accessible at http://icert.doleta.gov, unless an employer has a disability or lacks Internet access. Employers with a disability that prevents them from filing electronic applications or employers without Internet access can file the LCA by U.S. mail. Employers without Internet access MUST obtain prior permission to file their application by U.S. mail by submitting a written request to the following address:</p> <p>Attention:</p> | | This change is for clarity of instructions. |

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| | | | <p>Administrator Office of Foreign Labor Certification Employment & Training Administration U.S. Department of Labor 200 Constitution Avenue, NW, Suite PPII 12-200 Washington, DC 20210</p> <p>Employers filing non-electronically due to disability must notify the Office of Foreign Labor Certification of the reason for the non-electronic filing at the time of submitting the application.</p> | | |
| Page 1, HOW TO FILE, Section B, How to File and Retention of Records | Page 2, HOW TO FILE, Section B, How to File and Retention of Records | 2. In accordance with 20 CFR part 655, Subpart H, either at the employer's principal place of business in the U.S. or at the place of employment in the U.S., the employer shall retain copies of the records required by Subpart H for a period of 1 year beyond the last date on which any nonimmigrant worker is employed under the LCA or, if no nonimmigrant workers were employed under the LCA, 1 year from the date the LCA expired or was withdrawn. Required payroll records for the nonimmigrant workers and other workers in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a | 2. In accordance with 20 CFR part 655, Subpart H, either at the employer's principal place of business in the U.S. or at the place of employment in the U.S., the employer must retain copies of the records required by Subpart H for a period of one (1) year beyond the last date on which any nonimmigrant worker is employed under the LCA or, if no nonimmigrant workers were employed under the LCA, one (1) year from the date the LCA expired or was withdrawn. Required payroll records for the nonimmigrant workers and other workers in the occupational classification, including the names and wage rates of such workers and the information on benefits | 0 | This change is for clarity of instructions. |

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| | | <p>period of 3 years from the date(s) of the creation of the record(s), except that if an enforcement action is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in 20 CFR part 655, Subpart I. For a complete list of documents that must be retained and/or made available for public access see 20 CFR 655.760.</p> | <p>offered required by 20 CFR 655.760(a)(6), shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three (3) years from the date(s) of the creation of the record(s), except that if an enforcement action is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in 20 CFR part 655, Subpart I. For a complete list of documents that must be retained and/or made available for public access see 20 CFR 655.760.</p> | | |
| <p>Page 2, Section A, Employment - Based Nonimmigrant Visa Information</p> | <p>Page 2, Section A, Employment - Based Nonimmigrant Visa Information</p> | <p>1. Enter one of the following classification symbols to indicate the type of visa supported by this application: “H-1B”, “H-1B1 Chile”, “H-1B1 Singapore” or “E-3 Australian”. When filing this application electronically, the iCERT System will provide a dropdown of the acceptable visa classification symbols.</p> <p>The H-1B visa allows an employer to temporarily employ a foreign professional worker in the U.S. on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. A</p> | <p>1. Enter one of the following classification symbols to indicate the type of visa supported by this application: “H-1B”, “H-1B1 Chile”, “H-1B1 Singapore” or “E-3 Australia”. Select only one visa classification for all nonimmigrant workers employed pursuant to the LCA. When filing this application electronically, the iCERT System will provide a dropdown of the acceptable visa classification symbols.</p> <p>The H-1B visa allows an employer to temporarily employ foreign professional workers in the U.S. on a nonimmigrant basis in a</p> | <p>0</p> | <p>This change is for clarity of instructions.</p> |

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| | | <p>specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc...).</p> <p>The H-1B1-Chile visa applies to those employers temporarily hiring business professionals who are nationals of Chile under the Chile Free Trade Agreement allows an employer to temporarily employ business professionals who are nationals of Chile under the Chile Free Trade Agreement.</p> <p>The H-1B1-Singapore visa applies to those employers temporarily hiring business professionals who are nationals of Singapore under the Singapore Free Trade Agreement. allows an employer to temporarily employ business professionals who are nationals of Singapore under the Singapore Free Trade Agreement.</p> <p>The E-3 visa applies to those employers temporarily hiring business professionals who are nationals of Australia under Title V of the REAL ID Act of 2005 (Division B) in the Emergency Supplemental</p> | <p>specialty occupation or as a fashion model of distinguished merit and ability. Under 20 CFR 655.715, a specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc.).</p> <p>The H-1B1-Chile visa allows an employer to temporarily employ business professionals who are nationals of Chile under the Chile Free Trade Agreement.</p> <p>The H-1B1-Singapore visa allows an employer to temporarily employ business professionals who are nationals of Singapore under the Singapore Free Trade Agreement.</p> <p>The E-3 Australia visa allows an employer to temporarily employ business professionals who are nationals of Australia under Title V of the REAL ID Act of 2005 (Division B) in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.</p> | | |
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| | | Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005. | | | |
| Page 2, Section B, Temporary Need Information | Page 2, Section B, Temporary Need Information | 1. Enter the title of the job opportunity for which the LCA is being sought. . | 1. Enter the title of the job opportunity for which the LCA is being sought. The employer's internal job title should be entered in this field. Note: The job title must be the same for all nonimmigrant workers working on a single LCA. The employer may file additional LCAs, as needed. | 0 | This change is for clarity of instructions. |
| Page 2, Section B, Temporary Need Information | Page 2, Section B, Temporary Need Information | 2. Enter the six -digit Standard Occupational Classification (SOC)/ Occupational Network (O*NET) code for the occupation, which most clearly describes the work to be performed. For example, the six digit SOC code for a computer systems analyst is 15-1051. | 2. Enter the six -digit Standard Occupational Classification (SOC)/ Occupational Network (O*NET) code for the occupation, which most clearly describes the work to be performed. For example, the six digit SOC code for a Computer Systems Analyst is 15-1121. Note: More information on SOC codes can be found at http://www.bls.gov/soc/ | 0 | This change is for clarity of instructions. |
| Page 2, Section B, Temporary Need Information | Page 2, Section B, Temporary Need Information | 3. Enter the occupational title associated with the SOC/ O*NET code. For example, the occupational title associated with SOC/ O*NET code 15-1051.00 is "Computer System's Analyst". | 3. Enter the occupational title associated with the SOC/ O*NET code. For example, the occupational title associated with SOC/ O*NET code 15-1121 is Computer Systems Analyst. | 0 | This change is for clarity of instructions. |
| Page 2, Section B, Temporary Need | Page 3, Section B, Temporary Need | 4. Enter whether this position is full-time by indicating "Yes" or "No". whether the position is | 4. Indicate whether the position is full-time by marking "Yes" or "No." | 0 | This change is for clarity of instructions. |

