

DEPARTMENT OF LABOR**Employment and Training Administration****20 CFR Part 655**

RIN 1205-AA89

Wage and Hour Division**29 CFR Part 507**

RIN 1215-AA69

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration of the Department of Labor published final regulations governing the filing and enforcement of labor condition applications filed by employers seeking to employ foreign workers in specialty occupations and as fashion models of distinguished merit and ability under the H-1B nonimmigrant classification. At that time, ETA submitted the information collection requirements to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. This document amends the December 20, 1994, Federal Register document to display the OMB control numbers and announces the effective date for the sections containing information collection requirements for which OMB approval has been received.

DATES: The revision of 20 CFR part 655 and 29 CFR part 507 published December 20, 1994 (59 FR 65646) and these amendments are effective January 19, 1995. Form ETA 9035, published as an appendix to this document, may be used on or after January 19, 1995. The prior version of Form ETA 9035, published at 57 FR 1316, 1339-1342 (January 13, 1992) will be accepted for filing through January 18, 1995.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact Mr. Patrick Stange, Nonagricultural Unit, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone:

(202) 219-5263 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Mr. Thomas Shierling, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act's (PRA's) provisions on information collection are triggered when an employer files a labor condition application on Form ETA 9035 with the Department of Labor (Department), as a condition for being able to employ a professional in a specialty occupation or a fashion model of distinguished merit and ability under the H-1B nonimmigrant classification. The labor condition application is a prerequisite to filing a petition with the Immigration and Naturalization Service of the Department of Justice (INS) for approval under such nonimmigrant classification. Employers are required to file labor condition applications with the Department attesting to certain conditions related to the employment of H-1B nonimmigrants.

The labor condition applications, required under sections 101(a)(15)(H)(i)(b) and 212(n) of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), pertain to the absence of adverse effect on wages and working conditions, absence of a strike or lockout in the occupation in which H-1B nonimmigrants are to be employed at the place of employment, and provision of notice of filing to the employer's employees and to H-1B nonimmigrants employed by the employer. Attestations are made on Form ETA 9035, a copy of which is published as an appendix to this document, but which will not be codified in the Code of Federal Regulations.

The attestation process is administered by the Employment and Training Administration (ETA) of the Department, while complaints and investigations regarding the labor condition applications filed by employers are handled by the Wage and Hour Division of the Department's Employment Standards Administration (ESA).

Public reporting burden for this collection of information is estimated to average 1¼ hours including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

The Office of Management and Budget (OMB) reviewed the collection of information requirements for employers filing labor condition applications as a condition to petition INS for H-1B nonimmigrant classification in accordance with the PRA, 44 U.S.C. 3501 *et seq.*, and 5 CFR part 1320. OMB approved all information requirements contained in 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, under OMB clearance number 1205-0310.

On January 10, 1995, OMB approved the information collection provisions until November 30, 1997.

Authority

8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n) and 1184, and 29 U.S.C. 49 *et seq.*, and Pub. L. 102-232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

Signed at Washington, DC, this 13th day of January, 1995.

Doug Ross,

Assistant Secretary for Employment and Training.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Title 20, part 655, subpart H, and title 29, part 507, subpart H, of the Code of Federal Regulations are hereby amended as follows:

PART 655—[AMENDED]

1. The authority citation for 20 CFR part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c) 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii) 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(H)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

2. In 20 CFR 655.730, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 655.730 Labor condition application.

* * * * *

(Approved by the Office of Management and Budget under control number 1205-0310.)

3. In 20 CFR 655.760, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 655.760 Public access; retention of records.

* * * * *

(Approved by the Office of Management and Budget under control number 1205-0310.)

PART 507—[AMENDED]

4. The Authority citation for title 29 CFR part 507, subparts H and I, continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*, and Pub. L. 102-232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

5. In 29 CFR 507.730, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 507.730 Labor condition application.

* * * * *

(Approved by the Office of Management and Budget under control number 1205-0310.)

6. In 29 CFR 507.760, by adding a parenthetical, as follows, at the end of the regulatory text:

§ 507.760 Public access; retention of records.

* * * * *

(Approved by the Office of Management and Budget under control number 1205-0310.)

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1 (Not To Be Codified in the CFR): Form ETA 9035

Printed below is a copy of *Form ETA 9035*.

