

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for

Germany. The actions specified in this AD are intended to prevent fuel from flowing behind the firewall in the case of a fuel leak. This could result in an in-flight fire, which could cause loss of the airplane and crew.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) For airplanes listed in Group A of paragraph (c)(1) of this AD: Seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall. (2) For airplanes listed in Group B of paragraph (c)(1) of this AD: Whenever you install the bottom fuselage cover (belly fairing), do the sealing procedure required by paragraph (e)(1) of this AD.	Within the next 50 hours time-in-service (TIS) or 3 calendar months after the effective date of this AD, whichever occurs first, unless already done. As of the effective date of this AD, whenever you install the bottom fuselage cover (belly fairing).	Follow EXTRA Flugzeugproduktions- und Vertriebs- GmbH Service Bulletin No. 300-4-04, Issue: A, dated May 25, 2004. Follow EXTRA Flugzeugproduktions- und Vertriebs- GmbH Service Bulletin No. 300-4-04, Issue: A, dated May 25, 2004.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, ACE-112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816-329-4146; facsimile: 816-329-4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D-2004-489, dated November 11, 2004, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact EXTRA Flugzeugproduktions- und Vertriebs- GmbH, Schwarze Heide 21, 46569 Hünxe, Germany; telephone: 49-2358-9137-0; facsimile: 49-2858-9137-30. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. This is docket number FAA-2005-20588; Directorate Identifier 2005-CE-11-AD.

Issued in Kansas City, Missouri, on March 25, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB39

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H-1B1 Visas in Specialty Occupations; Filing Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (the Department or DOL) is proposing to amend its regulations related to the H-1B and H-1B1 programs to generally require employers to use Web-based electronic filing of labor condition applications (LCAs). The H-1B program allows an employer in the United States to temporarily employ a foreign worker on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. For its part, the H-1B1 program allows a U.S. employer to temporarily employ on a nonimmigrant basis in a specialty occupation a foreign worker from a country with which the U.S. has reached trade or other agreements listed in the Immigration and Nationality Act (now Chile and Singapore). ETA anticipates that increasing e-filing of H-1B and H-1B1 labor condition applications, and reducing U.S. Mail and fax-based filings, will enhance the effectiveness of the H-1B and H-1B1 programs, reduce costs and delays, and

will match a U.S. employer with a qualified H-1B or H-1B1 worker in a more timely fashion. This notice of proposed rulemaking (NPRM) also proposes technical and clarifying amendments to ETA's H-1B and H-1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Among these amendments are provisions to reflect Congressional reinstatement of certain attestation obligations applicable to employers who are H-1B dependent or who have committed willful violations of H-1B requirements.

DATES: To ensure consideration, comments must be received on or before May 2, 2005.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB39, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *E-mail:* Comments may be submitted by e-mail to h1b.comments@dol.gov. Include RIN 1205-AB39 in the subject line of the message.

- *U.S. Mail:* Submit written comments to the Assistant Secretary for Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail sent to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205-AB39 for this rulemaking. Receipt of submissions will not be acknowledged. Because DOL continues to experience occasional

delays in receiving postal mail in the Washington, DC area, commenters using mail are encouraged to submit any comments early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (e.g., large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693-3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Contact Rachel Wittman, Senior Policy Analyst, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; telephone: (202) 693-3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Background

The Immigration and Nationality Act as amended (INA or Act) assigns responsibilities to the Department of Labor relating to the entry and employment in the United States of certain categories of employment-based immigrants and nonimmigrants, including under the H-1B and H-1B1 visas. See INA section 101 *et seq.* [8 U.S.C. 1101 *et seq.*].

The H-1B visa program permits admission to the United States, on a nonimmigrant basis, of foreign workers who will temporarily perform services in a specialty occupation or as a fashion model of distinguished merit and ability. See 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184(c), (g), and (i). Specialty occupations under the H-1B program are those requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. 8 U.S.C. 1184(i)(1).

