

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035CP – General Instructions for the 9035 & 9035E
U.S. Department of Labor



IMPORTANT: 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. ***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 (Department). If the employer received approval by the Department to submit this form non-electronically, ALL required sections, fields and items, designated by an asterisk (*), must be completed as well as any sections, fields and items where a response is conditioned on the response to another required section/ field or item, designated by the Section (§) symbol.***

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, punishable by fine or imprisonment up to 5 years or both (18 U.S.C. §§ 2, 1001). Other penalties apply to fraud or misuse of this immigration document and to perjury on this form (18 U.S.C. §§ 1546, 1621).

Public Burden Statement, OMB control number 1205-0310: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 55 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. § 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification * U.S. Department of Labor * Room C4312 * 200 Constitution Ave., NW, * Washington, DC * 20210 or email ETA.OFLC.Forms@dol.gov. **Please do not send the completed application to this address.**

HOW TO FILE

A. Who May File:

A United States (U.S.) employer who desires to apply for an LCA on behalf of a nonimmigrant worker(s) must file the ETA Form 9035 (paper) or ETA Form 9035E (electronic).

B. How to File and Retention of Records

1. For all occupations, online filing of the ETA Form 9035E is required through the iCERT System accessible at <http://icert.doleta.gov>. 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 prior permission to file their application by U.S. mail by submitting a written request to the following address:

Attn: Administrator
Office of Foreign Labor Certification
Employment & Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW- Room C4312
Washington, DC 20210

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 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.

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Section A
Employment -Based Nonimmigrant Visa Information

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.

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. **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.).**

The **H-1B1-Chile** visa allows an employer to temporarily employ business professionals who are nationals of Chile under the Chile Free Trade Agreement.

The **H-1B1-Singapore** visa allows an employer to temporarily employ business professionals who are nationals of Singapore under the Singapore Free Trade Agreement.

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.

Section B
Job Opportunity and Nonimmigrant Worker Information

Enter information for up to 10 nonimmigrant workers per LCA.

1. Enter the employer's 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 under the LCA.
2. Enter the six -digit Standard Occupational Classification (SOC) code for the occupation, which most clearly describes the work to be performed. Note: More information on SOC codes can be found at <http://www.bls.gov/soc/>.
3. Enter the occupational title associated with the SOC code.
4. Indicate whether the position is 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.

Note: If the position is part-time, the employer also attests that the nonimmigrant 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).

Note: All nonimmigrant 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.

- 4a. Enter the number of hours per week worked by the nonimmigrant worker(s). In "Basic," enter the standard number of work hours for the week. In "Overtime", (if applicable) enter the approximate number of overtime hours per week.
5. Enter the beginning date of the nonimmigrant worker(s)' period of employment. The beginning date of employment cannot be 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.

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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.
7. This item contains two parts. First, use collection Item (a) to enter the total number of worker positions being requested for certification. You may enter up to 10 worker positions per LCA filed. The total number of worker positions requested in Item (a) cannot exceed 10. Second, use collection Items (b) through (g) to enter the number of nonimmigrant workers in each applicable USCIS defined category under which the employer plans to file various Form I-129s for the nonimmigrant workers. The sum of the numbers in collection Items (b) through (g) should equal or exceed the total number of nonimmigrant worker positions requested in Item (a). The overall total in collection Item (a) cannot be more than the sum total of the numbers entered in collection Items (b) through (g). The overall total collection in Item (a) cannot be "0". Every box **MUST** be filled and a single nonimmigrant worker may fit into multiple boxes, as appropriate. If the employer does not plan to request nonimmigrant worker(s) in a particular category in Items (b) through (g), please enter "0", as appropriate.
8. Nonimmigrant Worker Information. Enter the nonimmigrant worker(s) information in this section. Provide information specific to each nonimmigrant worker. You may enter up to 10 nonimmigrant workers per LCA and information for each worker must be separately entered in this section. For Item (g) "current nonimmigrant visa status," if the nonimmigrant worker is currently in the U.S., enter the nonimmigrant worker's most recent visa status, if any. For Item (h), if there is a PERM application that is currently pending enter the PERM application number issued by the Department.