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| Information | Information | <p>full-time by marking “Yes” or “No”. Although there is no regulatory definition for full-time employment for the H-1B, H-1B1 and E-3 programs, the Department generally considers 35 hours per week as the distinction point between full-time and part-time.</p> <p><u>Note:</u> If the position is part-time, the employer attests that the foreign worker(s) supported by the LCA will not regularly work more than the number of hours indicated (which may be a range of hours) on the United States Citizenship and Immigration Services (USCIS) Form(s) I-129 filed for the nonimmigrant(s). <u>Note:</u> All foreign worker(s) under the LCA must be part-time if Item 4 is marked “No”; all nonimmigrant worker(s) must be full-time if Item 4 is marked “Yes.” If the employer has both full-time and part-time nonimmigrant worker(s), then separate LCAs must be filed.</p> | <p>Although there is no regulatory definition for full-time employment for the H-1B, H-1B1 and E-3 programs, the Department generally considers 35 hours per week or more to be full-time.</p> <p><u>Note:</u> If the position is part-time (less than 35 hours per week), the foreign worker(s) supported by the LCA must not regularly work more than the number of hours indicated (which may be a range of hours) on the United States Citizenship and Immigration Services (USCIS) Form(s) I-129 filed for the nonimmigrant(s).</p> <p><u>Note:</u> All foreign worker(s) under the LCA must be part-time if Item B.4 is marked “No”; all nonimmigrant worker(s) must be full-time if Item B.4 is marked “Yes.” If the employer has both full-time and part-time nonimmigrant worker(s), then separate LCAs must be filed.</p> | | |
| Page 2, Section B, Temporary Need Information | Page 3, Section B, Temporary Need Information | 5. Enter the beginning date of the worker’s period of employment. Use a month/day/full year (MM/DD/YYYY) format. | 5. Enter the beginning date of the nonimmigrant worker’s (or workers’) period of employment. The beginning date of employment cannot be | 0 | This change is for clarity of instructions. |

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| | | | <p>more than 6 months from the date the LCA is submitted to the Department for processing. The beginning date of employment also cannot be prior to the date the LCA is submitted for processing. Use a month/day/full year (MM/DD/YYYY) format.</p> | | |
| Page 2, Section B, Temporary Need Information | Page 3, Section B, Temporary Need Information | <p>6. Enter the end date for the nonimmigrant worker's) period of employment. The end date of employment cannot be more than 3 years after the start date for H-1B LCAs and initial H-1B1 LCAs. The end date employment for E-3 LCAs and H-1B1 extensions cannot be more than 2 years after the start date. Use a month/day/full year (MM/DD/YYYY) format.</p> | <p>6. Enter the end date for the nonimmigrant worker's (or workers') period of employment. The end date of employment cannot be more than three (3) years after the start date for H-1B LCAs and initial H-1B1 LCAs. The end date employment for E-3 LCAs and H-1B1 extensions cannot be more than two (2) years after the start date. Use a month/day/full year (MM/DD/YYYY) format.</p> | 0 | This change is for clarity of instructions. |
| Page 2, Section B, Temporary Need Information | Page 3, Section B, Temporary Need Information | <p>7. This collection item contains two parts.</p> <p>First, enter the total number of worker positions being requested for certification.</p> <p>Second, use collection (a) through (f) to enter the number of foreign workers in each applicable USCIS-defined category under which you the employer plans to file various Form I-129s for the foreign workers so that the sum of the numbers</p> | <p>7. This collection item contains two parts.</p> <p>First, enter the total unique number of worker positions being requested for certification. This total cannot be "0" (zero).</p> <p>Second, use collection Items B.7(a) through (f) to enter the number of foreign workers in each applicable USCIS-defined category under which the employer plans to file various</p> | 0 | This change is for clarity of instructions. |

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| | | in (a) through (f) equals the total number of worker positions requested. Every box Must be filled. If the employer plans to request no foreign workers in a particular category, please indicate “0 (zero)”. | Form I-129s for the foreign workers. The total worker positions requested for certification must be less than or equal to the sum total of the numbers entered in collection Items (a) through (f). Every box MUST be filled and a single worker may fit into multiple boxes, as appropriate. Note: If the employer does not plan to request nonimmigrant worker(s) in a particular category in Items (a) through (f), please enter “0” (zero), as appropriate. | | |
| Page 3, Section C, Employer Information | Page 3, Section C, Employer Information | 1. Enter the full legal name of the business, person, association, firm, corporation, or organization, i.e., the employer, filing this application. The employer’s full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service. | 1. Enter the full legal name of the business, person, association, firm, corporation, or organization, i.e., the employer, filing this application. The employer’s full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service (IRS). | 0 | This change is for clarity of instructions. |
| Page 3, Section C, Employer Information | Page 4, Section C, Employer Information | 8. Enter the country of the employer’s principal place of business. If the city and country are the same, the name <u>must</u> still be entered in <u>both</u> fields. | 8. Enter the country of the employer’s principal place of business. If the city and country are the same, the name must still be entered in both fields. Note: This entry is for a country, not a county. | 0 | This change is for clarity of instructions. |
| Page 4, Section E, Attorney or Agent Information (if applicable) | Page 5, Section E, Attorney or Agent Information (if applicable) | Note: The information provided in this Section, specifically the name, telephone number, and email address, must be different from the employer’s point of contact information in Section D, unless the | Note: The information provided in this Section, specifically the name, telephone number, and email address, must be different from the employer’s point of contact information in Section D, | 0 | This change is for clarity of instructions. |

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| | | attorney is an employee of the employer. | unless the attorney is an employee of the employer. The employer authorizes the attorney or agent identified in this section to act on its behalf in connection with the filing of this application. | | |
| Page 4, Section E, Attorney or Agent Information (if applicable) | Page 5, Section E Attorney or Agent Information (if applicable) | 1. Identify whether the employer is represented by an attorney or agent in the process of filing this application. Only mark one box. If “Yes” complete the remainder of Section E. If “No” in question 1, skip 2 to 19 and continue to Section F. | 1. Identify whether the employer is represented by an attorney or agent in the process of filing this application. Only mark one box. If “Yes” complete the remainder of Section E. If “No” in question 1, skip 2 through 19 and continue to Section F. | 0 | This change is for clarity of instructions. |
| Page 4, Section E, Attorney or Agent Information (if applicable) | Page 5, Section E Attorney or Agent Information (if applicable) | 4. Enter the middle name of the attorney/agent. | 4. Enter the middle name of the attorney/agent, if a middle name exists. | 0 | This change is for clarity of instructions. |
| Page 5, Section E, Attorney or Agent Information (if applicable) | Page 5, Section E Attorney or Agent Information (if applicable) | 19. Enter the name of the highest court where attorney is in good standing. | 19. Enter the name of the highest State court where attorney is in good standing. | 0 | This change is for clarity of instructions. |
| Page 5, Section F, Rate of Pay | Page 6-7, Section F, Employment and Wage Information | Wage Rate Enter the rate of pay to be paid to the foreign worker(s). If the wage offer is expressed as a range, enter the bottom of the wage range to be paid. Enter the top of the wage range to be paid to the foreign worker(s). in the section indicating “Rate Up to (Optional).” 1. Enter whether the rate of pay is in | Wage Rate 11. Enter the wage to be paid to the nonimmigrant worker(s). If the wage offer is expressed as a range, enter the bottom of the wage range to be paid. Enter the top of the wage range to be paid to the nonimmigrant worker(s) in the section indicating “To” (Required only for employers paying a wage range). 11 a. Indicate whether | 0 | These items were moved for streamlining purposes and to assist with form completion. |