The H-1B1 visa was created as part of Congress' approval of the United States-Chile Free Trade Agreement and the United States-Singapore Free Trade

Agreement and took effect January 1, 2004. It permits the temporary entry and employment in the United States of professionals in specialty occupations from countries with which the United States has entered into agreements identified in section 1184(g)(8)(A) of the Immigration and Nationality Act. See INA, 8 U.S.C. 1101(a)(15)(H)(i)(b)(1), 1182(t), 1184(g)(8)(A), and 1184(i). The statute now covers nationals of Chile and Singapore. 8 U.S.C. 1184(g)(8)(A). Under the INA amendments creating the H-1B1 visa, the Department of Labor's responsibilities regarding H-1B1 visas are required to be implemented in a manner similar to the H-1B program. To implement the H-1B1 program in accordance with the statutory requirements, on November 23, 2004, DOL issued an Interim Final Rule extending the H-1B regulations found at 20 CFR part 655 subparts H and I to the H-1B1 program, with limited exceptions consistent with statutory requirements. See 69 FR 68222 (November 23, 2004). (Prior to publication of the H-1B1 Interim Final Rule, DOL conducted its H-1B1 responsibilities in accordance with the statute and procedures posted on the DOL website prior to the H-1B1 visa effective date of January 1, 2004.)

Before H-1B or H-1B1 status for a foreign worker will be approved by the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS),¹ the Secretary of Labor must certify a "labor condition application" or LCA filed by the foreign worker's prospective employer. See 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t); 20 CFR part 655, subpart H. In completing the "labor condition application" or LCA in paper form (Form ETA 9035) or electronic form (Form ETA 9035E), an employer must specifically indicate, among other things, the H-1B or H-1B1 nonimmigrant's prospective job title, the number of H-1B or H-1B1 nonimmigrants sought, the nonimmigrant's anticipated period of employment and rate of pay, and the location where the H-1B or H-1B1 nonimmigrant(s) will work. Additionally, the employer attests to four statements:

1. H-1B or H-1B1 nonimmigrants will be paid at least the local prevailing wage or the actual wage level paid by the employer to others with similar experience and qualifications, whichever is higher;

2. The employment of H-1B or H-1B1 nonimmigrants will not adversely affect the working conditions of workers similarly employed;

3. There is not a strike or lockout in the course of a labor dispute in the occupation in which H-1B or H-1B1 nonimmigrants will be employed at the place of employment; and

4. Notice of the application has been provided to workers employed in the occupations in which H-1B or H-1B1 nonimmigrants will be employed. See 8 U.S.C. 1182(n)(1) and (t)(1); 20 CFR 655.705(c)(1), 655.730(d), 655.731 through 655.734; Forms ETA 9035E, 9035, and 9035CP (Cover Pages). While DOL administers and enforces the labor condition application portion of the H-1B and H-1B1 program, USCIS identifies and defines the occupations covered by the H-1B and H-1B1 category (except as already defined in the Chile and Singapore Free Trade Agreements) and determines an alien's qualifications for such occupations.

Congress enacted the "H-1B Visa Reform Act of 2004" as part of the Consolidated Appropriations Act of 2005. See Public Law 108-447, 118 Stat. 2809, Division J, Title IV, Subtitle B (December 8, 2004). Among other provisions, the H-1B Visa Reform Act reinstated, effective March 8, 2005, special attestation requirements for employers who are H-1B dependent or who have been found to have committed willful violations of H-1B requirements or misrepresentations of a material fact during the five-year period prior to filing an H-1B LCA. See Public Law 108-447 at Division J, section 422(a). Reinstatement was achieved by deleting from INA section 212(n)(1)(E)(ii) the sunset date of October 1, 2003, previously applicable to the H-1B dependent employer and willful violator provisions. Pursuant to this INA amendment, H-1B dependent employers and willful violator employers who file H-1B applications after March 7, 2005, generally must attest that: the employer did not displace and will not displace a U.S. worker within the period of 90 days before and after filing a petition for an H-1B nonimmigrant; the employer will not place H-1B nonimmigrants with a secondary employer unless the employer has inquired if the secondary employer has displaced or intends to displace a U.S. worker in a period of 90 days before and after the placement of the H-1B nonimmigrant; the employer took good faith steps prior to filing the H-1B application to recruit U.S. workers; and, finally, the employer has offered the job to any U.S. applicant

¹ See 6 U.S.C. 236(b), 552(d), and 557.

who is equally or better qualified than the H-1B nonimmigrant for the job.