In Item (i), enter the Department's Office of Foreign Labor Certification (OFLC's) H Number. This number is generated for the nonimmigrant worker(s) by OFLC. If the nonimmigrant worker has previously received an H number from the Department it **must** be entered in this field. If the nonimmigrant worker has never received an OFLC H Number, OFLC will provide an H number after the LCA is filed. After a nonimmigrant worker receives an OFLC H Number, that number **must** be used on all subsequent LCA filings and/or LCA requests for continuing employment for that worker.

Note: This section must be completed for each nonimmigrant worker working pursuant to this LCA. If the employer has received approval from the Department to submit this form non-electronically, an attachment must be submitted in order to complete additional entries for this section.

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 (IRS).
2. Enter the full trade name or "Doing Business As" (d/b/a) name, if applicable, of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application.
3. Enter the street address of the employer's principal place of business.
4. If additional space is needed for the street address, use this line to complete the employer's street address.
5. Enter the city 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.
6. Enter the State of the employer's principal place of business.
7. Enter the postal (zip) code of the employer's principal place of business.
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.
9. Enter the area code and telephone number for the employer's principal place of business. Include country code, if applicable.

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10. Enter the extension of the telephone number for the employer's principal place of business, if applicable.
 11. Enter the nine-digit Federal Employer Identification Number (FEIN) as assigned by the IRS. **Do not enter a social security number.**

Note: All employers, including private households, MUST obtain an FEIN from the IRS before completing this application. Information on obtaining an FEIN can be found at www.irs.gov. Additionally, new filers should submit their FEIN documentation to the Department for verification of their FEIN prior to filing an LCA. Documentation of the FEIN may include: documentation from the IRS noting the assigned FEIN, a pre-printed label or pre-printed coupon listing the FEIN and the company's name, documentation from the employer's financial institution listing the FEIN and the company's name, articles of incorporation, business license or other certification of business, Secretary of State or Corporation Commission registration documents or other documentation listing the FEIN and the company's name. Employers may send proof of a valid FEIN to the Chicago National Processing Center by fax at (312)353-6757 Attn: LCA Business Verification Team Proof of Valid FEIN, by email at LCA.Chicago@dol.gov Attn: LCA Business Verification Team Proof of Valid FEIN or by mail to Attn: LCA Business Verification Team Proof of Valid FEIN, U.S. Department of Labor, ETA, Chicago National Processing Center, 536 South Clark Street- 9th Floor, Chicago, IL 60605.

12. Enter the four to six-digit North American Industry Classification System (NAICS) code that best describes the employer's business, not the nonimmigrant worker's job. A listing of NAICS codes can be found at <http://www.census.gov/epcd/www/naics.html>
13. Type of business (NAICS industry name). Enter the industry description for the NAICS code entered in Item C.12.
14. Enter the year the employer's business was established. Use a full year YYYY format.
15. Enter the current number of all employees the employer has in the U.S. Include both full-time and part-time employees in the U.S.
16. Enter the employer's gross annual income.
17. Enter the employer's net annual income.
18. Enter the country of the employer's headquarters. The country entered should be the country of the employer's chief place of business or the nerve center that directs and controls all of the employer's business activities.

Section D Employer Point of Contact Information

An employer point of contact is an employee of the employer whose position authorizes the employee to provide information and supporting documentation concerning this LCA for nonimmigrant workers and to communicate with the Department on behalf of the employer. The employer point of contact should be the individual most familiar with the content of this application and circumstances of the nonimmigrant worker's(s') employment.

Note: The employer point of contact information in this Section, specifically the name, telephone number, and email address, must be different from the attorney/agent information listed in Section E, unless the attorney is an employee of the employer. For the purpose of the LCA, an attorney is considered an employee of the employer only if the attorney is in-house counsel or, otherwise employed full-time by the employer.

1. Indicate whether the authorized employer point of contact is either an employee of the employer (not acting for the employer as an attorney) or is in-house counsel to the employer.
2. Enter the last (family) name of the employer point of contact.
3. Enter the first (given) name of the employer point of contact.
4. Enter the middle name of the employer point of contact. In the absence of a middle name, enter N/A.
5. Enter the job title of the employer point of contact.

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6. Enter the business street address of the employer point of contact.
7. If additional space is needed for the street address, use this line to complete the street address.
8. Enter the city of the employer point of contact. If the city and country are the same, the name must still be entered in both fields.
9. Enter the state of the employer point of contact.
10. Enter the postal (zip) code of the employer point of contact.
11. Enter the country of the employer point of contact. If the city and country are the same, the name must still be entered in both fields.
12. Enter the province of the employer point of contact, if applicable.
13. Enter the area code and business telephone number of the employer point of contact. Include country code, if applicable.
14. Enter the extension of the telephone number of the employer point of contact, if applicable.
15. Enter the **business** e-mail address of the employer point of contact. Use a name@emailaddress.top-leveldomain format.

