(a)(2)(ii) of this section because of notification by the Administrator of the employer's disqualification, such action shall be the final decision of the Secretary and no application shall be resubmitted by the employer.

(b) *Challenges to labor condition applications.* ETA shall not consider information contesting a labor condition application received by ETA prior to the determination on the application. Such information shall not be made part of ETA's administrative record on the application, but shall be referred to ESA to be processed as a complaint pursuant to subpart I of this part, and, if such application is certified by ETA, the complaint will be handled by ESA under subpart I of this part.

(c) *Truthfulness and adequacy of information.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application. The burden of proof is on the employer to establish the truthfulness of the information contained on the labor condition application.

[59 FR 65659, 65676, Dec. 20, 1994, as amended at 65 FR 80232, Dec. 20, 2000; 66 FR 63302, Dec. 5, 2001; 69 FR 68228, Nov. 23, 2004; 70 FR 72563, Dec. 5, 2005; 73 FR 19949, Apr. 11, 2008]

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

(a) *Validity of certified labor condition applications.* A labor condition application (LCA) certified under § 655.740 is valid for the period of employment indicated by the authorized DOL official on Form ETA 9035E or ETA 9035. The validity period of an LCA will not begin before the application is certified. If the approved LCA is the initial LCA issued for the nonimmigrant, the period of authorized employment must not exceed 3 years for an LCA issued on behalf of an H–1B or H–1B1 nonimmigrant and must not exceed 2 years for an LCA issued on behalf of an E–3 nonimmigrant. If the approved LCA is for an extension of an H–1B1 it must not exceed two years. The period of authorized employment in the aggregate is based on the first date of employment and ends:

(1) In the case of an H–1B or initial H–1B1 LCA, on the latest date indicated or three years after the employment start date under the LCA, whichever comes first; or

(2) In the case of an E–3 or an H–1B1 extension LCA, on the latest date indicated or two years after the employment start date under the LCA, whichever comes first.

(b) *Withdrawal of certified labor condition applications.* (1) An employer who has filed a labor condition application which has been certified pursuant to § 655.740 of this part may withdraw such labor condition application at any time before the expiration of the validity period of the application, provided that:

(i) H–1B, H–1B1, and E–3 nonimmigrants are not employed at the place of employment pursuant to the LCA; and

(ii) The Administrator has not commenced an investigation of the particular application. Any such request for withdrawal shall be null and void; and the employer shall remain bound by the labor condition application until the enforcement proceeding is completed, at which time the application may be withdrawn.

(2) Requests for withdrawals must be in writing and must be sent to ETA, Office of Foreign Labor Certification. ETA will publish the mailing address, and any future mailing address changes, in the FEDERAL REGISTER, and will also post the address on the DOL Web site at *http://www.foreignlaborcert.doleta.gov/.*

(3) An employer shall comply with the ''required wage rate'' and ''prevailing working conditions'' statements of its labor condition application required under §§ 655.731 and 655.732 of this part, respectively, even if such application is withdrawn, at any time H–1B nonimmigrants are employed pursuant to the application, unless the application is superseded by a subsequent application which is certified by ETA.

(4) An employer's obligation to comply with the ''no strike or lockout'' and ''notice'' statements of its labor condition application (required under §§ 655.733 and 655.734 of this part, respectively), shall remain in effect and the employer shall remain subject to investigation and sanctions for misrepresentation on these statements even if such application is withdrawn, regardless of

whether H–1B nonimmigrants are actually employed, unless the application is superseded by a subsequent application which is certified by ETA.

(5) Only for the purpose of assuring the labor standards protections afforded under the H–1B program, where an employer files a petition with DHS under the H–1B classification pursuant to a certified LCA that had been withdrawn by the employer, such petition filing binds the employer to all obligations under the withdrawn LCA immediately upon receipt of such petition by DHS.

(c) *Invalidation or suspension of a labor condition application.* (1) Invalidation of a labor condition application shall result from enforcement action(s) by the Administrator, Wage and Hour Division, under subpart I of this part—e.g., a final determination finding the employer's failure to meet the application's condition regarding strike or lockout; or the employer's willful failure to meet the wage and working conditions provisions of the application; or the employer's substantial failure to meet the notice of specification requirements of the application; see §§ 655.734 and 655.760 of this part; or the misrepresentation of a material fact in an application. Upon notice by the Administrator of the employer's disqualification, ETA shall invalidate the application and notify the employer, or the employer's authorized agent or representative. ETA shall notify the employer in writing of the reason(s) that the application is invalidated. When a labor condition application is invalidated, such action shall be the final decision of the Secretary.

(2) Suspension of a labor condition application may result from a discovery by ETA that it made an error in certifying the application because such application is incomplete, contains one or more obvious inaccuracies, or has not been signed. In such event, ETA shall immediately notify DHS and the employer. When an application is suspended, the employer may immediately submit to the certifying officer a corrected or completed application. If ETA does not receive a corrected application within 30 days of the suspension, or if the employer was disqualified by the Administrator, the application shall be immediately invalidated as described in paragraph (c) of this section.

(3) An employer shall comply with the ''required wages rate'' and ''prevailing working conditions'' statements of its labor condition application required under §§ 655.731 and 655.732 of this part, respectively, even if such application is suspended or invalidated, at any time H–1B nonimmigrants are employed pursuant to the application, unless the application is superseded by a subsequent application which is certified by ETA.

(4) An employer's obligation to comply with the ''no strike or lockout'' and ''notice'' statements of its labor condition application (required under §§ 655.733 and 655.734 of this part, respectively), shall remain in effect and the employer shall remain subject to investigation and sanctions for misrepresentation on these statements even if such application is suspended or invalidated, regardless of whether H–1B nonimmigrants are actually employed, unless the application is superseded by a subsequent application which is certified by ETA.

(d) *Employers subject to disqualification.* No labor condition application shall be certified for an employer which has been found to be disqualified from participation, in the H–1B program as determined in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart I of this part.

[59 FR 65659, 65676, Dec. 20, 1994, as amended at 65 FR 80232, Dec. 20, 2000; 66 FR 63302, Dec. 5, 2001; 70 FR 72563, Dec. 5, 2005; 73 FR 19949, Apr. 11, 2008]

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

Paragraphs (a)(1) thru (a)(6) and paragraphs (b) and (c) of this section also apply to the H–1B1 and E–3 visa categories.

(a) *Public examination.* The employer shall make a filed labor condition application and necessary supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed