any other parties. See §655.450 custody of the record of the appeal.

(e) 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.

(f) Decisions on annual State plans. With respect to an appeal of the approval, disapproval, suspension or invalidation of an annual State plan, the decision of BALCA shall be the final decision by the Secretary, unless a petition for review of the BALCA decision is filed with the Secretary and the Secretary determines to review the decision.

(1) Filing of petition for review. The Director or the State desiring review of the decision and order of BALCA may petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on BALCA.

(2) Form of petition for review. No particular form is prescribed for any petition for Secretary’s review permitted by this paragraph (f). However, any such petition shall:

(i) Be dated;
(ii) Be typewritten or legibly written;
(iii) Specify the issue or issues stated in the BALCA decision and order giving rise to such petition;
(iv) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
(v) Be signed by the party filing the petition or by an authorized representative of such party;
(vi) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
(vii) Attach copies of BALCA’s decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(3) Notice of determination to review. Whenever the Secretary determines to review the decision and order of BALCA on an annual State plan, a notice of the Secretary’s determination to do so shall be served upon BALCA and upon all parties to the proceeding within 30 days after the Secretary’s receipt of the petition for review.

(4) Hearing record. Upon receipt of the Secretary’s notice, BALCA shall within 15 days forward the complete hearing record to the Secretary.

(5) Contents of Secretary’s notice. The Secretary’s notice shall specify:

(i) The issue or issues to be reviewed;
(ii) The form in which submissions shall be made by the parties; and
(iii) The time within which such submissions shall be made.

(6) Filing of documents. All documents submitted to the Secretary pursuant to this paragraph (f) shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, Room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(7) Service of documents. Copies of all documents filed with the Secretary pursuant to this paragraph (f) shall be served simultaneously upon all other parties involved in the proceeding. Service upon the Director shall be in accordance with paragraph (a)(3) of this section.

(8) Secretary’s decision. The Secretary’s final decision pursuant to this paragraph (f) shall be issued within 180 days from the date of the notice of intent to review. The Secretary’s decision shall be served upon all parties and BALCA.

(9) Transmittal of record. Upon issuance of the Secretary’s decision under this paragraph (f), the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to §655.450.

§655.350 Public access.

(a) Public examination at ETA. ETA shall make available for public examination in Washington, DC, a list of facilities which have filed attestations, and such facilities’ visa petitions (if
§ 655.400 Enforcement authority of Administrator, Wage and Hour Division.

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

(b) The Administrator, either pursuant to 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 regarding the matters to which a health care facility has attested under section 212(m) of the INA (8 U.S.C. 1182(m)) and subparts D and E of this part.

(c) A facility being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No facility shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(m) or subparts D or E of this part. In the event of such interference, the Administrator may deem the interference 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) A facility subject to subparts D and E of this part shall at all times cooperate in administrative and enforcement proceedings. No facility shall 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 D or E 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 D or E of this part;

3. Exercised or asserted on behalf of himself/herself or others any right or

Subpart E—Enforcement of H–1A Attestations

Source: 59 FR 882, 897, Jan. 6, 1994, unless otherwise noted.