Section E
Attorney or Agent Information (if applicable)

Note: The attorney/agent information in this Section, specifically the name, telephone number, and email address, must be different from the employer point of contact information in Section D, unless the attorney is an employee of the employer. For the purpose of the LCA, an attorney is considered an employee of the employer only if the attorney is in-house counsel or, otherwise employed full-time by the employer.

1. Indicate whether the employer is represented by an attorney for the filing of the LCA. If "Yes", complete all of Section E.
2. Indicate whether the employer is represented by an agent for the filing of the LCA. If "Yes", complete Section E but skip Items E.18, E.19 and E.20. If "No", skip to Section F.
3. Enter the last (family) name of the attorney/agent.
4. Enter the first (given) name of the attorney/agent.
5. Enter the middle name of the attorney/agent.
6. Enter the business street address of the attorney/agent.
7. If additional space is needed for the street address, use this line to complete the attorney/agent's street address.
8. Enter the city of the attorney/agent. If the city and country are the same, the name must still be entered in both fields.
9. Enter the state of the attorney/agent.
10. Enter the postal (zip) code of the attorney/agent.
11. Enter the country of the attorney/agent. If the city and country are the same, the name must still be entered in both fields.
12. Enter the province of the attorney/agent, if applicable.
13. Enter the area code and telephone number of the attorney/agent. Include country code, if applicable.
14. Enter the extension of the telephone number of the attorney/agent, if applicable.

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15. Enter the **business** e-mail address of the attorney/agent. Use a name@emailaddress.top-leveldomain format.
 16. Enter the attorney/agent's law firm or business name.
 17. Enter the attorney/agent's law firm or business nine-digit FEIN as assigned by the IRS. **Do not enter a social security number.** If the attorney/agent's law firm or business does not have an FEIN, then leave the field blank.

Note: Items E.18 through E.20 should only be completed if the employer is represented by an attorney. If the employer is represented by an agent, and not an attorney, do not complete Items E.18, E.19 and E.20.

18. Enter the attorney's State Bar number. If the attorney is licensed in more than one State, enter only one State Bar number. If submitting this form electronically and the attorney is licensed in a state which does not issue State Bar numbers, leave the field blank and once confirmed it will be automatically pre-populated with "N/A." If submitting this form non-electronically, enter N/A if the attorney is licensed in a state which does not issue State Bar numbers.

Note: The answers to Items E.19 and E.20 below should correspond to the same State for which a State Bar number was provided in Item 18, if any.

19. Enter the State of the highest court where the attorney is in good standing.
 20. Enter the name of the highest State court where attorney is in good standing.
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Section F. Employment and Wage Information

Note: *It is important for the employer to define the place of intended employment with as much geographic specificity as possible. The place of employment address listed must be a physical location and cannot be a Post Office (P.O.) Box. The employer may use this section to identify up to 10 physical locations with corresponding prevailing wages and rates of pay covering each location where work will be performed. If the employer has received approval from the Department to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment containing the information below for each location must be submitted in order to complete this section.*

1. Worksite Information. Select the type of worksite location that best describes where the work will be performed. Select only one box per worksite. Use "Other business premises" and enter the worksite type if the types listed do not adequately describe the type of worksite.
- 2a. Indicate whether this is a worksite placement at an end-client location (e.g. a business placement with another employer).
- 2b. Enter the business name of the end-client business.
3. Indicate whether the employment opportunity is a bona fide opportunity.
4. Indicate whether this is the worksite where nonimmigrant worker(s) will perform daily work activities.
5. Based on the number of worker positions entered in Item B.7, enter the number of nonimmigrant workers at the worksite location.
6. Enter the street address of the place of intended employment.
7. If additional space is needed for the street address, use this line.
8. Enter the city of the place of intended employment.
9. Enter the county of the place of intended employment. If there is no county designation, please enter "N/A".
10. Enter the State, district or territory of intended employment.
11. Enter the postal (zip) code of the place of intended employment.
- 12a. Rate of Pay. Enter the rate of pay to be paid to the nonimmigrant worker(s). If the wage offer is expressed as a range,

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enter the bottom of the wage range to be paid in the "From" field and the top of the wage range to be paid "To (Optional)" Field. If no wage range is offered, then the "To (Optional)" field should be left blank; do not enter a zero in this field.