II. Filing Options Under Current Regulation

DOL's current regulations issued by the Employment and Training Administration (ETA) for the filing and processing of H-1B and H-1B1 labor condition applications, found in 20 CFR part 655, subpart H, allow employers to file LCAs with ETA in three ways: By electronic submission through the DOL web site, by U.S. Mail to a centralized processing center, and through facsimile submission to a centralized fax number. See 20 CFR 655.720.

The electronic filing system now available on the DOL website at <http://www.lca.doleta.gov>, which will become the required filing procedure for LCAs (except in limited circumstances) if this NPRM becomes a final regulation, permits employers to fill out and submit their LCAs electronically, without the need to submit a paper "hard copy." The electronic LCA form, Form ETA 9035E, is identical in all respects to the paper LCA (Form ETA 9035), except the electronic form contains additional "blocks" to be marked by the employer to acknowledge the submission is being made electronically and the employer will be bound by the LCA obligations through such submission. The website includes detailed instructions, prompts, and checks to help employers fill out the 9035E. This process is designed to help ensure employers enter the H-1B and H-1B1 programs based on accurate LCA information and with explicit, immediate notice of their obligations. The website provides an option for employers that frequently file LCAs to become "registered users." Under this option, registered users set up secure files within the ETA electronic filing system accessed by password and, each time the registered user files an LCA, information common to all its LCAs is entered automatically by the electronic filing system.

III. Overview of Regulatory Changes

This NPRM proposes amendment of ETA's regulations on the H-1B and H-1B1 programs, which are found at 20 CFR part 655, subpart H, to require electronic filing and processing of H-1B and H-1B1 labor condition applications (LCAs) except in limited circumstances where a physical disability prevents the employer from filing electronically. This transition to e-filing will reduce paper-based LCA filings now submitted by U.S. Mail and facsimile. This NPRM does not propose changes to the existing LCA forms (Forms ETA 9035, 9035E,

and 9035CP) or to the current electronic filing procedures.

Creation of an electronic filing requirement necessitates amendment of ETA's current H-1B and H-1B1 regulations because the regulations now permit filing of LCAs by three means: electronic transmission, paper copy filed by U.S. Mail, and paper copy filed by facsimile. See 20 CFR 655.720. Therefore, this NPRM proposes to amend the H-1B and H-1B1 regulations at §§ 655.700, 655.705, 655.720, 655.730, 655.750, and 655.760 to state the requirement of electronic filing except in limited circumstances, and to remove references to filing by facsimile or U.S. Mail.

ETA believes that requiring e-filing of LCAs, except in limited circumstances where disabilities prevent an employer from using the Web-based electronic system, will enhance the effectiveness of the H-1B and H-1B1 programs in several ways, resulting in reduced costs and delays for both employers and ETA by providing U.S. employers with access to qualified H-1B or H-1B1 workers in a more timely fashion. (The justifications for moving to an e-filing system relate largely to the H-1B program because of the differing sizes of the programs. Whereas approximately 260,000 LCAs for the H-1B program are filed each year, only approximately 50 LCAs for the H-1B1 program were filed in the 9 months after the program became effective January 1, 2004. H-1B1 filings will continue at low rates since H-1B1 visas each year are limited to 1,400 from Chile and 5,400 from Singapore.)

First, ETA believes the e-filing process will limit the number of potentially incomplete H-1B and H-1B1 labor condition applications which are filed with the Department. The e-filing system instantly notifies the employer that an LCA is incomplete, giving the employer the immediate opportunity to correct the error. Instant notification limits the burdens and delays that occur when employers file incomplete LCAs. By contrast, with faxed or mailed LCAs, incomplete applications bring delays and require resources from both ETA and the employer to fix "ETA personnel must review the LCA for completeness and notify the employer of missing information, the employer must resubmit the non-electronically filed LCA, and ETA again must review for completeness.

Second, electronic filing permits more efficient processing of LCAs than those submitted by either U.S. Mail or by facsimile. Since the scope of the Department's review of LCAs under section 212(n)(1) and section 212(t)(2) of

the INA is limited to "completeness and obvious inaccuracies," the filing and processing of LCAs is particularly amenable to an electronic filing and review system. Because of on-line guidance and checks, LCAs submitted electronically have fewer incomplete or obviously inaccurate entries and therefore are ordinarily acceptable for immediate electronic certification.

Third, through e-filing, ETA will be able to better capture statistics and analyze data to identify areas that need improvement and to prepare reports on the H-1B and H-1B1 programs, as well as to identify fraud or abuse that may lead to future enforcement actions.

