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means that the employer used to submit the LCA, that is, electronically where the Form ETA 9035E was submitted electronically, and by U.S. Mail where the Form ETA 9035 was submitted by U.S. Mail.

(b) Electronic submission. Employers must file the electronic LCA, Form ETA 9035E, through the Department of Labor’s Web site at http://www.lca.doleta.gov. The employer must follow instructions for electronic submission posted on the Web site. In the event ETA implements the Government Paperwork Elimination Act (44 U.S.C.A. 3504 n.) and/or the Electronic Records and Signatures in Global and National Commerce Act (E–SIGN) (15 U.S.C. 7001–7006) for the submission and certification of the Form ETA 9035E, instructions will be provided (by public notice(s) and by instructions on the Department’s Web site) to employers as to how the requirements of these statutes will be met in the Form ETA 9035E procedures.

(c) Approval to file LCAs by U.S. Mail. (1) Employers with physical disabilities or lacking Internet access and wishing to file LCAs by U.S. Mail may submit a written request to the Chief, Division of Foreign Labor Certification in accordance with paragraphs (c)(2) through (c)(4) of this section. The ETA shall identify the address to which such written request shall be mailed in a Notice in the FEDERAL REGISTER and on the Department’s Web site at http://www.lca.doleta.gov. The written request must establish the employer’s need to file by U.S. Mail, including providing an explanation of how physical disability or lack of access to the Internet prevents the employer from using the electronic filing system. No particular form or format is required for this request.

(2) The written request must establish the employer’s need to file by U.S. Mail, including providing an explanation of how physical disability or lack of access to the Internet prevents the employer from using the electronic filing system. No particular form or format is required for this request.

(3) ETA will review the submitted justification, and may require the employer to submit supporting documentation. In the case of employers asserting a lack of Internet access, supporting documentation could, for example, consist of documentation that the Internet cannot be accessed from the employer’s worksite or physical location (for example because no Internet service provider serves the site), and there is no publicly available Internet access, at public libraries or elsewhere, within a reasonable distance of the employer. In the case of employers with physical disabilities supporting documentation could, for example, consist of physicians’ statements or invoices for medical devices or aids relevant to the employer’s disability.

(4) ETA may approve or deny employers’ requests to submit LCAs by U.S. Mail. Approvals shall be valid for 1 year from the date of approval.

(d) U.S. Mail. If an employer has a valid approval to file by U.S. Mail in accordance with paragraph (c) of this section, the employer may use Form ETA 9035 and send it by U.S. Mail to ETA. ETA shall publish a Notice in the FEDERAL REGISTER identifying the address, and any future address changes, to which paper LCAs must be mailed, and shall also post these addresses on the DOL Internet Web site at http://www.lca.doleta.gov. When Form ETA 9035 is submitted by U.S. Mail, the form must bear the original signature of the employer (or that of the employer’s authorized agent or representative) at the time it is submitted to ETA.

(e) The ETA National Office is responsible for policy questions and other issues regarding LCAs. Prevailing wage challenges are handled in accordance with the procedures identified in § 655.731(a)(2).

[70 FR 72561, Dec. 5, 2005, as amended at 73 FR 19949, Apr. 11, 2008]

§ 655.721 [Reserved]

§ 655.730 What is the process for filing a labor condition application?

This section applies to the filing of labor condition applications for H–1B, H–1B1, and E–3 nonimmigrants. The term H–1B is meant to apply to all three categories unless exceptions are specifically noted.

(a) Who must submit labor condition applications? An employer, or the employer’s authorized agent or representative, which meets the definition of “employer” set forth in §655.715 and intends to employ an H–1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability shall submit an LCA to the Department.
(b) Where and when is an LCA to be submitted? An LCA shall be submitted by the employer to ETA in accordance with the procedure prescribed in §655.720 no earlier than six months before the beginning date of the period of intended employment shown on the LCA. It is the employer’s responsibility to ensure ETA receives a complete and accurate LCA. Incomplete or obviously inaccurate LCAs will not be certified by ETA. ETA will process all LCAs sequentially and will usually make a determination to certify or not certify an LCA within seven working days of the date ETA receives the LCA. LCAs filed by U.S. Mail may not be processed as quickly as those filed electronically.

(c) What is to be submitted and what are its contents? Form ETA 9035 or ETA 9035E.

(1) General. The employer (or the employer’s authorized agent or representative) must submit to ETA one completed and dated LCA as prescribed in §655.720. The electronic LCA, Form ETA 9035E, is found on the DOL Web site where the electronic submission is made, at http://www.lca.doleta.gov. Copies of the paper form, Form ETA 9035, and cover pages Form ETA 9035CP are available on the DOL Web site at http://www.ows.doleta.gov and from the ETA National Office, and may be used by employers with approval under §655.720 to file by U.S. Mail during the approval’s validity period.

(2) Undertaking of the Employer. In submitting the LCA, and by affixing the signature of the employer or its authorized agent or representative on Form ETA 9035E or Form ETA 9035, the employer (or its authorized agent or representative on behalf of the employer) attests the statements in the LCA are true and promises to comply with the labor condition statements (attestations) in forms ETA 9035E and ETA 9035, as well as set forth in full in the Form ETA 9035CP. The labor condition statements (attestations) are described in detail in §§655.731 through 655.734, and the additional attestations for LCAs filed by certain H–1B-dependent employers and employers found to have willfully violated the H–1B program requirements are described in §§655.736 through 655.739.

