Appendix B to LABOR CONDITION APPLICATION FOR H-1B, H-1B1, and E-3 NONIMMIGRANTS and the NONIMMIGRANT WORKER INFORMATION FORM OMB Control Number 1205-0310

Form ETA-9035/9035E, Form ETA-9035CP, Form ETA-9035/9035E Appendix A, and WH-4: Comment Responses

This is an appendix to the Office of Management and Budget's (OMB) supporting statement for the Labor Condition Application (LCA) for H-1B, H-1B1, and E-3 Nonimmigrants and the Nonimmigrant Worker Information Form, OMB Control No. 1205-0310. This appendix includes a summary of all public comments received in response to the 60-day notice the Department of Labor (Department or DOL) published in the *Federal Register* on August 3, 2017, to which the Supporting Statement refers in Question 8. The Department received comments from eleven commenters. The comments have been reviewed, considered, summarized, and addressed. A comment summary and the Department's responses follow.

I. FORMS ETA-9035/9035E AND 9035CP:

A. Support for the Department's Proposed Revisions

Five commenters expressed their support for the proposed revisions to Form ETA-9035/9035E and Form ETA-9035CP. Generally, these commenters were supportive of the Department's efforts both to protect U.S. workers and to make the administration of the program more transparent. One commenter stated that the Department's efforts to streamline the collection of the wage rate and the prevailing wage, and to reorganize the collection of the prevailing wage source information, assisted regulated entities with form completion, achieved greater clarity of existing employer obligations, and promoted program transparency. Another stated that it "supports measures that would combat wage violations and address worker abuse and unfair competition," and pointed to disclosure of the intended places of employment, the number of workers at each worksite location, and the names of secondary employers;[1] clarification of worker wage deductions and H-1B dependent and willful violator attestations;[2] proposed transparency measures for the collection of details regarding the statutory basis for exempt workers; and the employer's maintenance and documentation of a public access file as consistent with these objectives.

As these commenters recognize, the Department's proposed revisions streamline the collection of information, increase program transparency, and clarify existing employer obligations. As

[1] The Department's original form revision proposal referred to a requirement to disclose names of "secondary employers." For the reasons set out below, in Section D.2., *infra*, the Department has decided to modify the name of the category related to this disclosure requirement, and instead refers to the category as "secondary entities." To the extent that the Department retains a reference to "secondary employer" in this discussion, the reference is either to the original proposal or to a comment that used that term in response to the original proposal.

[2] Under INA Sec. 212(n)(1)(E) and (n)(3), an "H-1B dependent employer" is generally an employer with a workforce of 15% or more H-1B workers. 8 U.S.C. 1182(n)(1)(E), (n)(3). In addition, under INA Sec. 212(n)(1)(E), a "willful violator" is an employer that has been found to have committed a willful failure or a misrepresentation during the five-year period preceding the employers' filing the application. 8 U.S.C. 1182(n)(1)(E). For brevity, we refer to these categories of employers throughout as "dependent employers" or "willful violators."

discussed in more detail below, the Department emphasizes that these revisions do not create new legal obligations for employers; rather, they clarify existing regulatory requirements. As a result, the Department has determined that, for the most part, it will retain its proposed revisions. In response to comments, the Department has made some modifications to its original proposal. The Department's decisions regarding modifications are discussed in greater detail below.

B. Burden Imposed by the Department's Proposed Revisions

One commenter stated that the Department underestimated the burden for completion of Form ETA-9035/9035E and Appendix A, and another expressed concern that the Department's proposed revisions would be expensive and burdensome. The Department thoroughly assessed the overall burden associated with the filing of LCAs. Based on the Department's calculation of the average time needed for all filers, it has arrived at estimates of the total average time burden associated with the preparation and submission of Form ETA-9035/9035E. The public may evaluate and comment on the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, in response to the second *Federal Register* notice related to the proposed revisions. This notice, published simultaneously with this Supporting Statement, allows for an additional 30 days for the public to provide feedback on the proposed information collection and burden estimates, and submit further comments to the attention of OMB.

In the August 3, 2017 60-day notice, the Department estimated that the total annual time burden would increase from 310,005 burden hours to 910,919.28 burden hours, which included the burden associated with both Form ETA-9035/9035E and Form WH-4. As explained in the Supporting Statement, the Department made this estimate based in large part on the steady surge of H-1B, H-1B1, and E-3 LCA requests received during the economic upturn of the past three years. Further, improvements to the methodology for calculating the burden have contributed to this increase.

Specifically in terms of the LCA, data over Fiscal Years 2014 to 2016 reflect that the total number of LCA filings increased from 340,425 to 569,260. The increase is likely attributable to increased program demand and better employer accounting methods in compliance with OMB requirements. The Department is now providing an updated total burden estimate: it projects that the estimated overall total annual burden hours for LCAs will increase from 567,485 to 898,137.

C. The Department's Authority to Revise Forms ETA-9035/9035E and 9035CP

Three commenters generally questioned the Department's authority to make its proposed revisions. One stated that the Immigration and Nationality Act (INA) does not provide such authority, and two stated that the proposed revisions constitute substantive changes to regulatory requirements. According to one commenter, the proposed revisions require the Department to engage in notice and comment rulemaking under the Administrative Procedure Act (APA), or in some cases, to amend the INA. The Department maintains that its proposed changes constitute form revisions that do not alter employers' substantive legal obligations under the INA and accompanying regulations. Therefore, neither regulatory nor statutory amendment is necessary.

These revisions are within the Department's statutory authority under the INA to administer the LCA for the H-1B program. The revisions were made available for public inspection through the notice and comment process mandated by and in compliance with the Paperwork Reduction Act (PRA).

Two commenters generally questioned the Department's authority under the INA to collect educational attainment and degree information from H-1B dependent employers and willful violator employers, and stated that the Department has not adequately explained how it will review the information for obvious errors or inaccuracies. One stated that neither the INA nor the Department's regulations at 20 CFR 655.730 provide such authority, and the proposed Appendix A should be eliminated because the Wage and Hour Division's (WHD) WH-4 complaint form can be used if an employer does not comply with the conditions of the LCA. Another commenter stated that the INA only requires employers to provide the Department with the four main attestations related to wages, working conditions, strike or lockout, and notice of the LCA filing. This commenter stated that employers are not required by the INA to enumerate a specific employee on the LCA that matches educational or degree documentation or otherwise provide such documentation to the Department at the time of filing. The Department maintains that its proposed collection of educational information and documentation constitutes form revisions that do not alter employers' substantive legal obligations under the INA and accompanying regulations. The statute does not preclude the Department from collecting information that is reasonable, necessary, and has practical utility for administering the LCA process under the H-1B visa classification.