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| | | terms of per year, month, two weeks, week or hour in the section indicating “Rate is Per”. | the rate of pay unit is per hour, week, bi-week (every two weeks), month or year. | | |
| Page 5, Section G Employment and Prevailing Wage Information | Page 6, Section F Employment and Wage Information | Note: The employer may use this section to identify the physical locations of the intended place(s) of employment. up to three (3) physical locations and corresponding prevailing wages information covering each location where work will be performed and the electronic system will accept up to three (3) physical locations and wage information. If the employer has received approval from the Department of Labor to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section. | <p>Important Note: In accordance with 655.730(c)(4), the employer must specify, among other requirements, the gross wage rate to be paid to each nonimmigrant, the prevailing wage for the occupation in the area of intended employment and the specific source relied upon to determine the prevailing wage, and the intended place(s) of employment. The employer must define the intended place(s) of employment with as much geographic specificity as possible. Each place of employment listed below must be the worksite or physical location where the work will actually be performed and cannot be a P.O. Box.</p> <p>In accordance with 20 CFR 655,730(c)(5), the employer must identify all intended places of employment on the LCA. A place of employment means the worksite or physical location where the work actually is performed by the H-1B, H-1B1, or E-3 nonimmigrant. See 20 CFR 655.715. A worksite location must be identified as an “intended place of employment” if the employer knows at the time of filing the LCA that it will place workers at the worksite, or should reasonably expect that it will place workers at the</p> | 0 | This change is for clarity of instructions and to align the form with the regulatory requirement in 20 CFR 655.730(c)(5) that: “[a]ll intended places of employment shall be identified on the LCA; the employer may file one or more additional LCAs to identify additional places of employment.” |

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| | | | <p>worksite based on: 1) an extant contract with a secondary employer or client, 2) past business experience, or 3) future business plans. The Department's electronic filing system will accept up to three (3) physical locations with wage information and additional LCAs must be filed for any additional intended places of employment. If the employer is filing non-electronically and the employer intends that the work will be performed in more than one location, an attachment must be submitted in order to complete this section. If the employer has more than three (3) intended places of employment at the time of filing this application, the employer must file as many additional Form ETA 9035 forms as are necessary to sufficiently list all intended places of employment.</p> | | |
| <p>Page 5, Section G Employment and Prevailing Wage Information</p> | <p>Page 6, Section F Employment and Wage Information, Place of Employment Information</p> | <p><i>Place of Employment</i></p> <p>See the definition of "place of employment" in 20 Code of Federal Regulations (CFR) 655.715 and regulation concerning short term placement in 20 CFR 655.735.</p> <p><u>Note:</u></p> <p>1. Enter the street address of the place of intended employment. If primary address is not known, please enter "N/A".</p> | <p><i>Place of Employment Information</i></p> <p>See the definition of "place of employment" in 20 CFR 655.715. definition of "place of employment" in 20 Code of Federal Regulations (CFR) 655.715 and regulation concerning short term placement in 20 CFR 655.735.</p> <p>1. From the overall total worker positions entered in Item B.7, enter the estimated number of workers that will perform</p> | 0 | <p>Items moved on the form to streamline collection and assist with completion.</p> <p>New items are added to provide greater transparency to the public, and particularly to U.S. workers who may be displaced, about how workers hired under the LCA will be</p> |

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| | | <p>2. If additional space is needed for the street address, use this line.</p> <p>3. Enter the city of the place of intended employment.</p> <p>4. place of intended employment. If there is no county designation or it is not known, please enter "N/A".</p> <p>5. Enter the State/ district/ territory of intended employment.</p> <p>6. place of intended employment. If there is no postal code designation or it is not known,</p> | <p>work at this place of employment.</p> <p>2. For this intended place of employment, indicate whether the employer is placing the nonimmigrant worker(s) with a secondary employer. A secondary employer is another employer with whom LCA workers will be placed during the period of certification. The secondary employer must be disclosed in all circumstances where there are "indicia" of an employment relationship between the nonimmigrant worker(s) and the other/secondary employer as that term is explained in 20 CFR 655.738(d)(2)(ii).</p> <p>3. If "Yes" to Item F.2, provide the legal business name of the secondary employer (e.g. another employer) with whom the nonimmigrant worker(s) will be placed.</p> <p><u>Note:</u> The entry must include the legal business name of the secondary employer. Any trade name or DBA name should also</p> | <p>distributed and with which employers they will be placed.</p> |
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| | | | <p>be entered, as space permits.</p> <p>4. Enter the street address of the intended place of employment.</p> <p>5. If additional space is needed for the street address, use this line.</p> <p>6. Enter the city of the intended place of employment.</p> <p>7. Enter the county of the intended place of employment. If there is no county designation or it is not known, please enter "N/A". Note: In the absence of a county, enter the appropriate parish or borough in this field. Do not enter a country in this field.</p> <p>8. Enter the State/ district/ territory of intended employment.</p> <p>9. Enter the postal (zip) code of the intended place of employment. please enter "N/A".</p> | | |
| Page 5, Section F, Rate of Pay | Page 6, Section F, Employment and Prevailing Wage Information, Place of Employment Information, Wage Rate | <p>Enter the rate of pay to be paid to the foreign worker(s). If the wage offer is expressed as a range, enter the bottom of the wage range to be paid.</p> <p>Enter the top of the wage range to be paid to the foreign worker(s). in the section indicating "Rate Up to (Optional)."</p> <p>Enter whether the rate of pay is in terms of per year, month</p> | <p>Wage Rate</p> <p>10. Enter the wage to be paid the nonimmigrant worker(s) the wage offer is expressed range, enter the bottom of the wage range to be paid.</p> <p>Enter the top of the wage range to be paid to the nonimmigrant worker(s). in the section indicating "To" (Required only for employers paying a wage</p> | 0 | These items were moved to this section for streamlining purposes and to assist with completion. |