- 12b. Indicate whether the rate of pay is per hour, week, bi-weekly, month, or year. Only mark one box. For part-time employment, express the rate of pay in an hourly wage.
- 13a. Enter the prevailing wage for the job opportunity.
- 13b. Identify whether the prevailing wage is per hour, week, bi-weekly, month, or year. Only mark one box. For part-time employment, the prevailing wage must be expressed as an hourly wage.
- 14-17 Prevailing Wage Source Information. Enter the source of the prevailing wage rate entered in Item F.13a. You must fully complete one box in this Section from Items F.14 to F.17 (in its entirety) based on the prevailing wage entered in Item F.13a (e.g. complete the entire box for either Item 14, 15, 16 or 17).
14. If the prevailing wage was obtained from the National Prevailing Wage Center (NPWC) and used for the prevailing wage entered in Item F.13a, check "Yes" and complete this Item in its entirety F.14a to F.14c.
15. If the prevailing wage is an Occupational Employment Statistics (OES) wage obtained from the OFLC Online Wage Library at www.flcdatcenter.com or from the iCERT System at <http://icert.doleta.gov> and used for the prevailing wage entered in Item F.13a, check "Yes" and complete this Item in its entirety F.15a to F.15d.
16. If the prevailing wage was obtained from a Collective Bargaining Agreement (CBA), Davis- Bacon Act (DBA) or McNamara- O'Hara Service Contract Act (SCA) wage and used for the prevailing wage entered in Item F.13a, check "Yes" and complete this Item in its entirety F.16a to F.16b
17. If the prevailing wage was obtained from a survey or another wage source and used for the prevailing wage entered in Item F.13a, check "Yes" and complete this Item in its entirety F.17a to F.17e. Note: Depending on the prevailing wage source selected in Item F.17a, "N/A" may be used for Item F.17d or Item F.17e, as appropriate.

Section G Employer Labor Condition Statements

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 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 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 (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 or the employer's principal place of business as specified in Section I of this form.

(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 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'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. See 20 CFR 655.731.

(2) **Working Conditions:** The employer attests that 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.

(3) **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

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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.

(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 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 on or within 30 days before the date the LCA is filed and remain posted for 10 days. Notice documentation shall be maintained in the employer's records. Notice shall be made in accordance with the requirements of 20 CFR 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." 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, Office of Special Counsel for Immigration- Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW., Washington, DC 20530, Telephone: 1(800) 255-8155 (employers); 1(800) 255-7688 (employees); Web address: <http://www.usdoj.gov/crt/osc>." See 20 CFR 655.734 and 655.760.

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 ETA Form 9035E, or ETA Form 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, 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.

1. Indicate whether the employer has read and agrees to the labor condition statements (1) through (4) above, regarding wages, working conditions, strike, lockout or work stoppage and notice. The employer must agree to all four labor condition statements listed as (1) to (4). **Please note that marking "Yes" indicates that the employer has read and agrees to the above-listed labor condition statements.**
2. Indicate whether the employer has identified similarly employed U.S. workers with substantially comparable jobs for the occupation entered in Item B.1.
3. Enter the approximate number of U.S. workers similarly employed by the employer for the occupation listed in Item B.1.

**Section H
 Additional Employer Labor Condition Statements – This section is to be completed by H-1B Employers ONLY**

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."

a. Subsection 1

NOTE: The determination as to 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 following table can be used to determine whether the employer is an H-1B dependent employer:

NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES (U.S. WORKERS AND H-1B WORKERS)	NUMBER OF H-1B NONIMMIGRANT EMPLOYEES
1 to 25	8 or more

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26 to 50	13 or more
51 or more	15% or more of the workforce (US and H-1B workers)

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.

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. 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.

2. If “Yes” to Item 1 of subsection 1, indicate the approximate number of H-1B nonimmigrant workers in the U.S.
3. If “Yes” to item 1 of subsection 1, indicate approximate total number of U.S. workforce (include U.S. and H-1B nonimmigrant workers).
4. Indicate whether the determination of H-1B dependency was made using the snapshot test instead of a full calculation of H-1B dependency status. See 20 CFR 655.736.
5. 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.

