

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



IMPORTANT: Please read these instructions carefully before completing the ETA Form 9035 or 9035E –Labor Condition Application for Nonimmigrant Workers. These instructions contain full explanations of the questions and attestations that make up the ETA Form 9035 and 9035E. ***In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items must be completed.***

Anyone, who knowingly and willingly furnishes any false information in the preparation of ETA Form 9035 or 9035E and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, punishable by fine or imprisonment up to five years or both (18 U.S.C. §§ 2, 1001). Other penalties apply as well to fraud or misuse of this immigration document and to perjury with respect to this form (18 U.S.C. §§ 1546, 1621).

OMB Notice: These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply to the ETA 9035 or ETA 9035E are mandatory (Immigration and Nationality Act, Sections 212(n) and (t) and 214(c). Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave. NW, Washington, DC 20210. (Paperwork Reduction Project OMB 1205-0310.)

HOW TO FILE

A. Who May File:

A United States employer who desires to apply for a labor condition application on behalf of a foreign worker(s) must file the ETA Form 9035E.

B. How to File

1. For all occupations, online filing of the ETA Form 9035E is required through the LCA Online System accessible at <http://www.foreignlaborcert.doleta.gov>. Employers with physical disabilities that prohibit them from filing electronic applications or employers without Internet access can file the LCA by U.S. mail. These employers must obtain permission to file their application by U.S. mail by submitting a written request to the following address:

Office of Foreign Labor Certification
Employment & Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Room C-4312
Washington, DC 20210
Attn: Temporary Programs Manager

2. All application information (a copy of the certified ETA Form 9035E, public disclosure information, etc...) must be retained by the employer or its attorney/agent for five years from the date of filing the LCA for Nonimmigrant Workers.

Section A

Employment - Based Nonimmigrant Visa Information

1. Enter one of the following classification symbols to indicate the type of visa supported by this application: **"H-1B"**, **"H-1B1 Chile"**, **"H-1B1 Singapore"** or **"E-3 Australian."**

The **H-1B** visa allows an employer to temporarily employ a foreign professional worker in the U.S. on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc...).

The **H-1B1-Chile** visa applies to those employers temporarily hiring business professionals who are nationals of Chile under the Chile Free Trade Agreement.

The **H-1B1-Singapore** visa applies to those employers temporarily hiring business professionals who are nationals of Singapore under the Singapore Free Trade Agreement.

The **E-3** visa applies to those employers temporarily hiring business professionals who are nationals of Australia.

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Section B
Temporary Need Information

1. Enter the title of the job opportunity for which the labor condition application is being sought by the employer.
2. Enter the six or eight-digit Standard Occupational Classification (SOC)/Occupational Network (O*NET) code for the occupation, which most clearly describes the work to be performed.. For example, the six-digit SOC code for a computer systems analyst is 15-1051.00. **Appendix I** provides a mapping of the current 3-digit Dictionary of Occupational Title (DOT) codes to the SOC/O*NET classification system for use with this form.
3. Enter the occupation title associated with the SOC/O*NET (OES) code. For example, the occupational title associated with SOC/O*NET code 15-1051.00 is "Computer Systems Analyst".
4. Enter whether this position is full-time by indicating "Yes" or "No". **If this position is part-time, the employer attests that the H-1B nonimmigrant(s) supported by the LCA will not regularly work more than the number of hours indicated (which may be a range of hours) on the United States Citizenship and Immigration Services Form(s) I-129 filed for the nonimmigrant(s). Note: All H-1B nonimmigrants under the LCA must be part-time if question 4 is marked "Yes"; all H-1B nonimmigrants must be full-time if question 4 is marked "No."**
5. Enter the beginning date for the worker's period of employment. Use a month/day/full year (MM/DD/YYYY) format.
6. Enter the end date for the worker's period of employment, which cannot be more than three years after the start date. Use a month/day/full year (MM/DD/YYYY) format.
7. Enter the numerical number of workers needed for the visa application supported by this application in each box. Every box **MUST** be filled. If the employer has no workers in a particular category, please indicate "0 (zero)."

Section C
Employer Information

Note: If one or more questions in this section are not applicable, enter "N/A".