In accordance with 20 CFR 655.737(e), the employer will continue to designate on the LCA that the LCA will be used only to support H-1B petition(s) and/or request(s) for extension of status for "exempt" H-1B nonimmigrants. In order to assess whether the H-1B dependent or willful violator employer may be subject to the statutory obligations regarding non-displacement and recruitment of U.S. workers, the Department maintains that it is necessary and reasonable for this limited group of employers to disclose information that establishes the obvious bona fides of their request to employ one or more H-1B nonimmigrant workers in exempt status. Where the H-1B dependent or willful violator employer is seeking a statutory exemption based on the annual minimum wage rate threshold, the LCA has historically collected wage offer information that the Department reviews as prima facie evidence demonstrating compliance with the statute and regulations. Similarly, the collection of educational and degree documentation using the Department's proposed Appendix A will provide prima facie evidence as to whether these employers are subject to the statutory obligations based on the educational attainment threshold for H-1B nonimmigrant workers. Because the statutory non-displacement and recruitment obligations must be met prior to filing the LCA or H-1B petition, the Department maintains that collecting educational and degree documentation using the proposed Appendix A, at the time of filing, will better safeguard the employment and non-displacement of U.S. workers before the LCA is certified and H-1B petition is filed with the Department of Homeland Security (DHS). The Department has revised its proposal to collect Appendix A to require Appendix A from an H-1B dependent or willful violator employer only in instances in which an employer claims an exemption for a nonimmigrant worker based only on the Master's or higher degree. The Department will use the information submitted on the Appendix A to ensure that the educational attainment designation on the LCA by H-1B dependent or willful violator employers are

complete and without obvious errors or inaccuracies, including, but not limited to, whether the prospective H-1B nonimmigrants have met the Master's degree or higher threshold, received a degree from an academic institution that obviously exists, and that the year in which the degree was attained is obviously accurate. The proposed collection of information on the Appendix A, in aggregate form, will provide greater transparency to the public and disclose the manner and frequency with which H-1B dependent or willful violator employers are using the educational attainment threshold to claim an exemption from the statutory requirements for the non-displacement and recruitment of U.S. workers in these job opportunities.

One commenter requested that the Department provide additional guidance to employers as to how it will determine whether the educational credential is an acceptable equivalency to one issued by a U.S. academic institution, and two commenters stated that evaluation of the qualifications of the foreign beneficiary is within the jurisdiction of U.S. Citizenship and Immigration Services (USCIS) and not DOL. The Department does not intend to use the collection of this information to determine whether the academic degree is in a specialty occupation or, if awarded from an accredited or legally recognized foreign academic institution, whether it is equivalent to a Master's or higher degree issued by a U.S. academic institution. That level of review is within the jurisdiction of DHS, which has responsibility for making the final determination of the H-1B nonimmigrant worker's exempt status. The Department maintains, for these H-1B dependent or willful violator employers, that the collection of educational attainment information on the LCA and the preliminary review for obvious errors or inaccuracies will assist DHS in more effectively performing its review, as required by 20 CFR 655.737(d) and (e).

With respect to the commenter's assertion that the WHD's WH-4 complaint form should be used in lieu of the proposed Appendix A, the Department does not agree that administration of these important statutory protections can only be asserted after U.S. workers are adversely impacted and file a complaint due to the employment of H-1B nonimmigrants at the worksite(s). Neither the INA nor the regulations preclude the Department from collecting information that, at the time of filing, is reasonable and necessary to help establish the obvious bona fides of the claimed educational attainment designation on the LCA before a certification is granted and the H-1B petition is filed with DHS. The Department also disagrees with the commenter's assertion that this proposed collection will require employers to enumerate a specific employee on the LCA. The collection of degree documentation will only be used by the Department to verify that the educational attainment information contained on the proposed Appendix A is complete and without obvious errors or inaccuracies. The proposed Appendix A does not collect any identifying information from the H-1B dependent or willful violator employer about the prospective H-1B nonimmigrant worker(s). The Department maintains that the collection of this information is within the scope of its authority to administer the LCA for the H-1B program. The revisions were made available for public inspection through the notice and comment process mandated by and in compliance with the PRA.

D. The Department's Proposed Changes to Forms ETA-9035/9035E and 9035CP

1. Intended Place of Employment (Section F)

The Department's August 3, 2017 proposal to revise Forms ETA-9035/9035E and 9035CP re-designated current Section G, Employment and Prevailing Wage Information, as Section F. Proposed Section F on Form ETA-9035/9035E included an "Important Note" that differed from the current form in several respects. First, the revised form stated that "[e]ach intended place(s) of employment listed below must be the worksite or physical location where the work will actually be performed and cannot be a P.O. Box." This replaced the current statement that "[t]he place of employment address listed below must be a physical location and cannot be a P.O. Box." The proposed form also instructed that "[t]he employer must identify all intended places of employment on the LCA," citing 20 CFR 655.730(c)(5). Furthermore, the proposed form stated that if the employer has more than three intended places of employment, it must file as many additional LCAs as are necessary to list all intended places of employment. In addition to changes corresponding to the form revisions described above, proposed Section F on Form ETA-9035CP provided the definition of "place of employment" from 20 CFR 655.715. It also stated that a worksite is "an 'intended place of employment' if the employer knows at the time of filing the LCA that it will place workers at the worksite, or should reasonably expect that it will place workers at the worksite based on: (1) an extant contract with a secondary employer or client, (2) past business experience, or (3) future business plans." For clarity, the Department has changed the word "extant" to "existing". The Department has considered all comments regarding these revisions and has concluded that it will maintain its proposed revisions with some minor modifications as explained below.