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.

- 6a. If “Yes” in Items 1 and/ or 5 of subsection 1, indicate whether the employer intends to use this application ONLY to support H-1B petitions or extensions of status for expected H-1B nonimmigrant workers who are exempt and 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.

- 6b. If “Yes” to Item 6a of subsection 1, indicate the basis for the exemption of the nonimmigrant workers on the LCA.
- 6c. If “No” to Item 6a of subsection 1, state at least one solicitation method or recruitment effort made to take good faith steps to recruit U.S. workers in the United States for the job(s) in the United States for which the H-1B nonimmigrant(s) is/are sought. Solicitation method means the techniques by which an employer seeks to contact or to attract the attention of potential applicants for employment, and to solicit applications from person(s) for employment. Examples may include but are not limited to: collective bargaining unit contact and outreach, participation in job fair(s), a referral agency, advertisement in publication(s), or the employer’s website, etc. An employer is not required to utilize any particular number or type of recruitment methods but documentation of recruitment efforts must be made available in the employer’s public access file in accordance with 20 CFR 655.760. See 20 CFR 655.739.
- 6d. If “No” to Item 6a subsection 1, indicate whether the employer agrees to the attestation. See 20 CFR 655.739.
7. Indicate whether the employer agrees to the attestation. See 20 CFR 655.739 and 20 CFR 655.760.

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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 (A) through (C) 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 (A) through (C) 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 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:

- a. **Displacement:** The employer will not displace any similarly employed U.S. worker 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.
- b. **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 within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge.

If the other employer displaces a similarly employed U.S. worker during such period, the displacement will constitute a failure to comply with the terms of the LCA and the employer applicant may be subject to civil money penalties and debarment. See 20 CFR 655.738.

- c. **Recruitment and Hiring:** Prior to filing any petition for an H-1B nonimmigrant worker pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B nonimmigrant worker.

Under the Immigration and Nationality Act (INA) Section 212 (n)(1)(G)(ii), 8 U.S.C. 1182, labor condition statement "C" 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.

8. Indicate whether the employer has read and agrees to the additional employer labor conditions statements (A) through (C). 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 5 (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 6a ("No" to exempt H-1B nonimmigrant workers).

Section I
Public Disclosure Information

1. Indicate whether the employer's required public disclosure information will be located at the employer's principal place of business in the U.S. AND/OR the place of employment in the U.S. The employer may select more than one box.
 2. Enter the physical address of either the employer's principal place of business in the U.S. or the place of employment in the U.S. where the public disclosure information can be found. If both options were selected above for Item 1, enter only one address in this field.
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Section J
Declaration of Employer

Note: If the employer has received approval from the Department to submit this form non-electronically, the employer must sign and date the application prior to submission. If submitting this form electronically, the employer must sign and date the application immediately upon receipt of the certified application and before submission to USCIS. **For the purpose of the LCA, 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.**

1 through 6. Read and indicate whether the employer agrees with the attestations listed in this Section.

7a. Enter the last (family) name of the person with authority to sign as the employer.

7b. Enter the first (given) name of the person with authority to sign as the employer.

7c. Enter the middle name of the person with authority to sign as the employer. In the absence of a middle name, enter N/A.

7d. Enter the job title of the person with authority to sign as the employer.

7e. 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. 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.**

7f. The person with authority to sign as the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

Section K
Preparer Information

This section must be completed if the preparer of this LCA is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application. An employee of the attorney (e.g., paralegal) should complete this section. If the employer or attorney/agent contact listed in section D or section E was the person preparing and submitting the LCA, then this section will be left blank.

1. Enter the last (family) name of the person preparing this LCA by or on behalf of the employer.

2. Enter the first (given) name of the person preparing this LCA by or on behalf of the employer.

3. Enter the middle name of the person preparing this LCA by or on behalf of the employer.

4. Enter the Firm/Business name of the person preparing this LCA by or on behalf of the employer.

5. Enter the email address of the person preparing this LCA by or on behalf of the employer. Use a name@emailaddress.top-level domain format.

Section L
U.S. Government Agency User ONLY

Read this section. No entries required.

Section M
Signature Notification and Complaints

Read this section. No entries required.

Section N
OMB Paperwork Reduction Act (1205-0310)

Read this section. No entries required.