1. Enter the full legal name of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application. The employer's full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service.
2. Enter the full trade name or "Doing Business As" (DBA) name, if applicable, of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application.
3. Enter the street address of the employer's principal place of business.
4. If additional space is needed for the street address, use this line to complete the employer's street address.
5. Enter the city of the employer's principal place of business. If the city and country are the same, the name must still be entered in both fields.
6. Enter the state of the employer's principal place of business.
7. Enter the postal (zip) code of the employer's principal place of business.
8. Enter the country of the employer's principal place of business. If the city and country are the same, the name must still be entered in both fields.
9. Enter the province of the employer's principal place of business.
10. Enter the area code and telephone number for the employer's principal place of business. Include country code, if applicable.

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Section C (continued)

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

Note: All employers, including private households, MUST obtain an FEIN from the IRS before completing this application. Information on obtaining an FEIN can be found at www.irs.gov.
13. Enter the four to six-digit North American Industry Classification System (NAICS) code that best describes the employer's business, not the alien's job. A listing of NAICS codes can be found at <http://www.census.gov/epcd/www/naics.html>.

Section D
Employer Point of Contact Information

An employer point of contact is an employee of the employer whose position authorizes the employee to provide information and supporting documentation concerning this Labor Condition Application for Nonimmigrant Workers and to communicate with the Department of Labor on behalf of the employer. The employer point of contact should be the individual most familiar with the content of this application and circumstances of the foreign worker's employment as the point of contact will be contacted to verify whether the employer is authorizing the application and sponsoring the foreign worker named in the application. If one or more questions in this section are not applicable, enter "N/A".

Note: The employer point of contact information in this Section, specifically the name, telephone number, and email address, must be different from the attorney/agent information listed in Section E, unless the attorney is an employee of the employer.

1. Enter the last (family) name of the employer's point of contact.
2. Enter the first (given) name of the employer's point of contact.
3. Enter the middle initial of the employer's point of contact.
4. Enter the job title of the employer's point of contact.
5. Enter the business street address for the employer's point of contact.
6. If additional space is needed for the street address, use this line to complete the street address.
7. Enter the city of the employer's point of contact. If the city and country are the same, the name must still be entered in both fields.
8. Enter the state of the employer's point of contact.
9. Enter the postal (zip) code of the employer's point of contact.
10. Enter the country of the employer's point of contact. If the city and country are the same, the name must still be entered in both fields.
11. Enter the province of the employer's point of contact.
12. Enter the area code and business telephone number of the employer's point of contact. Include country code, if applicable.

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Section D (continued)

13. Enter the extension of the telephone number of the employer's point of contact.
14. Enter the business e-mail address of the employer's point of contact in the format [name@emailaddress.top-level](#) domain.

Section E
Attorney or Agent Information (if applicable)

Note: The attorney/agent information in this Section, specifically the name, telephone number, and email address, **must** be different from the employer's point of contact information in Section D, unless the attorney is an employee of the employer.

1. Identify whether the employer is represented by an attorney or agent in the process of filing this application. Only mark one box. If "Yes" complete the remainder of Section E. If "No" in question 1, skip questions 2 to 19 and continue to Section F.
2. Enter the last (family) name of the attorney/agent.
3. Enter the first (given) name of the attorney/agent.
4. Enter the middle initial of the attorney/agent.
5. Enter the street address of the attorney/agent.
6. If additional space is needed for the street address, use this line to complete the attorney/agent's street address.
7. Enter the city of the attorney/agent. If the city and country are the same, the name **must** still be entered in **both** fields.
8. Enter the state of the attorney/agent.
9. Enter the postal (zip) code of the attorney/agent.
10. Enter the country of the attorney/agent. If the city and country are the same, the name **must** still be entered in **both** fields.
11. Enter the province of the attorney/agent.
12. Enter the area code and telephone number of the attorney/agent. Include country code, if applicable.
13. Enter the extension of the telephone number of the attorney/agent.
14. Enter the e-mail address of the attorney/agent in the format of "name@emailaddress.top-level domain".
15. Enter the attorney/agent's law firm or business name.
16. Enter the attorney/agent's law firm or business nine-digit FEIN as assigned by the IRS.
17. Enter the attorney's state Bar number. If the attorney is licensed in more than one state, enter only one state Bar number. If submitting this form electronically and the attorney is licensed in a state which does not issue state Bar numbers, leave the field blank and once confirmed it will be automatically prepopulated with "N/A."