Three commenters stated that the proposed revisions to Section F create new requirements for completing the LCA that exceed what is contemplated in current regulations; therefore, the Department cannot implement its revisions without engaging in notice-and-comment rulemaking. The Department's proposed revisions do not create new obligations for LCA applicants. Rather, the revisions refine the Form ETA-9035/9035E and 9035CP instructions to clarify existing regulatory requirements. The instructions state that the employer must identify all intended places of employment on the LCA. This requirement exists in the Department's regulation at 20 CFR 655.730(c)(5), which states that "[a]ll intended places of employment shall be identified on the LCA." "Place of employment" is defined in 20 CFR 655.715 as "the worksite or physical location where the work actually is performed by the H-1B . . . nonimmigrant." These requirements have been in place in some form since the rule's original publication in 1991. *See* 56 FR 54720, 54729-30 (Oct. 22, 1991). The precise language that employers must identify "[a]ll intended places of employment" on the LCA was adopted in the 2000 Interim Final Rule (IFR); however, the 1991 IFR required employers to identify "[t]he place(s) of intended employment" on their applications and included conditions under which employers could file an application with more than one place of employment. 56 FR 54720, 54730; 65 FR 80110, 80213 (Dec. 20, 2000). And, the Department's regulations have consistently defined "place of employment" as "the worksite or physical location where the work is performed," modifying the language slightly in the 1994 Final Rule to provide "where the work *actually* is performed." 65 FR 80110, 80213 (emphasis added); *see also* 56 FR 65646,

65661 (Dec. 20, 1994). Therefore, the Department's revisions do not constitute substantive changes to employer obligations that require rulemaking under the APA.

One commenter stated that the Department's revisions impose a new requirement that employers identify multiple worksites within the same area of intended employment at the time an LCA is filed, and suggested that the Department has proposed a new definition of "place of employment." This commenter stated that "[e]mployers should not be required to provide 'the worksite or physical location where the work will actually be performed' in cases where an employee might be performing work at several physical locations within a single area of employment." As stated above, the requirement that employers identify their places of intended employment on their LCAs at the time of filing has existed as long as the H-1B program itself, and the definition of "place of employment" has been essentially consistent throughout the program's existence. The Department's proposed revisions to Forms ETA-9035/9035E and 9035CP have changed neither, and the Department cannot make such changes absent formal rulemaking. This commenter's misunderstanding of regulatory requirements, as well as its statement that providing a primary worksite address on the LCA while sending H-1B workers to "multiple actual worksites" within the area of intended employment was the "commonly accepted practice," illustrate the urgent need for the Department's form revisions. Although it may be true that listing a single worksite address on the LCA while planning to send workers to multiple worksites was not uncommon, failing to identify any *intended* worksites on the LCA violates the regulations and exposes employers to potential liability in an enforcement proceeding. The Department's revisions, therefore, are necessary to clarify employers' obligations under the regulations and ensure compliance.

One commenter claimed that Form ETA-9035CP's instructions at Section F regarding what constitutes an "intended place of employment" create a new regulatory burden that shifts the Department's current focus on geographic specificity to a new focus on including all potential job sites within one Metropolitan Statistical Area (MSA) that might possibly occur during the life of the LCA. This commenter suggested that the Department's proposed revisions require employers to make unreasonable predictions about where they will place H-1B workers to comply with the requirement to identify all intended places of employment, stating that the proposal requires H-1B employers "to possess a level of clairvoyance that even the most conscientious of business owners could never hope to possess." As discussed above, the current regulations require employers to identify all places of employment that are *intended* at the time of LCA filing. The Department's proposal does not alter this established obligation. Rather, the revisions clarify the meaning of "intended," and explain that employers must identify those worksites at which the employer knows or reasonably expects to place H-1B workers based on existing contracts, business plans, or its own expertise. It is clear that the Department does not expect employers to identify worksites that are not "intended" at the time of filing. For worksites not contemplated at the time of filing, employers may continue to utilize the procedures provided at 20 CFR 655.734(a)(2). This provision permits placement of H-1B workers at *unintended* worksites, within an approved area of intended employment, without filing a new LCA. In addition, the regulations at 20 CFR 655.735 permit short-term placement of H-1B workers at *unintended* worksites, outside an approved area of intended employment, without filing a new LCA. In order to clarify that the employer's obligation to identify all

intended places of employment extends to intended short-term placements under section 655.735, the Department has modified the proposed Section F instructions accordingly.

The same commenter worried that any employer moving an H-1B worker to another worksite within the same MSA "might be challenged by DOL as having a responsibility to document future business plans or past business experience at the time of the LCA's filing." The Department will not be requesting such documentation at the application stage. However, employers must comply with 20 CFR 655.730(c)(5), and may be subject to enforcement proceedings for noncompliance.

Two commenters were concerned with the proposal's potential effect on employers' ability to move workers within an area of intended employment without filing additional LCAs. One worried that the revisions contravene the definition of "area of intended employment" at 20 CFR 655.715 and effectively nullify 20 CFR 655.734(a)(2), stating that together, these provisions "[have] long been understood to give employers flexibility to move H-1B employees to new locations within the same [MSA] . . . without the need to file a new LCA." This commenter explained that an LCA is intended to cover an area of intended employment, not just a specific street address, and stated that the Department's proposed revisions make it unclear whether employers will be able to move a worker to a new worksite within the area of intended employment without filing a new LCA. This commenter also requested that the Department confirm that it is not modifying the fact that LCAs are valid for an area of intended employment. The other commenter stated that current regulations provide flexibility to move H-1B workers to new locations within the same MSA without filing a new LCA, but the proposed revisions would prevent this. The Department disagrees with these commenters' interpretation of its proposal. As explained above, the form revisions do not alter employers' existing statutory and regulatory rights and responsibilities. Rather, the revisions reiterate the requirement at 20 CFR 655.730(c)(5) that at the time of filing, employers must identify all *intended* places of employment. The provision at 20 CFR 655.734(a)(2) specifically applies to worksites "not contemplated at the time of filing the application," therefore, such worksites are *unintended* and cannot be identified at the time of filing. The Department agrees that the LCA covers an area of employment, which is established by the *intended* worksites listed on the form. Once an employer has an approved LCA, section 655.734(a)(2) permits that employer to move workers to *unintended* worksites within the established area of intended employment without filing a new LCA.

Two commenters illustrated this concern with hypothetical situations that they feared could be impacted by the Department's revisions. One stated that when employers establish new offices or acquire new companies, clients, or office space in the same MSA as their current location, the Department's "new requirement" would restrict those employers' ability to move H-1B workers accordingly. Another opined that a university employing H-1B workers as faculty may not know the physical place in which those workers will teach, i.e., the particular building or classroom, until right before the semester starts, and this location may change each semester, thus universities may have difficulty filing LCAs for such positions. As explained above, the requirement that employers identify all intended places of employment is not new. Additionally, for the reasons stated above, the employers described in the commenters' examples need not file new LCAs if the changes in worksite were not intended (known or reasonably expected) at the time of filing. Furthermore, the current forms require the employer to define the intended

worksite "with as much geographic specificity as possible." The Department's revisions do not alter these requirements. Thus, should an employer acquire a new office or company within the an approved area of intended employment, it need not file a new LCA to move workers to that location if it had no plans to acquire the new office or company until after filing. And, a university may include its main address on the LCA and must file a new LCA when workers move to new teaching locations only in the unlikely event that a teaching location is outside the area of intended employment established by the university address.

