

evidence. The certified copy of the case file transmitted to BALCA by the Certifying Officer must be made part of the evidentiary record of the case and need not be moved into evidence.

(4) BALCA's decision shall be rendered within 120 calendar days after BALCA's receipt of the case file.

(g) *Dismissals and stays.* If BALCA determines that the appeal is solely a question of misrepresentation by the facility or is solely a complaint of the facility's nonperformance of the Attestation, BALCA shall dismiss the case and refer the matter to the Administrator, Wage and Hour Division, for action under subpart M. If BALCA determines that the appeal is partially a question of misrepresentation by the facility, or is partially a complaint of the facility's nonperformance of the Attestation, BALCA shall refer the matter to the Administrator, Wage and Hour Division, for action under subpart M of this part and shall stay BALCA consideration of the case pending final agency action on such referral. During such stay, the 120-day period described in paragraph (f)(1)(iv) of this section shall be suspended.

(h) *BALCA's decision.* After consideration on the record or a *de novo* hearing, BALCA shall either affirm or reverse ETA's decision, and shall so notify the appellant; and any other parties.

(i) *Decisions on Attestations.* With respect to an appeal of the acceptance, rejection, suspension or invalidation of an Attestation, the decision of BALCA shall be the final decision of the Secretary, and no further review shall be given to the matter by any DOL official.

EFFECTIVE DATE NOTE: At 75 FR 10406, Mar. 5, 2010, §655.1135 was amended by revising paragraph (d), effective Apr. 5, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 655.1135 What appeals procedures are available concerning ETA's actions on a facility's Attestation?

* * * * *

(d) *Where to file appeals.* Appeals made under this section must be in writing and must be mailed by certified mail to: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor

Certification, Chicago National Processing Center, 536 South Clark Street, Chicago, IL 60605-1509.

* * * * *

§ 655.1150 What materials must be available to the public?

(a) *Public examination at ETA.* ETA will make available for public examination at the Office of Workforce Security, Employment Training Administration, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210, a list of facilities which have filed Attestations; a copy of the facility's Attestation(s) and any supporting documentation; and a copy of each of the facility's H-1C petitions (if any) to INS along with the INS approval notices (if any).

(b) *Public examination at facility.* For the duration of the Attestation's validity and thereafter for so long as the facility employs any H-1C nurse under the Attestation, the facility must maintain a separate file containing a copy of the Attestation, a copy of the prevailing wage determination, a description of the facility pay system or a copy of the facility's pay schedule if either document exists, copies of the notices provided under §655.1115 and §655.1116, a description of the "timely and significant steps" as described in §655.1114, and any other documentation required by this part to be contained in the public access file. The facility must make this file available to any interested parties within 72 hours upon written or oral request. If a party requests a copy of the file, the facility shall provide it and any charge for such copy shall not exceed the cost of reproduction.

(c) *ETA Notice to public.* ETA will periodically publish a notice in the FEDERAL REGISTER announcing the names and addresses of facilities which have submitted Attestations; facilities which have Attestations on file; facilities which have submitted Attestations which have been rejected for filing; and facilities which have had Attestations suspended.

EFFECTIVE DATE NOTE: At 75 FR 10406, Mar. 5, 2010, §655.1150 was amended by revising paragraph (a), effective Apr. 5, 2010. For the

convenience of the user, the revised text is set forth as follows:

§ 655.1150 What materials must be available to the public?

(a) *Public examination at ETA.* ETA will make available, upon request, for public examination at the Office of Foreign Labor Certification, Employment Training Administration, U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW., Washington, DC 20210, a list of facilities which have filed attestations; a copy of the facility's attestation(s) and any supporting documentation; and a copy of each of the facility's H-1C petitions (if any) to USCIS along with the USCIS approval notices (if any).

* * * * *

Subpart M—What are the Department's enforcement obligations with respect to H-1C Attestations?

SOURCE: 65 FR 51149, Aug. 22, 2000, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 10403, Mar. 5, 2010, subpart M was amended by removing the word "INS" and adding in its place the word "USCIS", wherever it occurs and by removing the word "SESA" and adding in its place the word "NPC", wherever it occurs, effective Apr. 5, 2010.

§ 655.1200 What enforcement authority does the Department have with respect to a facility's H-1C Attestations?

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under 8 U.S.C. 1182(m) and subparts L and M of this part.

(b) The Administrator, either because of a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance with the matters to which a facility has attested under section 212(m) of the INA (8 U.S.C. 1182(m)) and subparts L and M of this part.

(c) A facility being investigated must make available to the Administrator such records, information, persons, and

places as the Administrator deems appropriate to copy, transcribe, question, or inspect. A facility must fully cooperate with any official of the Department of Labor performing an investigation, inspection, or law enforcement function under 8 U.S.C. 1182(m) or subparts L or M of this part. Such cooperation shall include producing documentation upon request. The Administrator may deem the failure to cooperate to be a violation, and take such further actions as the Administrator considers appropriate.

(NOTE: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 1114.)

(d) No facility may intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part.

(3) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart L or M of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to the Act or to subparts L or M of this part or any other DOL regulation promulgated under 8 U.S.C. 1182(m).

(5) In the event of such intimidation or restraint as are described in this paragraph, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(e) A facility subject to subparts L and M of this part must maintain a separate file containing its Attestation and required documentation, and must make that file or copies thereof available to interested parties, as required by § 655.1150. In the event of a facility's failure to maintain the file, to provide access, or to provide copies, the Administrator may deem the conduct to be a violation and take such further actions