(3) Signed Originals, Public Access, and Use of Certified LCAs. In accordance with §655.760(a) and (a)(1), the employer must maintain in its files and make available for public examination the LCA as submitted to ETA and as certified by ETA. When Form ETA 9035E is submitted electronically, a signed original is created by the employer (or by the employer’s authorized agent or representative) printing out and signing the form immediately upon certification by ETA. When Form ETA 9035 is submitted by U.S. Mail as permitted by §655.720(a), the form must bear the original signature of the employer (or of the employer’s authorized agent or representative) when submitted to ETA. For H–1B visas only, the employer must submit a copy of the signed, certified Form ETA 9035 or ETA 9035E to the U.S. Citizenship and Immigration Services (USCIS, formerly INS) in support of the Form I–129 petition, thereby reaffirming the employer’s acceptance of all of the attestation obligations in accordance with 8 CFR 214.2(h)(4)(iii)(B)(2).

(4) Contents of LCA. Each LCA shall identify the occupational classification for which the LCA is being submitted and shall state:

(i) The occupation, by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer’s own title for the job;
(ii) The number of nonimmigrants sought;
(iii) The gross wage rate to be paid to each nonimmigrant, expressed on an hourly, weekly, biweekly, monthly, or annual basis;
(iv) The starting and ending dates of the nonimmigrants’ employment;
(v) The place(s) of intended employment;
(vi) The prevailing wage for the occupation in the area of intended employment and the specific source (e.g., name of published survey) relied upon by the employer to determine the wage. If the wage is obtained from a State Workforce Agency (SWA), the appropriate box must be checked and the wage must be stated; the source for a wage obtained from a source other than a SWA must be identified along with the wage; and
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(vii) For applications filed regarding H-1B nonimmigrants only (and not applications regarding H-1B1 and E-3 nonimmigrants), the employer’s status as to whether or not the employer is H-1B-dependent and/or a willful violator, and, if the employer is H-1B-dependent and/or a willful violator, whether the employer will use the application only in support of petitions for exempt H-1B nonimmigrants.

(5) Multiple positions and/or places of employment. The employer shall file a separate LCA for each occupation in which the employer intends to employ one or more nonimmigrants, but the LCA may cover more than one intended position (employment opportunity) within that occupation. All 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. Separate LCAs must be filed for H-1B, H-1B1, and E-3 nonimmigrants.

(6) Full-time and part-time jobs. The position(s) covered by the LCA may be either full-time or part-time; full-time and part-time positions can not be combined on a single LCA.

(d) What attestations does the LCA contain? An employer’s LCA shall contain the labor condition statements referenced in §§655.731 through 655.734, and §655.736 through 655.739 (if applicable), which provide that no individual may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:

(1) The employer is offering and will offer during the period of authorized employment to H-1B nonimmigrants no less than the greater of the following wages (such offer to include benefits and eligibility for benefits provided as compensation for services, which are to be offered to the nonimmigrants on the same basis and in accordance with the same criteria as the employer offers such benefits to U.S. workers):

(ii) The prevailing wage level for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions for such nonimmigrants that will not adversely affect the working conditions of workers similarly employed (including benefits in the nature of working conditions, which are to be offered to the nonimmigrants on the same basis and in accordance with the same criteria as the employer offers such benefits to U.S. workers);

(3) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) The employer has provided and will provide notice of the filing of the labor condition application to:

(i) The bargaining representative of the employer’s employees in the occupational classification in the area of intended employment for which the H-1B nonimmigrants are sought, in the manner described in §655.734(a)(1)(i); or

(ii) H-1B nonimmigrants by providing a copy of the LCA to each H-1B nonimmigrant at the time that such nonimmigrant actually reports to work, in the manner described in §655.734(a)(2).

(5) For applications filed regarding H-1B nonimmigrants only (and not applications regarding H-1B1 or E-3 nonimmigrants), the employer has determined its status concerning H-1B-dependency and/or willful violator (as described in §655.736), has indicated such status, and if either such status is applicable to the employer, has indicated whether the LCA will be used only for exempt H-1B nonimmigrant(s), as described in §655.737.

(6) The employer has provided the information about the occupation required in paragraph (c) of this section.

(e) Change in employer’s corporate structure or identity. (1) Where an employer corporation changes its corporate structure as the result of an acquisition, merger, “spin-off,” or other such action, the new employing entity
§ 655.731 What is the first LCA requirement, regarding wages?

An employer seeking to employ H–1B nonimmigrants in a specialty occupation or as a fashion model of distinguished merit and ability shall state on Form ETA 9035 or 9035E that it will pay the H–1B nonimmigrant the required wage rate. For the purposes of this section, “H–1B” includes “E–3 and H–1B1” as well.

(a) Establishing the wage requirement.

The first LCA requirement shall be satisfied when the employer signs Form ETA 9035 or 9035E attesting that it will pay the H–1B nonimmigrant the required wage rate. For the purposes of this section, “H–1B” includes “E–3 and H–1B1” as well.

(A) Abide by the DOL’s H–1B regulations applicable to the LCAs;

(B) Maintain a copy of the statement in the public access file (see §655.760); and

(C) Make the document available to any member of the public or the Department upon request.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, the new employing entity must file new LCA(s) and H–1B petition(s) when it hires any new H–1B nonimmigrant(s) or seeks extension(s) of H–1B status for existing H–1B nonimmigrant(s). In other words, the new employing entity may not utilize the predecessor entity’s LCA(s) to support the hiring or extension of any H–1B nonimmigrant after the change in corporate structure.

(3) A change in an employer’s H–1B-dependency status which results from the change in the corporate structure has no effect on the employer’s obligations with respect to its current H–1B nonimmigrant employees. However, the new employing entity shall comply with §655.736 concerning H–1B-dependency and/or willful-violator status and §655.737 concerning exempt H–1B nonimmigrants, in the event that such entity seeks to hire new H–1B nonimmigrant(s) or to extend the H–1B status of existing H–1B nonimmigrants. (See §655.736(d)(6).