Commenters were also concerned about the burden that the Department's revisions would impose. One stated that requiring employers to list all places of intended employment on the LCA "could require new LCAs for worksite changes within an area of intended employment, which can be expensive . . . and burdensome." This commenter also stated that the burden and expense would be exacerbated by USCIS's requirement that when an employer files a new LCA, it must also file an amended H-1B petition. Another commenter worried that the revisions would cause businesses to expend more resources filing multiple LCAs, which would create substantially more paperwork. As explained in more detail below, the Department is revising its information collection and increasing the number of worksite locations that may be disclosed on each LCA from three to ten. This proposed change will help reduce the burden of filing multiple LCAs and, potentially, additional I-129 petitions. Additionally, as stated above, the Department's form revisions have not created new obligations; rather, the revisions reiterate and clarify obligations that exist in current regulations. If a worksite is intended at the time of filing, it must be identified on the application per 20 CFR 655.730(c)(5). As this requirement is unaffected by the Department's revisions, the burden of identifying such worksites is unaffected. Furthermore, as stated above, the Department's revisions leave 20 CFR 655.734(a)(2) unchanged. As this provision permits the movement of H-1B workers to worksites *unintended* at the time of filing within an approved area of employment, without filing a new LCA, there is no need for employers to file new LCAs for these worksites. Therefore, the Department concludes that the revisions to Section F regarding the identification of intended places of employment do not increase the burden of completing LCAs or USCIS petitions, because the Department has not changed existing LCA requirements.

One commenter asked that the Department consider requiring employers to list the city and state of employment, rather than the physical worksite address, in order to eliminate potential confusion regarding the use of the same LCA for additional locations within the area of intended employment and to ensure consistency with 20 CFR 655.734(a)(2). The Department declines to adopt this proposal and will continue to collect the physical address for the intended place of employment for transparent administration of the program, enforcement of the LCA, and protection of foreign workers and similarly employed U.S. workers. This is consistent with the program regulations, which require the collection of "all intended places of employment" and define "place of employment" as "the worksite or physical location where the work is actually performed." 20 CFR 655.715, 655.730(c)(5). Collection of the city and state of employment rather than the physical worksite address is insufficient to meet this regulatory obligation.

Another commenter noted that Section F currently allows for the entry of only three places of intended employment, and requested that the Department increase the number of worksites employers may enter on the form to reduce the number of LCAs they must file. The commenter

suggested that the Department should accommodate an unlimited number of worksites on the LCA, but if a fixed number must be used, it recommended ten or more. The Department has evaluated this request and agrees that increasing the number of worksites that may be entered on one LCA streamlines and simplifies the application process and reduces employer burden. Therefore, the Department has modified Section F of Form ETA-9035/9035E to permit identification of ten worksites on a single LCA. The Department considered permitting the entry of more than ten worksites on one LCA, but concluded that doing so would interfere with the LCA attestation requirement at 20 CFR 655.734, which states that employers must provide notice of their LCA filings either to the employees' bargaining representative or directly to the employees. Such notice must include the number of H-1B workers and location(s) at which H-1B workers will be employed. If provided directly to the employees, the notice must be posted in at least two conspicuous locations at each place of employment where H-1B workers will be employed, or must be provided electronically to employees in the occupational classification for which H-1B workers are sought. If a single LCA contains more than ten places of employment, the required notice with its required content becomes excessively lengthy and prevents meaningful notice of LCA filings to affected U.S. workers. The Department's change to accommodate up to 10 worksites per LCA ensures both the proper disclosure of all intended places of employment and that U.S. workers are properly apprised of LCA filings.

2. Secondary Entity Name (Formerly *Secondary Employer Name*)(Section F)

The Department's August 3, 2017 proposal to revise Forms ETA-9035/9035E and 9035CP re-designated current Section G, Employment and Prevailing Wage Information, as Section F. Proposed Section F on Form ETA 9035/9035E instructed employers to "[i]ndicate whether the worker(s) subject to this LCA will be placed with a secondary employer at this place of employment," and to "provide the legal business name of the secondary employer." Proposed Section F on Form ETA-9035CP defined "secondary employer" as "another employer with whom LCA workers will be placed during the period of certification," and required disclosure of the secondary employer "in all circumstances where there are 'indicia' of an employment relationship between the nonimmigrant worker(s) and the other/secondary employer," as explained in 20 C.F.R 655.738(d)(2)(ii).

Three commenters disagreed with the Department's use of the term "secondary employer" to describe the worksites of other entities at which H-1B workers are placed by the employer seeking H-1B certification. Two of these commenters stated that the presence of an H-1B worker on another employer's premises does not mean that an employment relationship exists between the worker and the other employer. After thorough consideration, the Department agrees that the placement of H-1B workers at worksites of other entities may or may not create employment relationships between the workers and those entities. The Department concludes that the regulatory requirement to identify "[a]ll intended places of employment" requires identification of all secondary entities that qualify as "places of employment," whether or not placement at that "place of employment" specifically establishes any indicia of employment, or an employment relationship, between the secondary entity and the H-1B worker. Therefore, when referring to worksites of entities other than LCA applicants, at which those applicants intend to place H-1B workers during the period of certification, the Department will use the term "secondary entity." This choice does not reflect a rejection of the term "secondary employer,"

which the Department maintains is appropriate for use in some circumstances, but is not sufficiently broad in this instance.

Two commenters questioned the Department's authority to collect the names of secondary entities and claimed the Department's proposal to do so was inconsistent with the INA. One stated that current regulations and the current LCA require the employer to provide the address where services will be provided, but do not require the identification of client names. As explained above, the Department's regulations require employers to identify "[a]ll intended places of employment" on the LCA. 20 CFR 655.730(c)(5). The regulations define "place of employment" as "the worksite or physical location where the work actually is performed," and specifically exclude from that definition certain locations at which H-1B workers are present for only very short periods of time and locations where workers receive employer-required training. *See* 20 CFR 655.715. These places are "non-worksites" and need not be identified; all other locations contemplated at the time of filing are subject to the requirement that all intended places of employment be identified on the LCA. The Department has concluded that in order to comply with this existing requirement, employers must list the names of secondary entities at which or with which they intend to place H-1B workers at the time of filing that qualify as "places of employment." Contrary to the commenter's assertion, current regulations do not limit required disclosure to "the address where services will be provided." It is reasonable to interpret "worksite or physical location where the work actually is performed" to include business names, especially when read with the current Form ETA-9035/9035E's instruction to "define the intended place(s) of employment with as much geographic specificity as possible."

