

## § 34.50

of Justice with a request from the Department to file suit;

(5) Advise the violating party of the right to request a hearing, and reference the applicable procedures at §34.51(b); and

(6) Include a determination as to the Governor's liability, if any, in accordance with the provisions of §34.32.

(e) Where enforcement action pursuant to a Notification of Breach of Conciliation Agreement is commenced, the Director shall so notify: the Departmental granting agency; and the Governor, recipient or grant applicant, as applicable.

### Subpart E—Federal Procedures For Effecting Compliance

#### §34.50 General.

(a) *Sanctions; judicial enforcement.* If, following issuance of a Final Determination pursuant to §34.46, or a Notification of Breach of Conciliation Agreement pursuant to §34.48, compliance has not been achieved, the Secretary may:

(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the Federal financial assistance under JTPA, in whole or in part;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such action as may be provided by law.

(b) *Deferral of new grants.* When termination proceedings under §34.51 have been initiated, the Department may defer action on applications for new financial assistance under JTPA until a Final Decision under §34.52 has been rendered. Deferral is not appropriate when financial assistance under JTPA is due and payable under a previously approved application.

(1) New Federal financial assistance under JTPA includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New Federal financial assistance under JTPA does not include assistance approved prior to the beginning of termination proceedings or increases in

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funding as a result of changed computations of formula awards.

#### §34.51 Hearings.

(a) *Notice of opportunity for hearing.* As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director shall include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) *Complaint; request for hearing; answer.*

(1) In the case of noncompliance which cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer shall specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement shall have the effect of a denial. Findings of fact not denied shall be deemed admitted. The answer shall separately state and identify matters alleged as affirmative defenses and shall also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N-2464, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210.

(4)(i) The failure of a grant applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, is deemed to be a waiver of the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed admitted and the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing. See § 34.52(b)(3).

(c) *Time and place of hearing.* Hearings shall be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard shall be given to the convenience of the parties, their counsel, if any, and witnesses.

(d) *Judicial process; evidence.*

(1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents pursuant to Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) *Evidence.* In any hearing or administrative review conducted pursuant to this part, evidentiary matters shall be governed by the standards and principles set forth in the Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.

**§ 34.52 Decision and post-termination proceedings.**

(a) *Initial Decision.* After the hearing, the Administrative Law Judge shall issue an initial decision and order, containing findings and conclusions. The initial decision and order shall be served on all parties by certified mail, return receipt requested.

(b) *Exceptions; Final Decision.* (1) Initial decision after a hearing. The initial decision and order shall become the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of excep-

tions, the Secretary serves notice that the Secretary shall review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Secretary and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.

(ii) Upon receipt of exceptions, the Administrative Law Judge shall index and forward the record and the initial decision and order to the Secretary within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged shall be deemed to have been waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which shall be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies thereto must be received by the Secretary no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Secretary may, within 30 days of the expiration of the time for filing exceptions, on his or her own motion serve notice on the parties that the Secretary will review the decision.

(vii) *Final Decision and Order.* (A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge shall become the Final Decision and Order of the Secretary unless the Secretary, within 30 days of the expiration of the time for filing exceptions and any replies thereto, has notified the parties that the case is accepted for review. (B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge shall become the Final Decision and Order of the Secretary unless the Secretary has served notice on the parties that the Secretary will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Any case reviewed by the Secretary pursuant to this paragraph shall be decided within 180 days of the notification of such review. If the Secretary fails to issue a Final Decision and

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Order within the 180-day period, the initial decision and order of the Administrative Law Judge shall become the Final Decision and Order of the Secretary.

(2) Final Decision where a hearing is waived.

(i) If, after issuance of a Final Determination pursuant to §34.46(a) or Notification of Breach of Conciliation Agreement pursuant to §34.48, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in §34.51(b)(3), the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement is deemed the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

(3) Final agency action. A Final Decision and Order issued pursuant to §34.52(b) constitutes final agency action.