Fourth, requiring e-filing of LCAs except in limited circumstances will not impose an undue burden on the users of the program. Employers, not individuals, submit H-1B and H-1B1 filings. The vast majority of labor condition applications are filed electronically. (Until approval of new forms, H-1B1 labor condition applications were required to be submitted to ETA by mail.) For example, in Fiscal Year (FY) 2004 more than 90 percent of H-1B labor condition applications were filed electronically. Additionally, a high percentage, if not most of, the positions covered by H-1B labor condition applications are in information, computer, and other high-technology fields. For example, in FY 2004, the top four H-1B occupations certified by DOL included:

1. Programmer analyst (18% of certified job openings);
2. Software engineer (5% of certified job openings);
3. Systems analyst (3%); and
4. Computer programmer (2%).

Similarly, according to data from the Department of Homeland Security, of the approved H-1B petitions in FY 2002, 38% were in computer-related occupations and 13% in architecture, engineering, and surveying, while in FY 2000 and 2001, 58% of approved petitions were in computer-related occupations. See Characteristics of Specialty Occupation Workers (H-1B)—Fiscal Year 2002 (<http://uscis.gov/graphics/shared/services/employerinfo/FY2002Charact.pdf>); Fiscal Year 2001 (<http://uscis.gov/graphics/shared/services/employerinfo/FY2001Charact.pdf>); Fiscal Year 2000 (<http://uscis.gov/graphics/shared/services/employerinfo/FY2000Charact.pdf>).

Finally, this NPRM furthers the Federal government goal of promoting electronic government services and Internet-based information technology that will improve services to citizens. See, e.g., E-Government Act of 2002,

Public Law 107-347, 116 Stat. 2899 (2002) (promoting use of the Internet and other information technologies to improve government services to citizens); Government Paperwork Elimination Act, section 1704, Public Law 105-277, Division C, Title XVII, 112 Stat. 2681 (1998) (requiring Federal agencies, as practicable, to offer options for electronically transacting business with and submitting information to the agency); Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995) (requiring use of information technology to the maximum extent practicable to reduce burden and improve data quality, agency efficiency, and responsiveness to the public).

The Department invites comments on the proposed elimination of U.S. Mail and facsimile filings, except in limited circumstances, and the requiring of employers to file electronically. The Department is particularly interested in receiving comments from small business entities on this proposal.

In addition to the proposed regulatory changes to institute a general requirement for electronic filing of LCAs, this NPRM also proposes a number of technical amendments to ETA's H-1B and H-1B1 regulations to correct terminology and addresses, update internal agency procedures, and clarify text. Specifically, this NPRM proposes amending the definition of the Immigration and Naturalization Service (INS) at § 655.715 to reflect that INS' functions in relation to H-1B visas now are performed by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security. The § 655.715 definition of State Employment Security Agency or SESA is also proposed to be amended to reflect that these state agencies now are known as "State Workforce Agencies" or SWAs.

This NPRM also proposes amending the H-1B and H-1B1 regulations at §§ 655.715, 655.720, 655.721, and 655.740 to remove references to the previous role of "Regional Certifying Officers" and ETA's Regional Offices in processing labor condition applications and taking other actions regarding LCAs. These regulatory references are unnecessary and should be deleted, because ETA Regional Offices no longer process LCAs, and this NPRM does not propose reinstating any processing role for ETA Regional Offices. We also propose amending § 655.720(d) to reflect that the ETA National Office, not ETA Regional Offices, handles other matters regarding the H-1B and H-1B1 programs, and to provide a clearer reference to the regulatory section that identifies how employers may challenge

state prevailing wage determinations. Consistent with the deletion of references to a role regarding LCAs for ETA Regional Offices, this NPRM also proposes removal of § 655.721, which currently provides the addresses of ETA Regional Offices.