The Department notes that it has previously declined to implement rules that would impose different requirements for different kinds of employers. The 1993 H-1B Notice of Proposed Rulemaking proposed treating "job contractors" differently from any other employer by requiring such entities to file new LCAs for any places of employment not listed on a certified LCA. 58 FR 52152, 52156 (Oct. 6, 1993). In the Final Rule, in consideration of comments received, the Department decided not to establish special procedures applicable only to job contractors, and instead implemented a "time test" for short-term assignments applicable to all employers. 59 FR 65646, 65651 (Dec. 20, 1994). These provisions permitted employers to make short-term placements of H-1B workers, without filing a new LCA, whether the new worksite was another establishment of the employer or a worksite of another entity under certain circumstances: (1) the worksite was not intended at the time of filing, and (2) the worksite was outside the area of employment established by the approved LCA. 20 CFR 655.730(c)(5), 655.735. However, the regulatory requirements that all employers list all intended places of employment on their LCAs and file new LCAs for long-term placements not contemplated at the time of filing and outside the areas identified on approved LCAs remained.

When employers place H-1B workers at worksites not contemplated at the time of filing, but within the area of intended employment established by an approved LCA, the regulations require posting of notice at those worksites, but do not require the filing of new LCAs. 20 CFR 655.734(a)(2). This and the short-term placement provisions apply to places of employment not contemplated at the time of filing. Therefore, such places are not *intended* places of employment and cannot be included on the initial LCA. These provisions underscore the requirement that if an employer intends to place H-1B workers at a secondary entity at the time of filing, the names

and locations of such entities must be identified on the LCA. If an employer wants to move H-1B workers to worksites not contemplated at the time of filing, these provisions determine whether a new LCA must be filed. Thus, the revision to Forms ETA-9035/9035E and 9035CP to require the identification of secondary entities clarifies applicants' obligations under the H-1B program.

Two commenters worried that disclosing the names of secondary entities could harm the competitiveness of participating businesses. Among the concerns raised were the generation of negative publicity for clients, the revelation of strategic plans to competitors, and resulting harm to innovation. The Department is sensitive to commenters' concerns about the competitiveness of H-1B employer businesses. However, the H-1B visa program is voluntary and employers may choose whether to participate. Employers with concerns about disclosing the names of secondary entities may decide not to participate in the program. Or, they may take advantage of the short-term placement procedures at 20 CFR 655.735, which permit short-term placement of H-1B workers at worksites not listed on the LCA as long as regulatory requirements are met. However, employers who choose to participate in the H-1B program must comply with program requirements. Current regulations require H-1B employers to identify "[a]ll intended places of employment on the LCA." 20 CFR 655.730(c)(5). "Places of employment" include secondary entities that qualify as worksites under 20 CFR 655.715, and the Department has collected and made available to the public for many years the physical location(s) of these secondary entities. Further, there is ample anecdotal evidence from media and other research reports that the identity of secondary entities can be recreated through an examination of the worksite information already collected by the Department. Therefore, the identification of secondary entities does not represent any significant burden on employers and is necessary to ensure program transparency and to protect both U.S. and H-1B workers.

Three commenters stated that the names of secondary entities may be commercially protected. One of these commenters stated that this information is protected by the common law of business competition. The Department concludes that the disclosure of names and locations of secondary entities does not violate the common law of business competition or other protections for proprietary business information. Although there are legal protections for certain categories of commercial information, they do not apply here. The common law of business competition has been replaced by statute in almost all jurisdictions. Even if the common law applied, it likely would not protect the names and locations of secondary entities. Generally, client lists have been afforded protected status only when they include business information about the clients, but names and addresses alone rarely qualify as proprietary.

Three commenters stated that requiring disclosure of information regarding secondary entities would potentially violate confidentiality agreements between the employers seeking certification and their clients. In a similar vein, one commenter stated that the proposed requirement would violate the client's right to privately contract. As explained above, the collection of information regarding all intended places of employment is not new. The regulations have always required that employers identify intended worksites on their LCAs. To the extent that the Department's revisions change employers' current practices, the Department has provided sufficient notice to H-1B employers that it will collect the names and locations of secondary entities so that employers have time to come into compliance. The Department's first request for comments on

the proposed revisions to Forms ETA-9035/9035E and 9035CP was published in the *Federal Register* on August 3, 2017, and its second request for comments was published concurrently with the Supporting Statement and this appendix. The Department plans to implement the revised forms in October 2018, upon obtaining OMB clearance of these proposed changes. Should disclosure of secondary entity names and locations violate a nondisclosure provision of a contract, affected employers may choose to renegotiate in the coming months, or, as one commenter stated, "review the terms of [affected] contract[s], identify any restrictions, and if necessary, obtain consent from the end-client to disclose this information on the LCA." Furthermore, employers are on notice of the disclosure requirement and can ensure that any new contracts account for it.

One commenter stated that the proposed addition of secondary entity information "necessitate[s] unworkable logistical changes to the LCA process." Another stated that "DOL should consider the full impact" of the requirement to identify secondary entities, "as small changes in company name or addresses . . . might make employers feel compelled to file new LCAs and amended petitions at USCIS despite none of the other underlying facts in the LCA changing." As previously explained, the proposal that employers identify secondary entities clarifies employers' obligations under the regulations. Thus, any logistical changes are the result of employers updating their practices to comply with regulatory requirements. Additionally, after the filing of an LCA, employers are not required to file a new LCA when the company name changes but the Federal Employer Identification Number (FEIN) remains the same, nor must they file a new LCA when the worksite address undergoes a minor change that was unknown at the time of filing (e.g., the floor or suite number changes but the worksite remains within the same office building).