Note: The answers to questions 18 and 19 below should correspond to the same state for which a Bar number was provided in question 17, if any.

18. Enter the state of the highest court where the attorney is in good standing.
19. Enter the name of the highest court in the state where the attorney is in good standing.

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Section F
Rate of Pay

1. Enter the rate of pay to be paid to H-1B nonimmigrants. If the wage offer is expressed as a range, enter the bottom of the wage range to be paid.

Enter the top of the wage range to be paid to H-1B nonimmigrants in the section indicating "Rate Up to (Optional)."
2. Enter whether the rate of pay is in terms of per year, month, two weeks, week or hour in the section indicating "Rate is Per."

Section G
Employment and Prevailing Wage Information

a. Place of Employment

Note: *It is important for the employer to define the place of intended employment with as much geographic specificity as possible. The place of employment address listed must be a physical location and cannot be a P.O. Box. The employer may use this section to identify up to three (3) physical locations and corresponding prevailing wages covering each location where work will be performed. If the employer has received approval from the Department of Labor to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section.*

See the definition of "place of employment" in 20 Code of Federal Regulations (CFR) 655.715 and regulation concerning short term placement in 20 CFR 655.735.

1. Enter the street address of the worksite location identified in question 1, where work will be performed. The worksite address must be a physical location and cannot be a P.O. Box.
2. If additional space is needed for the street address, use this line.
3. Enter the city of the worksite location.
4. Enter the county of the worksite location.
5. Enter the state/district/territory of the worksite location.
6. Enter the postal (zip) code of the worksite location.

PREVAILING WAGE INFORMATION

7. If the employer received a Prevailing Wage Determination (PWD) from the State Workforce Agency (SWA), enter the state/district/territory of the SWA which issued the PWD. If the employer did not obtain a PWD from the SWA, enter "N/A." **Use this field ONLY where the employer obtained a prevailing wage from the SWA.**
- 7(a). Enter the prevailing wage tracking number assigned by the SWA. If the SWA did not assign a prevailing wage tracking number **OR** the employer did not obtain a PWD from the SWA, enter "N/A". **Use this field ONLY where the employer obtained a prevailing wage from the SWA.**
8. If the employer received a prevailing wage from either the SWA or the Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatcenter.com>, identify whether the wage (skill) level of the job opportunity is a level I, II, III, or IV. Only mark one box. Otherwise, mark "N/A".
9. Enter the prevailing wage for the job opportunity.
10. Identify whether the prevailing wage is per hour, week, bi-weekly, month, or year. Only mark one box.

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Section G (continued)

11. Identify whether the prevailing wage source is Occupational Employment Statistics (OES); Collective Bargaining Agreement (CBA); Davis-Bacon Act (DBA); McNamara-O'Hara Service Contract Act (SCA); or Other (includes employer-provided independent authoritative source survey). Only mark one box.

Note: Mark "OES" in circumstances where the prevailing wage was obtained from either the SWA or the Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatcenter.com>

11(a). Enter the year in which the data source used to list the prevailing was published.

11(b). Specify the name of the company and exact wage survey used by the employer for the prevailing wage. **Appendix II** provides a sample listing of the types of wage surveys acceptable from two (2) major wage survey companies; Mercer and Watson Wyatt.

Note: This field should be used in circumstances where the employer has marked "Other" in question 11 **OR** "OES" in question 11 **and** the employer did not obtain a prevailing wage from the SWA. For example, if the employer obtained a prevailing wage using OES data from the Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatcenter.com>, then the words "OFLC Online Data Center" must be entered in the space provided.

Section H
Employer Labor Condition Statements

The employer must read and agree to statements (1) and (4) below and demonstrate that agreement by marking "Yes" to Question 1 in Section H of the Form ETA 9035E and by signing the application. The employer agrees to develop and maintain documentation supporting labor condition statements (1) and (4) as specified in 20 CFR 655.731 and 655.734, and to make this document available to DOL officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with DOL. This documentation must be retained for public examination at the place of employment or the employer's principal place of business as specified in Section J of this form.