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| | | two weeks, week or hour in the section indicating “Rate is Per”. | range). 10a. Indicate whether the rate of pay unit is per hour, week, bi-week (every two weeks), month or year. | | |
| Page 6, Section G, Employment and Prevailing Wage Information, Prevailing Wage Information | Page 7, Section F, Employment and Wage Information, Prevailing Wage Rate Per | Indicate whether prevailing wage unit is per hour, week, bi-weekly, month or year. | Indicate whether prevailing wage unit is per hour, week, bi-week (every two weeks) , month or year. | 0 | This change is for clarity of instructions |
| Page 6, Section G, Employment and Prevailing Wage Information | Page 7, Section F, Employment and Wage Information | <p>Prevailing Wage Information</p> <p>If the employer received a Prevailing Wage Determination (PWD) from the State Workforce Agency (SWA) or an OFLC National Processing Center (NPC), enter the state/district/territory of the Agency which issued the PWD. If the employer did not obtain a PWD from the SWA or NPC, enter “N/A.” Use this field ONLY where the employer obtained a prevailing wage from the SWA or NPC.</p> <p>7(a). Enter the prevailing wage tracking number assigned by the SWA or NPC. If the SWA or NPC did not assign a prevailing wage tracking number OR the employer did not obtain a PWD from the SWA or NPC, enter “N/A”. Use this field ONLY where the employer obtained a prevailing wage from the SWA or NPC.</p> <p>8. If the employer received a prevailing wage from either the SWA , NPC or the</p> | <p>Prevailing Wage Source (12-14)</p> <p>NPWC PWD For the prevailing wage source, if the employer is using a Prevailing Wage Determination (PWD) obtained from the Department of Labor’s National Prevailing Wage Center (NPWC) for this LCA, provide the PWD tracking number in Item 12a. Enter the tracking number in the following format using the appropriate numerical digits from the issued PWD: P-xxx-xxxxx-xxxxxx.</p> <p>12a. Enter the NPWC PWD tracking number.</p> <p><i>An Occupational Employment Statistics (OES) Prevailing Wage</i></p> <p>For the prevailing wage source, if the employer is using a Bureau of Labor Statistics OES wage obtained from the</p> | -5 | The form was reorganized to assist employers with completion of this section. The streamlined design provides a breakdown of prevailing wage options for employers, where employer will complete one option from Items 12-14. |

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| | | <p>Foreign Labor Certification Data Center Online Wage Library at http://www.flcdatcenter.com, identify whether the wage (skill) level of the job opportunity is a level I, II, III, or IV. Only mark one box. Otherwise, mark “N/A”.</p> <p>9. Enter the prevailing wage for the job opportunity.</p> <p>10. Identify whether the prevailing wage is per hour, week, bi-weekly, month, or year. Only mark one box.</p> <p>11. Identify whether the prevailing wage source is Occupational Employment Statistics (OES); Collective Bargaining Agreement (CBA); Davis-Bacon Act (DBA); McNamara-O’Hara Service Contract Act (SCA); or Other (includes employer-provided independent authoritative source survey). In accordance with 20 CFR 655.731, employers may use an independent authoritative wage source in lieu of a SWA or NPC prevailing wage determination or another legitimate source of wage information as long as the data source used meets all the criteria set forth under 20 CFR 655.731(b)(3)(iii)(B) or (C), as appropriate. Only mark one box.</p> <p>Note: Mark “OES” in circumstances where the prevailing wage was obtained from either the SWA, NPC or the Foreign Labor Certification Data Center Online Wage Library at http://www.flcdatcenter.com.</p> | <p>iCERT System at http://icert.doleta.gov or the Foreign Labor Certification Online Data Center at www.flcdatcenter.com for this LCA, complete Items 13a, 13b and 13c.</p> <p>13a. Enter OES wage level for the OES prevailing wage.</p> <p>13b. Enter the year of the OES prevailing wage.</p> <p>Example (For Instructional Purposes Only): Example Included</p> <p><i>Another Legitimate Source (Other than OES) or An Independent Authoritative Source</i></p> <p>For the prevailing wage source, if the employer has a Collective Bargaining Agreement (CBA), Davis Bacon Act (DBA) wage, McNamara O’Hara Service Contract Act (SCA) wage for this LCA, complete Items 14a and 14b.</p> <p>For the prevailing wage source, if the employer has another legitimate source or an independent authoritative source survey for this LCA, complete Item 14a by selecting “Other/ PW Survey” and complete Items 14b, 14c and 14d. In accordance with 655.731(a)(2)(ii)(C),</p> | | |
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| | | <p>com</p> <p>11(a). Enter the year in which the data source used to list the prevailing wage was published.</p> <p>11(b). Specify the name of the company and exact wage survey used by the employer for the prevailing wage.</p> <p>Note: This field should be used in circumstances where the employer has marked “Other” in question 11 OR “OES” in question 11 and the employer did not obtain a prevailing wage from the SWA or NPC. For example, if the employer obtained a prevailing wage using OES data from the Foreign Labor Certification Data Center Online Wage Library at http://www.flcdatacenter.com, then the words “OFLC Online Data Center” must be entered in the space provided</p> | <p>another legitimate source is a source which: (1) Reflects the weighted average wage paid to workers similarly employed in the area of intended employment; (2) Reflects the median wage of workers similarly employed in the area of intended employment if the survey provides such a median and does not provide a weighted average wage of workers similarly employed in the area of intended employment; (3) Is based on the most recent and accurate information available; and (4) Is reasonable and consistent with recognized standards and principles in producing a prevailing wage.</p> <p>In accordance with 20 CFR 655.715, an <i>independent authoritative source survey</i> means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's application. Such survey shall: (1) Reflect the average wage paid to workers similarly employed in the area of intended employment; (2) Be based upon recently collected data—e.g.,</p> | | |
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within the 24-month period immediately preceding the date of publication of the survey; and (3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment. An independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer, which has recognized expertise in an occupational field.

14a. Indicate the prevailing wage source type.

14b. Enter the year of the prevailing wage source. For unpublished surveys issued to or produced for the employer, enter the year.

14c. For a prevailing wage survey, enter the survey producer or publisher (e.g. survey company name).

14d. For a prevailing wage survey, enter the title or source of the prevailing wage survey (e.g. name of the survey instrument).