Three commenters questioned whether disclosure of secondary entity information is necessary for the Department's administration of the LCA process. One of these commenters stated that DHS already collects this information on Form I-129. The Department disagrees with the assertions that the secondary employer name is irrelevant to the Department's enforcement of the LCA and that the information is duplicative of information collected by USCIS. The Department, as well as U.S. and foreign workers, needs to know where H-1B workers are placed, and with whom, for the protection of both those H-1B workers and similarly employed U.S. workers. This program does not, and should not, provide anonymity to employers or to entities, at which or with which applicants place foreign workers, all of whom benefit from its use. Additionally, the Department is required to collect this information, which is not duplicative of information collected by USCIS. USCIS does not collect information specific to secondary entities on its I-129 petition, which collects information specific to the petitioning employer and the beneficiary.

One commenter suggested that, instead of collecting the names and addresses of secondary entities, the Department should ask, "Is the employee being placed at the premises of another company pursuant to an outsourcing agreement?" As previously explained, the requirement that employers collect the names and addresses of secondary entities is based in current regulations, which require identification of all intended worksites. The commenter's proposed question would not adequately identify worksites at which H-1B workers are placed. Therefore, the Department declines to adopt this proposal.

3. Appendix A (Section H.5)

The Department's August 3, 2017 proposal to revise Forms ETA-9035/9035E and 9035CP included a proposal to add Appendix A to Form ETA-9035/9035E. This addition collects the number of H-1B nonimmigrant workers for which H-1B dependent or willful violator employers will only seek exempt status based on attainment of a Master's degree or higher in a specialty related to the intended employment; the name of the institution that awarded the degree; the field of study in which the degree was awarded; the date on which the degree was awarded; and documentation substantiating the degree information. Three commenters expressed concerns with the Department's proposed addition of Appendix A to the Form ETA-9035/9035E.

One commenter expressed concern that the form instructions did not provide a clear indication as to which employers are required to complete the Appendix A. The Department reiterates that the proposed Form ETA-9035/9035E and accompanying instructions state that the Appendix A is to be completed only by H-1B employers, and of those H-1B employers, completion of Appendix A is limited only to H-1B dependent or willful violator employers who (a) are seeking to use the LCA only to support H-1B petitions or extensions of status for exempt H-1B nonimmigrant workers; and (b) are using attainment of a Master's degree or higher in a related specialty as the basis of seeking the exemption status at DHS. Appendix A is not to be completed by all employers seeking to employ H-1B nonimmigrant workers. Moreover, Appendix A is not to be completed at all by employers seeking to employ H-1B1 or E-3 nonimmigrant workers. In light of this comment, however, the Department has revised its proposal to further limit the collection of Appendix A to those particular H-1B dependent and/or willful violator employers claiming an exemption for an H-1B nonimmigrant worker solely on the basis of that worker's Master's or higher degree, and the Department will not collect Appendix A where both exemptions might be claimed for that H-1B nonimmigrant worker. In the employer's analysis of the exemption(s) for each H-1B nonimmigrant worker subject to the Form ETA-9035/9035E, if the employer is able to claim an exemption for the H-1B nonimmigrant worker based all or in part on the worker's annual salary of at least $60,000, that employer would not complete Appendix A for that worker even where a Master's degree exemption exists. In such an instance, the employer would designate the $60,000 annual wage exemption and/or both exemptions on the Form ETA-9035/9035E without completing Appendix A.

Two commenters stated that the Department's collection of the Appendix A information and documentation is duplicative of what is collected by DHS on the I-129 petition. The Department maintains that its proposed collection of information through Appendix A is necessary for administering the LCA process under the H-1B visa classification and its collection is specific to the exemption claimed on the LCA. Pursuant to 20 CFR 655.737, an employer that is H-1B dependent or a willful violator of the H-1B program requirements is subject to the attestation obligations regarding displacement and recruitment of U.S. workers for all LCAs that are filed on and after March 8, 2005, unless the LCA is used only for the employment of exempt H-1B nonimmigrants. Thus, although the USCIS I-129 petition may collect similar information, the classification of the employer's dependency or willful violator status and other information related to the prospective employment of exempt H-1B nonimmigrants is based on the

Department's LCA and within the scope of the Department's authority to collect. Further, by the Department's collection of this information on the LCA, the Department will be able to ensure that the educational attainment designation made by H-1B dependent or willful violator employers on the Form ETA-9035/9035E and accompanying Appendix A is complete and without obvious errors or inaccuracies, prior to the filing of the petition with USCIS, thereby ensuring key statutory provisions related to non-displacement and recruitment of U.S. workers are fully safeguarded by the Department.

One commenter questioned how the educational or degree documentation would be submitted to the Department with the LCA. Another commenter stated that requiring copies of educational documents is an unworkable logistical change that suggests the possibility of the Department creating an "Internet Registry" permitting public access to personally-sensitive information on foreign beneficiaries. The Department maintains that permitting employers to upload electronic documentation, at the time of filing, is an efficient and proven solution. Except in limited circumstances where the OFLC Administrator approves an employer request to file the LCA by U.S. mail, all employers have used the iCERT System since July 2009 to file their LCAs electronically. Since January 2013, OFLC has successfully implemented document upload features used by small businesses, farms, and ranches to file applications for temporary employment certification in the H-2A and H-2B visa programs. Thus, the Department maintains that implementing a similar electronic document upload feature for use in filing the LCA is efficient, cost effective, and a proven method of minimizing respondent burden to information collection requirements. In those rare circumstances where the electronic upload feature may not be functioning properly, employers can contact the iCERT technology staff at oflc.portal@dol.gov to have any technical issues submitted and resolved. With respect to public disclosure, the Department does not intend to publicly disclose copies of the educational or degree documentation submitted by employers on an Internet registry, and this information is not required to be retained by the employer in its public access file, as specified in 20 CFR 655.760(a). Rather, the Department will only provide public disclosure of the aggregate educational information contained on the pages of the Appendix A, which will be included in the certification package for employers to submit with their H-1B petition to DHS. In terms of cybersecurity, OFLC's system follows the Department's policy, procedures, and standards. The Department reviews the security controls to determine the extent to which the controls are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security requirements for the system. For additional information on privacy and security safeguards, see the Supporting Statement for this information collection.