(1) **Wages:** The employer attests that H-1B, H-1B1 or E-3 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 occupational classification in the area of intended employment. By marking "Yes" to Question 1 of Section H, the employer also attests that it will pay these nonimmigrants the required wage for time in nonproductive status due to a decision of the employer or due to the nonimmigrant's lack of a permit or license. The employer further attests that these nonimmigrants will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.731.

(2) **Working Conditions:** The employer attests that H-1B, H-1B1 or E-3 nonimmigrants in the named occupation will not adversely affect the working conditions of workers similarly employed. The employer further attests that nonimmigrants will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.732.

(3) **Strike, Lockout, or Work Stoppage:** The employer attests that on the date the application is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the named occupation at the place of employment and that, if such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify the Employment & Training Administration (ETA) with three (3) days of such occurrence and the application will not be used in support of a petition filing with the United States Citizenship and Immigration Services (USCIS) for H-1B, H-1B1 or E-3 nonimmigrants to work in the same occupation at the place of the employment until ETA determines the strike lockout or work stoppage has ceased. See 20 CFR 655.733.

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Section H (continued)

(4) **Notice:** The employer attests that as of the date of filing, notice of the Labor Condition Application (LCA) has been or will be provided to workers employed in the named occupation. Notice of the application shall be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing shall be provided either through physical posting in conspicuous locations where H-1B, H-1B1 or E-3 nonimmigrants will be employed, or through electronic notification to employees in the occupational classification for which nonimmigrants are sought. The employer further attests that each nonimmigrant employed pursuant to the application will be provided with a copy (or original, as appropriate) of the certified Form ETA 9035E or ETA 9035 (if applicable). AS stated above for H-1B, H-1B1 or E-3 nonimmigrants, the employer must provide the certified LCA to the nonimmigrant, who must follow the H-1B, H-1B1 or E-3 procedures of USCIS and the Department of State. The notification shall be provided no later than the date the nonimmigrant reports to work at the place of employment. See 20 CFR 655.734.

1. Mark “Yes” or “No”. The employer must agree to all four labor condition statements listed as (1) to (4). **Please note that marking “Yes” indicates that you have read and agree to the above-listed statements.**

Section I
Additional Employer Labor Condition Statements – H-1B Employers ONLY

All H-1B employers are required to complete Section I of this form in order for an application regarding an H-1B, H-1B1 and E-3 nonimmigrant to be processed. See 20 CFR 655.736 for more detailed guidance as to what constitutes an “H-1B employer” or a “willful violator.”

a. Subsection 1

NOTE: The determination as to whether an employer is H-1B dependent is a function of the number of H-1B nonimmigrants employed as a proportion of the total number of full-time equivalent employees employed in the United States. The following table can be used to determine whether the employer is an H-1B dependent employer:

NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES (U.S. WORKERS AND H-1B WORKERS)	NUMBER OF H-1B NONIMMIGRANT EMPLOYEES
1 to 25	8 or more
26 to 50	13 or more
51 or more	15% or more of the workforce (US and H-1B workers)

1. Mark “Yes” or “No” if the employer is H-1B dependent. The employer is an H-1B dependent employer if the number of H-1B nonimmigrants employed by the employer as a proportion of the total number of full-time equivalent employees employed in the United States matches the chart above.

If an employer marks “No” and is or becomes H-1B dependent, the submitted labor condition application shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B, H-1B1, and E-3 nonimmigrant. By marking “No”, the employer also acknowledges that if it uses his application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section H.

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Section I (continued)

2. Mark "Yes" or "No" if the employer is a willful violator. The employer is willful violator if the employer has been found during the five (5) years preceding the date of the application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact.

If an employer marks "No" and was found, prior to the date of filing, to have committed a willful violation or a misrepresentation, the submitted labor condition application shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B, H-1B1, and E-3 nonimmigrant. By marking "No," the employer also acknowledges that if it uses his application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section I.