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| <p>Page 6, Section H, Employer Labor Condition Statements</p> | <p>Page 8, Section G Employer Labor Condition Statements</p> | <p>The employer must read and agree to statements (1) through (4) below and demonstrate that agreement by marking “Yes” to Item 1 in Section G of the Form ETA 9035/ 9035E and by signing the application. The employer agrees to develop and maintain documentation supporting labor condition statements (1) through (4) as specified in 20 CFR 655.731 and 655.734, and to make this documentation available to Department of Labor officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with the Department of Labor. This documentation must be retained for public examination at the place of employment or the employer’s principal place of business as specified in Section J of this form.</p> | <p>The employer must read and agree to statements (1) through (4) below and demonstrate that agreement by marking “Yes” to Item 1 in Section G of the Form ETA 9035/ 9035E and by signing the application. The employer agrees to develop and maintain documentation supporting labor condition statements (1) through (4) as specified in 20 CFR 655.731 through 655.734, and to make this documentation available to Department of Labor officials upon request. The employer is required to make available for public examination a copy of the LCA and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with the Department of Labor. This documentation must be retained for public examination at the place of employment or the employer’s principal place of business as specified in Section I of this form.</p> | <p>0</p> | <p>This change is for clarity of instructions.</p> |
| <p>Page 6, Section H, Employer Labor Condition Statements</p> | <p>Page 8, Section G Employer Labor Condition Statements</p> | <p>(1) Wages: The employer attests that H-1B, H-1B1 or E-3 foreign workers will be paid wages which are at least the higher of the actual wage level paid by the employer to all other</p> | <p>(1) Wages: The employer attests that H-1B, H-1B1 or E-3 nonimmigrant workers will be paid wages which are at least the higher of the actual wage level paid by the</p> | <p>0</p> | <p>This change is for clarity of instructions.</p> |

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| | | <p>individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for occupational classification in the area of intended employment. By marking “Yes” to item 1 of Section H, the employer also attests that it will pay these nonimmigrant the required wage for time in nonproductive status due to a decision of the employer or due to the nonimmigrant’s lack of a permit or license. The employer further attests that these nonimmigrant will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.731</p> | <p>employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for occupational classification in the area of intended employment. By marking “Yes” to Item 1 of Section G, the employer also attests that it will pay these nonimmigrant workers the required wage for time in nonproductive status due to a decision of the employer or due to the nonimmigrant worker’s lack of a permit or license. The employer further attests that these nonimmigrant workers will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to U.S. workers. The employer shall not make deductions to recoup a business expense(s) of the employer, including attorney fees and other costs connected to the performance of H-1B, H-1B1, or E-3 program functions, which are required to be performed by the employer. This includes expenses related to the preparation and filing of this LCA and related visa petition information. See 20 CFR 655.731</p> | | |
| Page 7, Section H, | Page 8, Section G | (2)Working Conditions: The employer attests that | (2)Working Conditions: The employer attests that | 0 | This change is for clarity of |

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| Employer Labor Condition Statements | Employer Labor Condition Statements | H-1B, H-1B1 or E-3 nonimmigrant workers in the named occupation will not adversely affect the working conditions of workers similarly employed. The employer further attests that nonimmigrant will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.732. | the employment of H-1B, H-1B1 or E-3 nonimmigrant workers in the named occupation will not adversely affect the working conditions of similarly employed U.S. workers. The employer further attests that nonimmigrant workers will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.732. | | instructions. |
| Page 7, Section H, Employer Labor Condition Statements | Page 8, Section G Employer Labor Condition Statements | (1) Strike, Lockout, or Work Stoppage: The employer attests that on the date the application is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the named occupation at the place of employment and that, if such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify the Employment & Training Administration (ETA) within 3 days of such occurrence and the application will not be used in support of a petition filing with the USCIS for H-1B, H-1B1 or E-3 nonimmigrant workers to work in the same occupation at the place of the employment until ETA determines the strike lockout or work stoppage has ceased . See 20 CFR 655.733. | (1) Strike, Lockout, or Work Stoppage: The employer attests that on the date the application is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment and that, if such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify the Employment & Training Administration (ETA) within three (3) days of such occurrence; in that event, the application will not be used in support of a petition filing with the USCIS for H-1B, H-1B1 or E-3 nonimmigrant workers to work in the same occupation at the place of the employment until ETA determines | 0 | This change is for clarity of instructions. |

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| | | | the strike lockout or work stoppage has ceased . See 20 CFR 655.733. | | |
| Page 7, Section H, Employer Labor Condition Statements | Page 8 Section G Employer Labor Condition Statements | <p>(4)Notice: The employer attests that as of the date of filing, notice of the LCA has been or will be provided to workers employed in the named occupation. Notice of the application shall be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing shall be provided either through physical posting in conspicuous locations where H-1B, H-1B1 or E-3 nonimmigrants will be employed, or through electronic notification to employees in the occupational classification for which nonimmigrants are sought.</p> <p>The employer further attests that each nonimmigrant employed pursuant to the application will be provided with a copy (or original, as appropriate) of the certified Form ETA 9035E, or ETA 9035 (if applicable). As stated above for H-1B, H-1B1 or E-3 nonimmigrants, the employer must provide the certified LCA to the nonimmigrant, who must follow the H-1B, H-1B1 or E-3 procedures of USCIS and the Department of State. The notification shall be provided no later than the date the nonimmigrant</p> | <p>(4)Notice: The employer attests that notice of the LCA filing was provided no more than 30 days before filing of this LCA or will be provided on the day this LCA is filed to workers employed in the occupational classification. Notice of the application shall be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing shall be provided either through physical posting in conspicuous locations where H-1B, H-1B1 or E-3 nonimmigrant workers will be employed, or through electronic notification to employees in the occupational classification for which nonimmigrant workers are sought. Notice shall be provided no more than 30 days before the date the LCA is filed and no later than the day the LCA is filed and remain posted for 10 days, except that if employees are provided individual, direct notice by e-mail, notification need only be given once. Notice documentation shall be maintained in the employer's records.</p> <p>Notice shall be made in accordance with the requirements of 20 CFR</p> | 0 | This change is for clarity of instructions. |

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| | | <p>reports to work at the place of employment. See 20 CFR 655.734.</p> | <p>655.734 and contain the following statement: “Complaints alleging misrepresentation of material facts in the labor condition application and/ or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.” The WH-4 complaint form and a listing of Wage and Hour Division offices can be obtained at www.dol.gov/whd. In addition, if the employer is an H-1B dependent employer or a willful violator, and the LCA is not being used only for exempt H-1B nonimmigrant workers, the notice shall be made in accordance with the requirements of 20 CFR 655.734 and shall contain the following statement: “Complaints alleging failure to offer employment to an equally or better qualified U.S. applicant or an employer’s misrepresentation regarding such offers of employment may be filed with the Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section, 950 Pennsylvania Avenue, NW., Washington, DC 20530, Telephone: 1(800) 255-8155 (employers); 1(800) 255-7688 (employees); Internet address: http://www.justice.gov .” See 20 CFR 655.734 and 655.760.</p> | | |
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| | | | <p>The employer further attests that each nonimmigrant worker employed pursuant to the application will be provided with a copy (or original, as appropriate) of the certified Form ETA 9035E, or Form ETA 9035 (if applicable). As stated above for H-1B, H-1B1 or E-3 nonimmigrant workers, the employer must provide the certified LCA to the nonimmigrant worker, who must follow the H-1B, H-1B1 or E-3 procedures of USCIS and the Department of State. The notification shall be provided no later than the date the nonimmigrant reports to work at the place of employment. See 20 CFR 655.734.</p> | | |
| <p>Page 7, Section I, Additional Employer Labor Condition Statements- H-1B Employers ONLY</p> | <p>Page 9, Section H Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u></p> | <p>All H-1B employers are required to complete Section H in order for an LCA to be processed. See 20 CFR 655.736 for more detailed guidance as to what constitutes an “H-1B dependent employer” or a “willful violator.”</p> <p>a. Subsection 1</p> <p>NOTE: The determination of whether an employer is H-1B dependent is a function of the number of H-1B nonimmigrant workers employed as a proportion of the total number of full-time equivalent employees employed in the United States. The</p> | <p>All H-1B employers are required to complete Section H in order for an LCA to be processed. See 20 CFR 655.736 for more detailed guidance as to what constitutes an “H-1B dependent employer” or a “willful violator.”</p> <p>a. Subsection 1</p> <p>NOTE: The determination of whether an employer is H-1B dependent is based on the ratio between the employer’s total workforce employed in the U.S., as measured according to full-time equivalent employees, and the employer’s H-1B</p> | 0 | <p>This change is for clarity of instructions.</p> |