A number of regulatory amendments are included in this NPRM to reflect Congress' reinstatement, effective March 8, 2005, of special attestation requirements for employers who are H-1B dependent or willful violators. As discussed in Section I above, these special attestation requirements had sunset on September 30, 2003. Provisions reflecting the responsibility of employers who file applications regarding H-1B nonimmigrants (but not regarding H-1B1 nonimmigrants) to provide information regarding H-1B dependent status and these special attestations are found at

§§ 655.705(c)(1), 655.730(c)(2), (c)(4)(vii), and (d)(5), and 655.736(c), (g)(1), (g)(2) and (g)(3). As reflected in these sections, the special attestation requirements for H-1B dependent employers and willful violators apply to H-1B labor condition applications filed with the Department on or after March 8, 2005. These special attestation requirements do not apply to H-1B labor condition applications filed from October 1, 2003, through March 7, 2005, or before January 19, 2001. An LCA filed during a period when the special attestation obligations for H-1B dependent employers and willful violators were not in effect (that is, prior to January 19, 2001, and from October 1, 2003, through March 7, 2005) may not be used by an H-1B dependent employer or willful violator to support either petitions for new H-1B nonimmigrants or requests for extensions of status for existing H-1B nonimmigrants.

Additionally, the following sections are being revised to reflect address changes: (1) in § 655.710(b) and § 655.734(a)(1)(ii), the address for filing complaints with the Department of Justice arising under 8 U.S.C. 1182(n)(1)(G)(i)(II) of the INA; (2) in § 655.720(c) (previously § 655.720(b)), the address for filing LCAs by mail; and (3) in § 655.750(b)(2), the address for withdrawing previously filed LCAs. In the case of both the address for filing LCAs by mail (§ 655.720(c)) and for withdrawing previously filed LCAs (§ 655.750(b)(2)), because ETA anticipates addresses may change between the publication of this NPRM and the resulting final rule, this NPRM states that addresses will be published on DOL's web site at <http://www.ows.doleta.gov/foreign/>. ETA

anticipates the final rule will state the actual mailing address in both § 655.720(c) and § 655.750(b)(2).

Finally, where regulatory sections or subsections are being amended to reflect the e-filing requirement, these sections have been edited for clarity and to update terminology, such as replacing INS with USCIS.

IV. Administrative Information

Executive Order 12866—Regulatory Planning and Review: We have determined that this proposed rule is significant, although not "economically significant" within the meaning of Executive Order 12866. The proposed rule therefore has been reviewed by the Office of Management and Budget (OMB). The requirement for all-electronic filing (except in limited circumstances) of H-1B and H-1B1 labor condition applications, and corresponding elimination of U.S. Mail or facsimile filing options, will not have an economic impact of \$100 million or more because this will not alter the required forms or attestations for labor condition applications, but rather require all-electronic filing of LCAs (except in limited circumstances). The proposed rule will alter the filing mechanism for less than 10 percent of the LCAs filed in FY 2004, namely those filed by means other than electronic filing. While employers previously filing by facsimile or U.S. Mail will have to change to electronic filing, they will be moving to a more efficient and rapid filing procedure.

Regulatory Flexibility Act: We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for that certification is as follows: Based on past filing data, ETA estimates in the upcoming year employers will file approximately 260,000 attestations under the H-1B and H-1B1 program as a whole. (Since the H-1B program's inception, the number of H-1B attestations has exceeded the initial H-1B visas available each year; for example, for Fiscal Year 2003, about 261,000 attestations covering 517,000 job openings were certified even though only 195,000 initial H-1B visas were available that year. As previously noted, only approximately 50 H-1B1 attestations were filed with ETA in the first 9 months that the H-1B1 program operated.) Some employers will file multiple attestations in a year. We do not inquire about the size of employers

filing labor attestations; however, the number of small entities that file attestations in the upcoming year will be less than the expected total of 260,000 applications and significantly below the potential universe of small businesses to which the program is open. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to the Small Business Administration's publication *The Regulatory Flexibility Act—An Implementation Guide for Federal Agencies*, there were 22,900,000 small businesses in the United States in 2002. Thus in comparison to the universe of all small businesses, the expected 260,000 applications represent approximately 1% of all small businesses. The Department of Labor asserts a small business pool of 1% does not represent a substantial proportion of small entities.

In any case, the Department of Labor does not believe this proposed rule will have a significant economic impact on employers using the H-1B and H-1B1 programs. This proposed rule does not alter the required forms or attestations for labor condition applications, but rather requires all-electronic filing of LCAs (except in limited circumstances). The proposed rule will alter the filing mechanism for less than 10 percent of the LCAs filed in FY 2004, namely those filed by means other than electronic filing. While employers previously filing by facsimile or U.S. Mail will have to change to electronic filing, they will be moving to a more efficient and rapid filing procedure. The Department of Labor welcomes comments on this RFA certification.