(c) *Post-termination proceedings.* (1) A grant applicant or recipient adversely affected by a Final Decision and Order issued pursuant to paragraph (b) of this section shall be restored, where appropriate, to full eligibility to receive Federal financial assistance under JTPA if it satisfies the terms and conditions of such Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part.

(2) A grant applicant or recipient adversely affected by a Final Decision and Order issued pursuant to paragraph (b) of this section may at any time petition the Director to restore its eligibility to receive Federal financial assistance under JTPA. A copy of the petition shall be served on the parties to the original proceeding which led to the Final Decision and Order issued

pursuant to paragraph (b) of this section. Such petition shall be supported by information showing the actions taken by the grant applicant or recipient to comply with the requirements of paragraph (c)(1) of this section. The grant applicant or recipient shall have the burden of demonstrating that it has satisfied the requirements of paragraph (c)(1) of this section. Restoration to eligibility may be conditioned upon the grant applicant or recipient entering into a consent decree. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under paragraphs (b) (1) and (2) of this section shall remain in effect.

(3) The Director shall issue a written decision on the petition for restoration.

(i) If the Director determines that the requirements of paragraph (c)(1) of this section have not been satisfied, he or she shall issue a decision denying the petition.

(ii) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Secretary, setting forth the grounds for its objection to the Director's decision.

(iii) The petition shall be served on the Director and on the Office of the Solicitor, Civil Rights Division.

(iv) The Director may file a response to the petition within 14 days.

(v) The Secretary shall issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

**§34.53 Suspension, termination, denial or discontinuance of Federal financial assistance under JTPA; alternate funds disbursement procedure.**

(a) Any action to suspend, terminate, deny or discontinue Federal financial assistance under JTPA shall be limited to the particular political entity, or part thereof or other recipient (or grant applicant) as to which the finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the non-compliance has been found. No order suspending, terminating, denying or

discontinuing Federal financial assistance under JTPA shall become effective until:

(1) The Director has issued a Final Determination pursuant to §34.46 or Notification of Breach of Conciliation Agreement pursuant to §34.48;

(2) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or pursuant to the nondiscrimination and equal opportunity provisions of JTPA or this part;

(3) A Final Decision has been issued by the Secretary, the Administrative Law Judge's decision and order has become the Final Decision of the Secretary, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, pursuant to §34.52(b); and

(4) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

(b) When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of JTPA.

## PART 42—COORDINATED ENFORCEMENT

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AUTHORITY: 29 U.S.C. 49, *et seq.*; 29 U.S.C. 201 *et seq.*; 29 U.S.C. 651, *et seq.*; 29 U.S.C. 801, *et seq.*; 5 U.S.C. 301.

SOURCE: 45 FR 39489, June 10, 1980, unless otherwise noted.

### § 42.1 General statement.

These regulations are promulgated by the Secretary of Labor to describe the coordination of the activities of the Employment Standards Administration, the Occupational Safety and Health Administration, and the Employment and Training Administration relating to migrant farmworkers.

### § 42.2 Purpose.

(a) These regulations coordinate the activities of ESA, OSHA and ETA, and are intended to:

(1) Ensure effective enforcement efforts under the protective statutes—i.e., the Farm Labor Contractor Registration Act (FLCRA), the Occupational Safety and Health Act (OSHA), and the Fair Labor Standards Act (FLSA) (*protective statutes*).

(2) Ensure that the enforcement efforts of DOL agencies are coordinated to maximize their effectiveness, yet minimize unnecessary duplication.

(3) Focus the attention of DOL agencies upon the special employment-related problems faced by migrant farmworkers.

(4) Coordinate DOL enforcement efforts with related activities of farmworker groups, federal and State agencies, and other concerned parties outside the Department of Labor whose operations are related to the employment, housing, and working conditions of migrant farmworkers.

(5) Establish an information exchange which will afford the Department, farmworker groups, and other concerned parties outside the Department of Labor the opportunity to exchange information concerning wages, hours and working conditions.

### § 42.3 National Committee.

A National Farm Labor Coordinated Enforcement Committee (*National Committee*) is hereby established which shall be responsible for: Reviewing