One commenter asserted that the Department's estimate that 50,000 LCAs would be required to complete the Appendix A was too low and that USCIS already tracks this information. The Department maintains that the original estimate of 50,000 LCAs that would be required to complete the Appendix A was reasonable based on available data sources. The Department's estimate was based upon actual LCAs where the employer designated on the Form ETA-9035/9035E the following: (1) H-1B dependent or a willful violator; (2) the LCA would be used only to support H-1B petitions or extensions of status for exempt H-1B nonimmigrant workers; and (3) a wage offer less than $60,000 annually. Because the current LCA does not collect the basis of the exemption request or details about educational attainment, the Department reasonably estimated that employers who meet the aforementioned criteria would seek an

exemption of status based on educational attainment. Conversely, any LCA where the employer offered a wage of $60,000 or more in annual salary could reasonably be assumed to seek an exemption of status based on the minimum wage threshold and, therefore, the Department assumed those employers would find it unnecessary to seek an exemption based on the educational attainment threshold. With respect to using USCIS data to estimate the burden to respondents, the Department is not aware of any other data source made publicly available by the USCIS that can be relied upon to provide a reasonable estimate of burden for the proposed collection of Appendix A. USCIS does not electronically collect all information submitted by employers on the I-129 petition and permits multiple petitions to be filed for a single LCA certified by the Department. As stated previously, the Department has sufficient and readily available data from its historical LCA records that served as the basis for providing a reasonable estimate of the number of collections impacted by the proposed Appendix A. Given the aforementioned revision to the proposed collection of Appendix A to now limit collection of the appendix to instances in which the sole basis for the nonimmigrant worker's exemption is the Master's or higher degree, the Department has rerun its data analysis and has arrived at a new estimate of 11,337 LCAs which would require the collection of Appendix A. Since this is a newly proposed collection for which an estimate is provided, the Department is amenable to additional feedback on the burden for this collection on H-1B dependent/willful violator employers claiming the exemption from H-1B program requirements solely on the basis of the worker's attainment of a Master's or higher degree.

This same commenter also stated that the Appendix A would virtually eliminate the use of "multiple-slot" LCAs for H-1B dependent employers claiming the Master's degree exemption, because employers rarely know the names of foreign beneficiaries who will be placed at a single location and their educational backgrounds. Consequently, employers will be forced to file a LCA for each foreign beneficiary and will bear the associating burden and recordkeeping requirements. The Department reiterates that the employer has the choice of filing the LCA for one or more workers to perform work in the occupational classification and area of intended employment. The Department's proposed revisions to the Form ETA-9035/9035E and Appendix A are flexible enough to permit employers to seek multiple workers on a single LCA. Furthermore, pursuant to 20 CFR 655.760(a), the Department's regulations require the employer to place in its public access file a list of "exempt" H-1B nonimmigrants within one working day of filing the LCA if the employer is claiming the exemption. This means that the employer must have identified the H-1B nonimmigrant(s) subject to the education-based exemption and collected all credential information justifying the basis of such exemption(s) at the time of filing the LCA. The commenter provided no additional data or information for the Department's consideration to substantiate the assertion that employers rarely know the names of foreign beneficiaries at the time of filing the LCA.

Two commenters asked how long the Department will retain the educational or degree documentation submitted with the LCA. As noted in the Department's record retention schedule with the National Archives and Records Administration, and subject to an active investigation or litigation hold, the LCA and all other documentation, whether retained in paper and electronic form, must be retained for a period of five years following the date a final determination letter is issued or final action occurs on the LCA, including a withdrawn application.

E. Changes Proposed by Commenters

Several commenters recommended that the Department make additional revisions to Forms ETA-9035/9035E and 9035CP, as well as other changes to the H-1B program. The Department's responses to these suggestions follow.

1. *Congressional Action*

One commenter stated that Congress should enact laws that further protect U.S. workers. This request exceeds the Department's authority and fails to address the Department's proposed revisions. Therefore, the Department is unable to make any corresponding changes to its proposed revisions.

2. *Identification of Foreign Workers* (Section B, All Forms)

One commenter expressed concern with the practice of permitting LCAs to be filed for unknown individuals, claiming such practice is contrary to the statutory requirements of 8 U.S.C. 1182(n)(1)(E)–(G) that, *inter alia*, employers make a good faith effort to recruit U.S. workers and hire U.S. workers who are equally or better qualified for the job for which H-1B workers are sought. The commenter stated that some employers "use blanket petitions to hire many unidentified alien workers," which makes it difficult to ensure that qualified U.S. workers are hired first. Furthermore, the commenter claimed that since the number of LCAs does not correspond with the number of workers, it is difficult to determine which employers are the largest H-1B program users. Therefore, the commenter suggested that the Department require a separate LCA for each worker that identifies that worker by name.

At this time, the Department declines to adopt this proposal. As an initial matter, the Department notes that Section 1182(n)(1)(E)–(G) of the INA limits the non-displacement, secondary non-displacement, and recruitment requirements to H-1B employers who are either H-1B-dependent, willful violators, or both. The provisions apply only to those employers using an LCA to hire H-1B workers who are not subject to the annual salary or degree-based exemptions. The Department's regulations implement this portion of the INA at 20 CFR 655.736 to 655.739, and the Department collects this information in Section H of Form ETA-9035/9035E. The employers to which these requirements apply must document their efforts to recruit U.S. workers in their public access files and provide that documentation upon request. Additionally, existing regulatory provisions permit a single application to cover multiple positions and worksites; thus, a single application may cover multiple workers. Finally, the identification of H-1B workers by name would require revisions to regulatory provisions that would necessitate notice and comment rulemaking.

3. *Extension of the Standard Occupational Classification Code* (Section B.2, All Forms)

One commenter requested that the Department modify the Forms ETA-9035/9035E and 9035CP instructions to permit entry of an eight-digit Standard Occupational Classification Code (SOC). Currently, the LCA and LCA Instructions permit the entry of a six-digit SOC code, which the Department's proposal does not modify. At this time, the Department declines to adopt the requirement to enter an eight-digit SOC code. The Department concludes that collecting six-

digit SOC codes provides sufficient detail regarding the occupational classification of H-1B workers, and greater consistency in classifying occupations, since the last two digits of the SOC codes can changes from one year to the next. In addition, the collection of six-digit SOC codes establishes occupational information comparable to the three-digit level in the Dictionary of Occupational Titles provided for in the Department's regulation at 20 CFR 655.730(c)(4)(i). However, the Department will take this recommendation into consideration for future revisions to Forms ETA 9035/9035E and 9035CP.

4. *Permissibility of Part-time Employment* (Section B.4, All Forms)

One commenter stated that "the statutes are silent on whether part-time employment should be permitted," and that the Department's regulations "[have] interpreted this silence as permitting part-time employment" for H-1B workers. This commenter recommended that the Department require full-time employment for H-1B workers because permitting part-time work is inconsistent with congressional intent and encourages part-time workers to supplement their income through illegal activity. Because the regulations permit part-time employment, the Department cannot accommodate the commenter's request through a form revision. Therefore, the Department declines to adopt this proposal.