Unfunded Mandates Reform Act of 1995: This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996: This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an "economically significant regulatory action" within the meaning of Executive Order 12866. Because we certified this

proposed rule is not an economically significant rule under Executive Order 12866, we certify that it also is not a major rule under SBREFA. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: This proposed rule will not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform: This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act: The collection of information under 20 CFR part 655, subpart H, is currently approved under OMB control number 1205-0310. This proposed rule does not include a substantive or material modification of that collection of information. Forms ETA 9035 and 9035E are not being changed by this proposed rule and both will remain in use. Accordingly, the Department believes the Paperwork Reduction Act is inapplicable to this proposed rule. The Department invites the public to comment on its Paperwork Reduction Act analysis.

Catalog of Federal Domestic Assistance Number: This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.252, "Attestations by Employers Using Non-Immigrant Aliens in Specialty Occupations."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Chile, Employment, Forest and forest products, Health professions, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting requirements, Singapore, Students, Wages.

For the reasons stated in the Preamble, the Department of Labor proposes to amend 20 CFR part 655, subpart H, as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H-1B1 Visas in Specialty Occupations

1. The authority citation for 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), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103-206, 107 Stat. 2149; Title IV, Pub. L. 105-277, 112 Stat. 2681; Pub. L. 106-95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(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)(b) and 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. 2099, 2103 (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) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.*; sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105-277, 112 Stat. 2681.

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).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

2. Section 655.700 is amended by revising paragraph (b)(1) to read as follows:

§ 655.700 What statutory provisions govern the employment of H-1B and H-1B1 nonimmigrants and how do employers apply for an H-1B or H-1B1 visa?

* * * * *

(b) * * *

(1) First, an employer shall submit to DOL, and obtain DOL certification of, a labor condition application (LCA). The requirements for obtaining a certified LCA are provided in this subpart. The electronic LCA (Form ETA 9035E) is available at <http://www.lca.doleta.gov>. The paper-version LCA (Form ETA 9035) and the LCA cover pages (Form

ETA 9035CP), which contain the full attestation statements incorporated by reference into Form ETA 9035 and Form ETA 9035E, may be obtained from <http://ows.doleta.gov> and from the Employment and Training Administration (ETA) National Office. Employers must file LCAs in the manner prescribed in § 655.720(a).

* * * * *

3. Section 655.705 is amended by revising the section heading and paragraphs (c) introductory text and (c)(1) to read as follows:

§ 655.705 What Federal agencies are involved in the H-1B and H-1B1 programs, and what are the responsibilities of those agencies and of employers?

* * * * *

(c) *Employer's Responsibilities.* This paragraph applies only to the H-1B program; employer's responsibilities under the H-1B1 program are found at § 655.700(d)(4). Each employer seeking an H-1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability has several responsibilities, as described more fully in this subpart and subpart I of this part, including—

(1) The employer shall submit a completed labor condition application (LCA) on Form ETA 9035E or Form ETA 9035 in the manner prescribed in § 655.720. By completing and submitting the LCA, and in addition by signing the LCA, the employer makes certain representations and agrees to several attestations regarding its responsibilities, including the wages, working conditions, and benefits to be provided to the H-1B nonimmigrants (8 U.S.C. 1182(n)(1)); these attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. The LCA contains additional attestations for certain H-1B-dependent employers and employers found to have willfully violated the H-1B program requirements; these attestations impose certain obligations to recruit U.S. workers, to offer the job to U.S. applicants who are equally or better qualified than the H-1B nonimmigrant(s) sought for the job, and to avoid the displacement of U.S. workers (either in the employer's workforce, or in the workforce of a second employer with whom the H-1B nonimmigrant(s) is placed, where there are indicia of employment with that second employer (8 U.S.C. 1182(n)(1)(E)-(G)). These additional attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. If ETA certifies

the LCA, notice of the certification will be sent to the employer by the same 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). The employer reaffirms its acceptance of all of the attestation obligations by submitting the LCA to the U.S. Citizenship and Immigration Services (formerly the Immigration and Naturalization Service or INS) in support of the Petition for Nonimmigrant Worker, Form I-129, for an H-1B nonimmigrant. See 8 CFR 214.2(h)(4)(iii)(B)(2), which specifies that the employer will comply with the terms of the LCA for the duration of the H-1B nonimmigrant's authorized period of stay.