BILLING CODE 4510-30-M

**Labor Condition Application
for H-1B Nonimmigrants**

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service



1. Full Legal Name of Employer	5. Employer's Address (No., Street, City, State, and ZIP Code)	OMB Approval No.: 1205-0310 Expiration Date: 11-30-97
2. Federal Employer I.D. Number		
3. Employer's Telephone No. ()	6. Address Where Documentation is Kept (If different than item 5)	
4. Employer's FAX No. ()		

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three-digit Occupational Group Code (From Appendix 2): _____ (b) Job Title (Check Box if Part-Time): _____

(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Prevailing Wage Rate and its Source (see instructions)	(f) Period of Employment From To	(g) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
_____	\$ _____	\$ _____ <input type="checkbox"/> SESA <input type="checkbox"/> Other: _____	_____	_____
_____	\$ _____	\$ _____ <input type="checkbox"/> SESA <input type="checkbox"/> Other: _____	_____	_____

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check each box to indicate that the employer will comply with each statement.)

- (a) H-1B nonimmigrants will be paid at least 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 the occupation in the area of employment, whichever is higher.
- (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
- (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment. If such a strike or lockout occurs after this application is submitted, I will notify ETA within 3 days of the occurrence of such a strike or lockout and the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.
- (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed: (check appropriate box)
 - (i) Notice of this filing has been provided to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or
 - (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official _____ Signature _____ Date _____

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.

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official _____ ETA Case No. _____ Date _____

Subsequent DOL Action: Suspended _____ (date) Invalidated _____ (date) Withdrawn _____ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application. Public reporting burden for this collection of information is estimated to average 1 1/2-hour 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of U.S. Employment Service, Department of Labor, Room N-4470 and/or the Office of IRM Policy, DOL, Room N-1901, 200 Constitution Avenue, N.W., Washington, DC 20210. (1205-0310).

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

**INSTRUCTIONS FOR COMPLETING FORM ETA 9035 - LABOR CONDITION
APPLICATION FOR H-1B NONIMMIGRANTS**

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, subparts H and I, and to 29 CFR 507, subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by \$10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the regional certifying officer in the Department of Labor (DOL), Employment and Training Administration (ETA) regional office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA regional office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the Immigration and Naturalization Service.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Employer's Telephone No. Self-explanatory.

Item 4. Employer's FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three-Digit Occupational Group Code. Enter the three-digit code from Appendix 2 which most clearly describes the job to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name or payroll title of the job being offered. Check box to the right of the blank if position is part-time. A separate labor condition application shall be filed for each occupation in which H-1B nonimmigrants will be employed.

Item 7(c). Number of H-1B Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Prevailing Wage Rate and Its Source. Enter the prevailing wage rate in terms of the amount per hour, week, year, etc. If the employer is replying on a wage determination obtained from a State Employment Security Agency, check the box marked "SESA." If the employer is using another source, check the "Other" box and specify such other source: i.e., published wage survey, or other source utilized by the employer to determine the prevailing wage for the occupational classification in which H-1B nonimmigrants will be employed, e.g., "collective bargaining agreement," or "Bureau of Labor Statistics Occupational Compensation Survey, Denver, Colorado, Metropolitan Area." (Only 1 box can be checked per line item).

Item 7(f). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(g). Locations Where H-1B Nonimmigrants Will Work. Enter the city and State of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's principal place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.731 through 655.734 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants 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 the occupational classification in the area of intended employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Item 8(c). The employer must attest 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 worksite. If such a strike or lockout occurs after this application is submitted, the employer must notify ETA within 3 days of the occurrence of such a strike or lockout and the application may not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupation. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in conspicuous places where H-1B nonimmigrants will be employed. Further, the employer must attest that each H-1B nonimmigrant employed pursuant to the application will be provided with a copy of the application. The notification shall be provided no later than the date the H-1B nonimmigrant reports to work at the place of employment.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative, employees, or H-1B nonimmigrants, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

Appendix 2 (Not To Be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models

Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models.