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| | | <p>following table can be used to determine whether the employer is an H-1B dependent employer:</p> <p><i>Table, Left Column</i></p> <p>NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES (U.S. WORKERS AND H-1B WORKERS)</p> <p><i>Table, Right Column</i></p> <p>NUMBER OF H-1B NONIMMIGRANT EMPLOYEES</p> <p>15% or more of the Workforce (US and H-1B workers)</p> | <p>nonimmigrant employees including both full-time and part-time H-1B employees. See 20 CFR 655.736. The following table can be used to determine whether the employer is an H-1B dependent employer:</p> <p><i>Table, Left Column</i></p> <p>TOTAL WORKFORCE EMPLOYED IN THE U.S.EMPLOYEES (FULL-TIME EQUIVALENT EMPLOYEES)</p> <p><i>Table, Right Column</i></p> <p>TOTAL H-1B NONIMMIGRANT EMPLOYEES</p> <p>15% or more of the employer's total workforce employed in the U.S.</p> | | |
| <p>Page 8, Section I, Additional Employer Labor Condition Statements- H-1B Employers ONLY</p> | <p>Page 9, Section H Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u></p> | <p>1. The employer is H-1B dependent if the number of H-1B nonimmigrant workers employed by the employer as a proportion of the total number of full-time equivalent employees employed in the United States matches the chart above.</p> <p>If an employer marks “No” and is, or becomes H-1B dependent, the submitted LCA shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B nonimmigrant worker.</p> | <p>1. Indicate whether the employer is H-1B dependent at the time of filing. The employer is H-1B dependent if the number of H-1B nonimmigrant workers employed by the employer as a proportion of the total number of full-time equivalent employees employed in the United States matches the chart above.</p> <p>If an employer marks “No” and is, or becomes H-1B dependent, the submitted LCA must not be used in support of a</p> | 0 | <p>This change is for clarity of instructions.</p> |

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| | | By marking “No”, the employer also acknowledges that if it uses this application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of Section H. | new petition or extension of a petition for an H-1B nonimmigrant worker. By marking “No”, the employer also acknowledges that if it uses this application to support a new petition or extension of a petition despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of Section H. | | |
| Page 8, Section I, Additional Employer Labor Condition Statements- H-1B Employers ONLY | Page 10, Section H Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u> | <p>2. The employer is a willful violator if the employer has been found during the five (5) years preceding the date of the application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact.</p> <p>If an employer marks “No” and is found, prior to the date of filing, to have committed a willful violation or a misrepresentation, the submitted LCA shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B nonimmigrant worker. By marking “No,” the employer also acknowledges that if it uses this application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of Section H.</p> | <p>2. Indicate whether the employer is a willful violator at the time of filing. The employer is a willful violator if the employer has been found during the five (5) years preceding the date of the application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact.</p> <p>If an employer marks “No” and is found, prior to the date of filing, to have committed a willful violation or a misrepresentation, the submitted LCA must not be used in support of a new petition or extension of a petition for an H-1B nonimmigrant worker. By marking “No,” the employer also acknowledges that if it uses this application to support a new petition or extension of a petition despite its invalidity, it is required to comply with the Additional Employer</p> | 0 | This change is for clarity of instructions. |

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| | | | Labor Condition Statements in Subsection 2 of Section H. | | |
| Page 8, Section I, Additional Employer Labor Condition Statements- H-1B Employers ONLY | Page 10, Section H Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u> | <p>Mark “Yes” or “No” to this question after marking “Yes” to question 1 or 2 of Subsection 1 in Section I AND the employer intends to use this application ONLY to support H-1B petitions or extensions of status for expected H-1B nonimmigrants who will receive wages at a rate equal to at least \$60,000 per year, or have attained a master’s degree (or equivalent or higher degree) in a specialty related to the employment. The employer also agrees to maintain documentation required by 20 CFR 655.737.</p> <p>If an employer marks “Yes” the employer acknowledges that if it uses this application in support of a petition or extension of a petition of an H-1B nonimmigrant who is not exempt, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section I with respect to all H-1B nonimmigrants supported by this application.</p> | <p>3.If Yes to Item H.1 and/ or Item H.2, indicate whether the employer intends to use this application ONLY to support H-1B petitions or extensions of status for H-1B nonimmigrant workers who are exempt, i.e., will receive wages at a rate equal to at least \$60,000 per year, or have attained a Master’s degree (or equivalent or higher degree) in a specialty related to the employment. The employer also agrees to maintain documentation required by 20 CFR 655.737. If an employer marks “Yes,” the employer acknowledges that if it uses this application in support of a petition or extension of a petition of an H-1B nonimmigrant who is not exempt, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of Section H with respect to all H-1B nonimmigrant workers supported by this application.</p> | 0 | This change is for clarity of instructions. |
| N/A | Page 10, Section H Additional Employer Labor Condition | New Collection | <p>4.If the employer responded “Yes” to an exemption in Item H.3, indicate the basis (or bases) of the exemption. Check a box for either</p> | 0 | This change clarifies the claimed exemption on the current collection. |

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| | Statements – This section is to be completed by <u>H-1B Employers ONLY</u> | | \$60,000 or higher annual wage, or Master’s Degree or higher in related specialty, or the box for “Both”, if both exemptions are applicable. | | The collection will provide greater transparency to the public, and particularly to U.S. workers who may be displaced, about the basis of the employer’s exemption. This information is known for the current collection and is not estimated to add to the current burden. |
| N/A | Page 10, Section H Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u> | New Collection | <p>5. If the employer marked “Master’s Degree or higher in related specialty” or “Both” in Item H.4, indicate by marking “Yes or No” whether the employer has completed and attached Appendix A to this LCA. Instructions for completing the Appendix A can be found at the end of this document.</p> <p>If the employer is seeking an exemption solely based on the H-1B nonimmigrant worker(s) receiving wages at an annual rate equal to at least \$60,000 or higher, then mark “N/A”.</p> | +0.5 minutes for completion of this question | This is a new collection for which the employer will complete a separate Appendix and submit supporting documentation . The collection will provide greater transparency to the public, and particularly to U.S. workers who may be displaced, about the basis of the employer’s exemption. The information is requested for details of the claimed |