* * * * *

4. Section 655.710 is amended by revising paragraph (b) to read as follows:

§ 655.710 What is the procedure for filing a complaint?

* * * * *

(b) Complaints arising under section 212(n)(1)(G)(i)(II) of the INA, 8 U.S.C. 1182(n)(1)(G)(i)(II), alleging failure of the employer to offer employment to an equally or better qualified U.S. applicant, or an employer's misrepresentation regarding such offer(s) 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>. The Department of Justice shall investigate where appropriate and shall take such further action as may be appropriate under that Department's regulations and procedures.

5. Section 655.715 is amended by revising the definitions of *Certifying Officer and Regional Certifying Officer, Immigration and Naturalization Service, and State Employment Security Agency* to read as follows:

§ 655.715 Definitions.

* * * * *

Certifying Officer means a Department of Labor official, or such official's designee, who makes determinations about whether or not to certify labor condition applications.

* * * * *

Immigration and Naturalization Service (INS), now known as United States Citizenship and Immigration Services (USCIS) of the Department of

Homeland Security, means the Federal entity that makes the determination under the INA on whether to grant visa petitions of employers seeking the admission of nonimmigrants under H-1B visas for the purpose of employment.

* * * * *

State Employment Security Agency (SESA), now known as a State Workforce Agency (SWA), means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with Office of Workforce Services (OWS) in the operation of the national system of public employment offices.

* * * * *

6. Section 655.720 is revised to read as follows:

§ 655.720 Where are labor condition applications (LCAs) to be filed and processed?

(a) Employers must file all LCAs regarding H-1B and H-1B1 nonimmigrants through the electronic submission procedure identified in paragraph (b) of this section except as provided in the next sentence. If physical disability prevents an employer from using the electronic filing system, an LCA may be filed by U.S. Mail in accordance with paragraph (c) of this section. Requirements for signing, providing public access to, and use of certified LCAs are identified in § 655.730(c). If the LCA is certified by DOL, notice of the certification will be sent to the employer by the same 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 Internet Web site at <http://www.lca.doleta.gov>. The employer must follow instructions for electronic submission posted on the website. In the event that 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) *U.S. Mail.* If, as provided in paragraph (a) of this section, a physical disability prevents an employer from filing an LCA electronically, 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 shall 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.

(d) 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).

§ 655.721 [Removed and reserved]

7. Section 655.721 is removed and reserved.

8. Section 655.730 is amended by revising paragraphs (b), (c), and (d)(5) to read as follows:

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

* * * * *

(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 that 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 make a determination to certify or not certify an LCA within seven working days of the date ETA receives the LCA.

(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>. For employers with a physical disability preventing them from filing electronically, copies of the paper form, Form ETA 9035, and cover pages Form ETA 9035CP are available on the ETA Web site at <http://ows.doleta.gov> and from the ETA National Office.

(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 that the statements in the LCA are true and promises to comply with the labor condition statements (attestations) specifically identified 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 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 it is 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) *Content 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 SESA, now known as 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

(vii) For applications filed regarding H-1B nonimmigrants only (and not applications regarding H-1B1 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 and H-1B1 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) * * *

* * * * *

(5) For applications filed regarding H-1B nonimmigrants only (and not regarding H-1B1 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.

* * * * *

§ 655.734 [Amended]

9. Section 655.734 is amended in paragraph (a)(1)(ii) by removing the phrase "Complaints alleging failure to offer employment to an equally or better qualified U.S. worker or an employer's misrepresentation regarding such offers of employment may be filed with the Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530" and adding in lieu thereof the phrase "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 (employees), 1 (800) 255-7688 (employees); Web address: <http://www.usdoj.gov/crt/osc>."

10. Section 655.736 is amended in paragraph (g)(1) by removing the phrase "paragraph (2)(g) of this section" where it appears and adding in lieu thereof the phrase "paragraph (g)(2) of this section" and by revising paragraphs (c) introductory text, (g)(2), and (g)(4) to read as follows:

§ 655.736 What are H-1B-dependent employers and willful violators?