5. *Entry of the Number of Workers Per Visa Classification* (Section B.7, Form ETA 9035CP)

One commenter requested clarification of the instructions for completing items B.7(a) through (f) on Form ETA-9035CP, asking whether the employer should count an individual worker only once or check as many boxes on Form ETA-9035/9035E as appropriate for that individual. The Department's instructions for this section state that "a single worker may fit into multiple boxes, as appropriate." In response to this comment, the Department has clarified the instructions as follows: (1) for the total unique number of worker positions being requested for certification, applicants should count each worker once; and (2) if an individual fits into more than one category, applicants should indicate so in items (a) through (f).

6. *Verification of Employer Information* (Section C, All Forms)

One commenter requested that the Department require an employer to sufficiently establish that it has a bona fide business. The Department currently verifies that the employer filing an LCA has a FEIN issued by the Internal Revenue Service. In addition, the Department continues to coordinate with other government agencies to ensure the integrity of the program. Therefore, the Department declines to adopt this proposal.

7. *Additional Data Collection Regarding Secondary Entities* (Formerly *Secondary Employers*)(Section F, All Forms)

One commenter suggested that the Department should request the total number of both H-1B and L-1 workers at secondary employer (herein referred to as secondary entity) worksites, and that, in addition to collecting the name of the secondary entity, the Department should request information regarding the specific department and project name to which workers are assigned.

First, the L-1 program is administered by DHS. The Department is not authorized to collect information regarding L-1 workers; therefore, it declines to use the LCA to collect the number of L-1 workers at particular worksites. Second, at this time, the Department declines to collect the total number of H-1B workers at secondary entity worksites or the specific departments and project names to which H-1B workers are assigned. The Department concludes that collecting the total number of H-1B workers at secondary entity worksites lacks practical utility for the processing of the LCA and is likely duplicative of information collected in other LCA filings. However, the Department's proposed revisions to Section F of Forms ETA-9035/9035E and 9035CP seek to collect the number of H-1B workers that will perform the work covered by the LCA at the listed worksite(s).

8. *Prevailing Wage Sources* (Section F, All Forms)

Two commenters made suggestions regarding prevailing wage sources. One recommended that the Department require all prevailing wage sources to include wage levels, as is the case with Occupational Employment Statistics (OES) survey wages. Another asked that the Department require prevailing wages to be based on official government sources, so they could be automatically verified. This commenter expressed concern that employers can use nearly any source to establish a prevailing wage and the Department has limited means to ensure that the source meets regulatory requirements.

The Department declines to adopt these proposals. The H-1B regulations at 20 CFR 655.731 permit the use of legitimate wage sources and independent authoritative wage sources, which may include, but are not limited to, the following: collective bargaining agreement wages; OES wages; Davis Bacon Act wages; McNamara O'Hara Service Contract Act wages; and wage surveys. The modification of prevailing wage source requirements would require notice and comment rulemaking; thus, the Department cannot make such changes through the form revision process. Therefore, the Department declines to adopt this proposal.

9. *Electronic Storage of the LCA Public Access File* (Sections I & J, All Forms)

Proposed section I of Forms ETA-9035/9035E and 9035CP requires the employer to indicate whether its public disclosure information will be located at the employer's principal place of business or the place of employment. Proposed Section J provides notice of the employer's obligations to maintain public disclosure information. One commenter stated that the physical space required for the maintenance of paper-based files can be burdensome, and asked whether electronic storage of the public disclosure information is permissible. Another sought guidance regarding the effect of proposed Section J on the employer's ability to electronically store public disclosure information and asked which box in Section I it should check if it chooses to store this information electronically.

An LCA public access file meeting the requirements of 20 CFR 655.705(c)(2), 655.730(c)(3), 655.760, and 20 CFR 655 Subpart I may be stored electronically, as long as employers provide effective access. Employers must ensure that the file is made available for public examination and provided in an accessible format for review. Form ETA-9035/9035E, Section I, allows for the selection of either or both of the following storage options: (1) the employer's principal

place of business, and/ or (2) the place of employment. If the employer elects to store the public access file electronically, the employer must make the file available and accessible at the particular location(s) selected on the form. The Department has amended Form ETA-9035/9035E to indicate these options, and Form ETA-9035CP to clarify that, "[i]f the employer elects to store the public access file electronically, the employer must make the file available and accessible for government or public inspection upon request, at the particular location(s) provided in Section I of the Form ETA-9035/9035E." Proposed Section J does not affect the regulatory provisions and is intended to reiterate the requirements to assist employers with compliance.

F. Complaints Regarding Employer Misuse of Immigration Programs

One commenter stated, in summary, that U.S. employers use temporary foreign labor programs deceptively by misrepresenting a deficit of U.S. workers who can fill the job opportunities offered to foreign workers and pay "slave wages" to foreign workers to undercut the wages of U.S. workers. The Department concludes that this comment is outside of the scope of the form revisions, as it does not address the proposed revisions and does not recommend changes for the Department to address in connection with this information collection. Moreover, the INA permits U.S. employers to hire H-1B workers, provided the employers submit attestations that the wages and working conditions of the workers will not adversely impact the wages and working conditions of similarly employed U.S. workers. In addition, the Department's regulations at 20 CFR 655.731 require that the wage rate paid to nonimmigrant workers be at least the prevailing wage or the employer's actual wage, whichever is higher. U.S. workers, and the public at large, may raise concerns regarding employers' purported failure to comply with the terms and conditions of LCAs by filing complaints with WHD using Form WH-4. Accordingly, the Department declines to make revisions in response to this comment.

Two commenters expressed concern regarding fraud in connection with the LCA process. One stated that employers will use the occupation title with the lowest wage level, and the other indicated that employers used inaccurate worksite addresses. These comments do not address the proposed form revisions and, therefore, are outside the scope of this information collection. However, the Department intends its revisions related to identification of all intended places of employment at Section F of the forms to improve the accuracy of its collection of worksite information. The Department reminds the commenters that Form WH-4 is available to the public to report suspected fraud. Accordingly, the Department declines to make further revisions to the forms in response to these comments.

II. FORM WH-4:

The Department did not receive any comments on the proposed revision to the WH-4 information collection.