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| | | | | | exemption. . See also the burden for completion of Appendix A with documentation |
| Page 8, Section I, b. Subsection , Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u> 2 | Page 11, Section H, b, Subsection 2 | All employers that are (1) H-1B dependent (as defined above) and/or (2) have been found to have committed a willful violation or a misrepresentation of a material fact during the five (5) year period preceding the date of this application (and after October 20, 1998), must read and agree to statements (1) through (3) and demonstrate that agreement by marking “Yes” in Subsection 2 of Section H of this application. The employer agrees to develop and maintain documentation supporting labor condition statements (1) through (3) as specified in 20 CFR 655.738 and 655.739, and to make this document available to Department officials upon request. The employer also agrees to make available for public examination a copy of the LCA and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with the Department. This | All employers that are (1) H-1B dependent (as defined above) and/or (2) have been found to have committed a willful violation or a misrepresentation of a material fact during the five (5) year period preceding the date of this application, must read and agree to statements (1) through (3) and demonstrate that agreement by marking “Yes” in Subsection 2 of Section H of this application. The employer agrees to develop and maintain documentation supporting labor condition statements (1) through (3) as specified in 20 CFR 655.738 and 655.739, and to make this document available to Department officials upon request. The employer is required to make available for public examination a copy of the LCA and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with the Department. This documentation must be retained for public examination at the place of employment in the U.S. and/ or the employer’s principal place of business in the | 0 | This change is for clarity of instructions. |

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| | | documentation must be retained for public examination at the place of employment in the U.S. and/ or the employer's principal place of business in the U.S. as specified in Section I of this form. The employer agrees: | U.S. as specified in Section I of this form. The employer agrees: | | |
| Page 8, Section I, b. Subsection 2, Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u> | Page 10, Section H, b, Subsection 2 | Displacement: The employer will not displace any similarly employed U.S. worker in an essentially equivalent job within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant worker supported by this application | Displacement: The employer will not displace any similarly employed U.S. worker in an essentially equivalent job in its own workforce within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant worker supported by this application | 0 | This change is for clarity of instructions. |
| Page 8, Section I, b. Subsection 2, Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u> | Page 10, Section H, b, Subsection 2 | Secondary Displacement: The employer will not place any H-1B nonimmigrant worker employed pursuant to this application with any other employer or at another employer's worksite UNLESS the employer applicant first makes a bona fide inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker in an essentially equivalent job within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge. | Secondary Displacement: The employer will not place any H-1B nonimmigrant worker employed pursuant to this application at another employer's worksite where there are indicia of an employment relationship between the nonimmigrant(s) and that other/secondary employer UNLESS the employer applicant first makes an inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker in an essentially equivalent job within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge. | 0 | This change is for clarity of instructions. |

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| <p>Page 9, Section I, b. Subsection 2, Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u></p> | <p>Page 12, Section H, b, Subsection 2, c, Recruitment and Hiring</p> | <p>Under the Immigration and Nationality Act (INA) Section 212 (n)(1)(G)(ii), 8 U.S.C. 1182, labor condition statement "3" does not apply to the employment of an H-1B nonimmigrant worker who is a "priority worker" (defined as a person with extraordinary ability, or outstanding professors or researchers, or certain multi-national executives or managers) within the meaning of Section 203 (b)(1)(A), (B), or (C) of the INA, 8 U.S.C. 1153.</p> | <p>Under the Immigration and Nationality Act (INA) Section 212 (n)(1)(G)(ii), 8 U.S.C. 1182, the "recruitment and hiring" labor condition statement does not apply to the employment of an H-1B nonimmigrant worker who is a "priority worker" (defined as a person with extraordinary ability, or outstanding professors or researchers, or certain multi-national executives or managers) within the meaning of Section 203 (b)(1)(A), (B), or (C) of the INA, 8 U.S.C. 1153.</p> | <p>0</p> | <p>This change is for clarity of instructions.</p> |
| <p>Page 9, Section I, b. Subsection 2, Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u></p> | <p>Section H Additional Employer Labor Condition Statements – This section is to be completed by <u>H-1B Employers ONLY</u></p> | <p>6. Indicate whether the employer has read and agrees to the additional employer labor conditions statements (1) through (3). The employer must agree to all four labor condition statements of Section H, subsection 2. Answer this question only if the employer marked "Yes" to either or both questions in Section H Item 1 or Section H Item 2 (indicating that the employer is either an H-1B dependent employer or a willful violator, or both) and, also, the employer marked "No" to the question in Section H Item 3 ("No" to exempt H-1B nonimmigrant workers).</p> | <p>6. Indicate whether the employer has read and agrees to the additional employer labor conditions statements in Subsection 2 (A) through (C). The employer must agree to all three labor condition statements of Section H, subsection 2. Answer this question only if the employer marked "Yes" to either or both questions in Item H.1 or Item H.2 (indicating that the employer is either an H-1B dependent employer or a willful violator, or both) and, also, the employer marked "No" to the question in Item H.3 ("No" to exempt H-1B nonimmigrant workers).</p> | <p>0</p> | <p>This change is for clarity of instructions.</p> |
| <p>Page 9, Section J, Public Disclosure Information</p> | <p>Page 13, Section I Public Disclosure Information</p> | <p>Indicate whether the employer's required public disclosure information will be located at the employer's principal place of business <u>AND/OR</u> the place of</p> | <p>Indicate whether the employer's required public disclosure information will be located at the employer's principal place of business in the U.S. <u>AND/OR</u> the</p> | <p>0</p> | <p>This change is for clarity of instructions.</p> |