3. Mark "Yes" or "No" to this question after marking "Yes" to question 1 of Subsection 1 in Section I AND the employer intends to use this application ONLY to support H-1B petitions or extensions of status for expected H-1B nonimmigrants who will receive wages at a rate equal to at least \$60,000 per year, or have attained a master's degree (or equivalent or higher degree) in a specialty related to the employment. The employer also agrees to maintain documentation required by 20 CFR 655.737.

If an employer marks "Yes" the employer acknowledges that if it uses this application in support of a petition or extension of a petition of an H-1B, H-1B1, and E-3 nonimmigrant who is not exempt, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section I with respect to all H-1B, H-1B1, and E-3 nonimmigrants supported by this application.

b. Subsection 2

All employers that are (1) H-1B dependent (as defined above) and/or (2) have been found to have committed a willful violation or a misrepresentation of a material fact during the five (5) year period preceding the date of this application (and after October 20, 1998), **must read and agree to statements (A) through (C) below and demonstrate that agreement by marking "Yes" in Subsection 2 of Section I of this application.** The employer agrees to develop and maintain documentation supporting labor condition statements (1) and (4) as specified in 20 CFR 655.738 and 655.739, and to make this document available to DOL officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with DOL. This documentation must be retained for public examination at the place of employment or the employer's principal place of business as specified in Section J of this form. The employer agrees:

- (A) **Displacement:** The employer will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B, H-1B1, and E-3 nonimmigrant supported by this application.
- (B) **Secondary Displacement:** The employer will not place any H-1B, H-1B1, and E-3 nonimmigrant employed pursuant to this application with any other employer or at another employer's worksite UNLESS the employer applicant first makes a bona fide inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge.

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

- (C) **Recruitment and Hiring:** Prior to filing any petition for an H-1B, H-1B1, and E-3 nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B, H-1B1, and E-3 nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B, H-1B1, and E-3 nonimmigrant.

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This labor condition statement “(C)” does not apply to the employment of an H-1B, H-1B1, and E-3 nonimmigrant who is a “priority worker” (defined as a person with extraordinary ability, or outstanding professors or researchers, or certain multi-national executives or managers) within the meaning of Section 203(b)(1)(A), (B), or (C) of the Immigration and National Act, 8 U.S.C. 1153.

4. Mark “Yes” or “No”. The employer must agree to all four labor condition statements listed above #4 as (A) to (C) of Subsection 2 of Section I. Answer this question only if you marked “Yes” to either or both question one and two above in Section I indicating that you are either an H-1B dependent employer or a willful violator or both.

Section J
Public Disclosure Information

1. Please indicate whether the employer’s required public disclosure information will be located at the employer’s principal place of business **OR** the place of employment.

Section K
Declaration of Employer

Note: If submitting this form non-electronically, the employer must sign and date the application prior to submission. If submitting this form electronically, the employer must sign and date the application immediately upon receipt of the certified application and before submission to USCIS. An attorney or agent should not sign this section unless the attorney or agent is an employee of the employer and has authority to sign as the employer.

1. Enter the last (family) name of the person with authority to sign as the employer.
2. Enter the first (given) name of the person with authority to sign as the employer.
3. Enter the middle initial of the person with authority to sign as the employer.
4. Enter the job title of the person with authority to sign as the employer.
5. The person with authority to sign as the employer must sign the application. Read the entire application and verify all contained information prior to signing.
6. The person with authority to sign as the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

Section L
This section must be completed if the preparer completing this application is the person other than the one listed in sections D and E of this form.

1. Enter the last (family) name of the person preparing this LCA by or on behalf of the employer.
2. Enter the first (given) name of the person preparing this LCA by or on behalf of the employer.
3. Enter the middle initial of the person with preparing this LCA by or on behalf of the employer.
4. Enter the Firm/Business name of the person with preparing this LCA by or on behalf of the employer.
5. Enter the email address of the person with preparing this LCA by or on behalf of the employer. Format must be in the form of [name@emailaddress.top-level domain](#).

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Section M
U.S. Government Agency Use Only

Read this section. No entries required.

Section N
Signature Notification and Complaints

Read this section. No entries required.

Section O
OMB Paperwork Reduction Act/Information Control Number 1205-0310

Read this section. No entries required.