Three-Digit Occupational Groups

Professional, Technical, and Managerial Occupations and Fashion Models

Occupations in Architecture, Engineering, and Surveying

- 001 Architectural Occupations
- 002 Aeronautical engineering Occupations
- 003 Electrical/Electronics Engineering Occupations
- 005 Civil Engineering Occupations
- 006 Ceramic Engineering Occupations
- 007 Mechanical Engineering Occupations
- 008 Chemical Engineering Occupations
- 010 Mining and Petroleum Engineering Occupations
- 011 Metallurgy and Metallurgical Engineering Occupations
- 012 Industrial Engineering Occupations
- 013 Agricultural Engineering Occupations
- 014 Marine Engineering Occupations
- 015 Nuclear Engineering Occupations
- 017 Drafters
- 018 Surveying/Cartographic Occupations
- 019 Other Occupations in Architecture, Engineering, and Surveying

Occupations in Mathematics and Physical Sciences

- 020 Occupations in Mathematics
- 021 Occupations in Astronomy
- 022 Occupations in Chemistry
- 023 Occupations in Physics
- 024 Occupations in Geology
- 025 Occupations in Meteorology
- 029 Other Occupations in Mathematics and Physical Sciences

Computer-Related Occupations

- 030 Occupations in Systems Analysis and Programming
- 031 Occupations in Data Communications and Networks
- 032 Occupations in Computer System User Support
- 033 Occupations in Computer System Technical Support
- 039 Other Computer-Related Occupations

Occupations in Life Sciences

- 040 Occupations in Agricultural Sciences

041 Occupations in Biological Sciences

- 045 Occupations in Psychology
- 049 Other Occupations in Life Sciences

Occupations in Social Sciences

- 050 Occupations in Economics
- 051 Occupations in Political Science
- 052 Occupations in History
- 054 Occupations in Sociology
- 055 Occupations in Anthropology
- 059 Other Occupations in Social Sciences

Occupations in Medicine and Health

- 070 Physicians and Surgeons
- 071 Osteopaths
- 072 Dentists
- 073 Veterinarians
- 074 Pharmacists
- 076 Therapists
- 077 Dieticians
- 078 Occupations in Medical and Dental Technology
- 079 Other Occupations in Medicine and Health

Occupations in Education

- 090 Occupations in College and University Education
- 091 Occupations in Secondary School Education
- 092 Occupations in Preschool, Primary School, and Kindergarten Education
- 094 Occupations in Education of Persons With Disabilities
- 096 Home Economists and Farm Advisers
- 097 Occupations in Vocational Education
- 099 Other Occupations in Education

Occupations in Museum, Library, and Archival Sciences

- 100 Librarians
- 101 Archivists
- 102 Museum Curators and Related Occupations
- 109 Other Occupations in Museum, Library, and Archival Sciences

Occupations in Law and Jurisprudence

- 110 Lawyers
- 111 Judges
- 119 Other Occupations in Law and Jurisprudence

Occupations in Religion and Theology

- 120 Clergy
- 129 Other Occupations in Religion and Theology

Occupations in Writing

- 131 Writers
- 132 Editors: Publication, Broadcast, and Script
- 139 Other Occupations in Writing

Occupations in Art

- 141 Commercial Artists: Designers and Illustrators, Graphic Arts

142 Environmental, Product, and Related Designers

- 149 Other Occupations in Art

Occupations in Entertainment and Recreation

- 152 Occupations in Music
- 159 Other Occupations in Entertainment and Recreation

Occupations in Administrative Specializations

- 160 Accountants, Auditors, and Related Occupations
- 161 Budget and Management Systems Analysis Occupations
- 162 Purchasing Management Occupations
- 163 Sales and Distribution Management Occupations
- 164 Advertising Management Occupations
- 165 Public Relations Management Occupations
- 166 Personnel Administration Occupations
- 168 Inspectors and Investigators, Managerial and Public Service
- 169 Other Occupations in Administrative Occupations

Managers and Officials

- 180 Agriculture, Forestry and Fishing Industry Managers and Officials
- 181 Mining Industry Managers and Officials
- 182 Construction Industry Managers and Officials
- 183 Manufacturing Industry Managers and Officials
- 184 Transportation, Communication, and Utilities Industry Managers and Officials
- 185 Wholesale and Retail Trade Managers and Officials
- 186 Finance, Insurance, and Real Estate Managers and Officials
- 187 Service Industry Managers and Officials
- 188 Public Administration Managers and Officials
- 189 Miscellaneous Managers and Officials

Miscellaneous Professional, Technical, and Managerial Occupations

- 195 Occupations in Social and Welfare Work
- 199 Miscellaneous Professional, Technical, and Managerial Occupations

Sales Promotion Occupations

- 297 Fashion Models

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