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| | | employment | place of employment in the U.S. The employer may select more than one box. | | |
| Page 9, Section K, Declaration of Employer | Page 11, Section J Notice of Obligations | <p><u>Note</u>: If the employer has received approval from the Department to submit this form non-electronically, the employer <u>must</u> sign and date the application prior to submission. If submitting this form electronically, the employer <u>must</u> sign and date the application immediately upon receipt of the certified application and <u>before</u> submission to USCIS. An attorney or agent should not sign this section unless the attorney or agent is in-house counsel or employed full-time by the employer with the authority to sign as the employer.</p> <p>Items J. a through e. Read and indicate whether the employer agrees with the attestations listed in this Section. 1.6a. Enter the last (family) name of the person with authority to sign as the employer.</p> <p>b. Enter the first (given) name of the person with authority to sign as the employer.</p> <p>c. Enter the middle name of the person with authority to sign as the employer, if applicable.</p> <p>d. Enter the job title of the person with authority to sign as the employer.</p> <p>e. The person with authority to sign as the employer must sign the</p> | <p><u>Note</u>: If the employer is submitting this form non-electronically, the employer <u>must</u> sign and date the application prior to submission. If submitting this form electronically, the employer <u>must</u> sign and date the application immediately upon receipt of the certified application and <u>before</u> submission to USCIS.</p> <p>Items J. a through e. Read this Section.</p> <ol style="list-style-type: none"> 1.. Enter the last (family) name of the person with authority to sign as the employer. 2.. Enter the first (given) name of the person with authority to sign as the employer. 3. Enter the middle name of the person with authority to sign as the employer, if applicable. 4. Enter the job title of the person with authority to sign as the employer. 5. The person with authority to sign as the employer must sign the application. Read the entire application and verify all contained information prior to signing. <p>For paper filings, the application should be signed prior to submission to the</p> | 0 | This change is for clarity of instructions. |

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| | | <p>application. Read the entire application and verify all contained information prior to signing.</p> <p>For paper filings, the application should be signed prior to submission to the Department. For electronic submissions, the employer will sign the LCA after receiving certification from the Department.</p> <p>f. The person with authority to sign as the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.</p> | <p>Department. For electronic submissions, the employer will sign and date the LCA after receiving certification from the Department.</p> <p>6.. The person with authority to sign as the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.</p> | | |
| Page 9, Section L, Preparer Information | Page 12, Section K LCA Preparer | <ol style="list-style-type: none"> 1. Enter the middle name of the person preparing this LCA by or on behalf of the employer,. 2. Enter the Firm/Business name of the person preparing this LCA by or on behalf of the employer. 3. Enter the email address of the person preparing this LCA by or on behalf of the employer. Format must be in the format <u>name@emailaddress.top-level domain</u>. | <ol style="list-style-type: none"> 1. Enter the middle name of the person preparing this LCA by or on behalf of the employer, if a middle name exists. 2. Enter the Firm/Business name of the person preparing this LCA by or on behalf of the employer. 3. Enter the email address of the person preparing this LCA by or on behalf of the employer. The entry must be in the format <u>name@emailaddress.to p-level domain</u>. | 0 | This change is for clarity of instructions. |
| N/A | Appendix A H.5. Attainment of Educational Degree for | N/A | Appendix A H.5. Attainment of Educational Degree for "Exempt" H-1B Nonimmigrants | +19.5 minutes | This is a new collection for which the employer will complete a separate |

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| | <p>“Exempt” H-1B Nonimmigrants</p> | | <p>Pursuant to 20 CFR 655.738 and 655.739, an employer that is H-1B dependent or a willful violator is generally subject to the attestation obligations regarding displacement and recruitment of U.S. workers. However, these additional statutory obligations do not apply to an employer where the LCA is used only for the employment of “exempt” H-1B nonimmigrant worker(s), as described in 20 CFR 655.737, who either (1) receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000; or (2) attains a master’s or higher degree (or its equivalent) in a specialty related to the intended employment.</p> <p>For purposes of claiming the exemption, “master’s or higher degree (or its equivalent)” means a foreign academic degree from an institution which is accredited or recognized under the law of the country where the degree was obtained, and which is equivalent to a master’s or higher degree issued by a U.S. academic institution. The equivalence to a U.S. academic degree cannot be established through experience or through demonstration of expertise in the academic specialty (<i>i.e.</i>, no “time equivalency” or “performance equivalency” will be recognized as substituting for a degree issued by an</p> | <p>Appendix and submit supporting documentation . The information is requested for details of the claimed exemption will provide greater transparency to the public, and particularly to U.S. workers who may be displaced, about the basis of the employer’s exemption.</p> |
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academic institution). 20 CFR 655.737(d)(1).

A “specialty related to the intended employment” means that the academic degree is in a specialty which is generally accepted in the industry or occupation as an appropriate or necessary credential or skill for the person who undertakes the employment in question. A “specialty” which is not generally accepted as appropriate or necessary to the employment would not be considered to be sufficiently “related” to afford the H-1B nonimmigrant status as an “exempt” H-1B nonimmigrant. 20 CFR 655.737(d)(2).

Where the employer has designated that the LCA will be used to support H-1B petition(s) and/or request(s) for extension of status for “exempt” H-1B nonimmigrant workers based on attainment of a master’s or higher degree (or its equivalent) in a specialty related to the intended employment, the employer must fully complete and submit the Form ETA 9035, Appendix A. The employer must disclose the educational attainment information for all “exempt” H-1B nonimmigrant workers who will be employed under the LCA for which the employer is claiming the exemption because the worker has a “master's or higher degree (or its equivalent).” Where

multiple H-1B nonimmigrant workers attained the same degree in the same field of study from the same institution on the same date, the employer is only required to disclose the educational attainment information once on the Form ETA 9035, Appendix A. Because each of the initial five (5) educational attainment information sections is identical, the instructions for completing the collection elements are only described one time below. Each field within the educational attainment information section must be completed.

NOTE: If the employer will claim the exemption for workers with a “master’s or higher degree or higher (or its equivalent)” for more than five (5) workers with different educational attainment information, the employer must report as many additional sections of educational attainment information as are necessary to cover all “exempt” H-1B nonimmigrant workers who will be employed under the LCA.

a. Educational Attainment Information 1

1. Enter the number of H-1B nonimmigrant workers that the H-1B dependent or willful violator employer will seek exemption status based on attainment of a

master's or higher degree (or its equivalent) in a specialty related to the intended employment who attended the same institution with the same field of study and date of degree. The total number of H-1B nonimmigrant workers entered in this field must not be greater than the entry for "Total Worker Positions Being Requested for Certification" provided in Item B.7, Form ETA 9035. Where multiple sections of educational attainment information are entered, the sum of the number of H-1B nonimmigrant workers entered in this field in each section must not be greater than the entry for "Total Worker Positions Being Requested for Certification" provided in Item B.7, Form ETA 9035.

2. Enter the full name of the accredited or recognized institution (e.g., college or university) that awarded the degree to the H-1B nonimmigrant worker(s).

3. Enter the field of study in which the degree was awarded to the H-1B nonimmigrant worker(s).

4. Enter the date on which the degree was awarded to the H-1B nonimmigrant worker(s) using MM/DD/YYYY format (e.g., 06/01/2017).

NOTE: The employer is required to provide documentation at the

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| | | | time of filing which substantiates the academic information provided. The documentation is limited to the following: a copy of the degree, a transcript, or an official letter from the academic institution which granted the degree. | | |
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Draft August 3, 2017