(c) Which employers are required to make determinations of H-1B-dependency status? Every employer that intends to file an LCA regarding H-1B nonimmigrants or to file H-1B petition(s) or request(s) for extension(s) of H-1B status from January 19, 2001, through September 30, 2003, and after March 7, 2005, is required to determine whether it is an H-1B-dependent employer or a willful violator which, except as provided in § 655.737, will be subject to the additional obligations for H-1B-dependent employers (see paragraph (g) of this section). No H-1B-dependent employer or willful violator may use an LCA filed before January 19, 2001, and during the period of October 1, 2003, through March 7, 2005, to support a new H-1B petition or request for an extension of status. Furthermore, on all H-1B LCAs filed from January 19, 2001, through September 30, 2003, and on or after March 8, 2005, an employer will be required to attest as to whether it is an H-1B-dependent employer or willful violator. An employer that attests that it is non-H-1B-dependent but does not meet the "snap shot" test set forth in paragraph (c)(2) of this section shall make and document a full calculation of its status. However, as explained in paragraphs (c)(1) and (2), which follow, most employers would not be required to make any calculations or to create any documentation as to the determination of H-1B status.

* * * * *
(g) * * *
* * * * *

(2) During the period between January 19, 2001, through September 30, 2003, and on or after March 8, 2005, any employer that is "H-1B-dependent" (under the standards described in paragraphs (a) through (e) of this

section) or is a "willful violator" (under the standards described in paragraph (f) of this section) shall file a new LCA accurately indicating that status in order to be able to file petition(s) for new H-1B nonimmigrant(s) or request(s) for extension(s) of status for existing H-1B nonimmigrant(s). An LCA filed during a period when the special attestation obligations for H-1B dependent employers and willful violators were not in effect (that is before January 19, 2001, and from October 1, 2003, through March 7, 2005) may not be used by an H-1B dependent employer or willful violator to support petition(s) for new H-1B nonimmigrant(s) or request(s) for extension(s) of status for existing H-1B nonimmigrants.

* * * * *

(4) The special provisions for H-1B-dependent employers and willful violator employers do not apply to LCAs filed from October 1, 2003, through March 7, 2005, or before January 19, 2001. However, all LCAs filed before October 1, 2003, and containing the additional attestation obligations described in this section and §§ 655.737 through 655.739, will remain in effect with regard to those obligations, for so long as any H-1B nonimmigrant(s) employed pursuant to the LCA(s) remain employed by the employer.

§ 655.740 [Amended]

11. Section 655.740 is amended in paragraphs (a) introductory text and (a)(1) by removing the phrase "regional Certifying Officer" where it appears and adding in lieu thereof the phrase "Certifying Officer," and in paragraph (a)(3) by removing the phrase "the regional office" and adding in lieu thereof "ETA."

12. Section 655.750 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 655.750 What is the validity period of the labor condition application?

(a) *Validity of certified labor condition applications.* A labor condition application certified pursuant to the provisions of § 655.740 is valid for the period of employment indicated on Form ETA 9035E or ETA 9035 by the authorized DOL official. The validity period of a labor condition application will not begin before the application is certified and the period of authorized employment shall not exceed three years. However, in the event employment pursuant to section 214(n) of the INA (formerly section 214(m), addressing increased portability of H-1B status) commences prior to certification of the labor condition application, the attestation requirements

of the subsequently certified application shall apply back to the first date of employment. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or three years, whichever comes first.

(b) * * *
* * * * *

(2) Requests for withdrawals shall be in writing and shall be sent to ETA. ETA shall publish a Notice in the **Federal Register** identifying the address, and any future address changes, to which requests for withdrawals shall be mailed, and shall also post these addresses on the DOL Internet Web site at <http://www.lca.doleta.gov>.

* * * * *

13. Section 655.760 is amended by revising paragraph (a)(1) to read as follows:

§ 655.760 What records are to be made available to the public, and what records are to be retained?

(a) * * *

(1) A copy of the certified labor condition application (Form ETA 9035E or Form ETA 9035) and cover pages (Form ETA 9035CP). If the Form ETA 9035E is submitted electronically, a printout of the certified application shall be signed by the employer and maintained in its files and included in the public examination file.

* * * * *

Signed in Washington, DC, this 28th day of March, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07-05-012]

RIN 1625-AA08

Special Local Regulations: Annual Fort Myers Beach Air Show, Fort Myers Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Fort Myers Beach Air Show, Fort Myers Beach, Florida. This