

§ 658.703

20 CFR Ch. V (4–1–12 Edition)

(5) If, as a result of this review, the Regional Administrator determines that the State has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator shall notify in writing the State agency and the Administrator of his/her findings. The Regional Administrator shall conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's further follow-up reveals that violations have not been corrected, the Regional Administrator shall apply remedial actions to the State agency pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines that the State agency has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator shall apply remedial actions to the State agency pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines that the State agency has made good faith efforts and adequate progress toward the correction of the violation and it appears that the violation will be fully corrected within a reasonable time period, the State agency shall be advised by registered mail (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period shall not exceed 40 working days unless the Regional Administrator determines that exceptional circumstances necessitate corrective action requiring a longer time period. In such cases, the Regional Administrator shall notify the Administrator in writing of the exceptional circumstances which necessitate a longer time period, and shall specify that time period. The specified time period shall commence with the date of signature on the registered mail receipt.

(8)(i) If the State agency has been given an additional time period pursuant to paragraph (b)(7) of this section, ETA staff shall review the State agency's efforts as documented by the State

agency at the end of the time period. If necessary, ETA shall conduct a follow-up visit as part of this review.

(ii) If the State agency has corrected the violation(s), the Regional Administrator shall document that finding, notify in writing the State agency and the Administrator, and retain supporting documents in ETA files. If the State agency has not corrected the violation(s), the Regional Administrator shall apply remedial actions pursuant to § 658.704.

§ 658.703 Emergency corrective action.

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator shall notify the State agency of the reason for imposing the corrective action prior to providing the State agency an opportunity to comment.

§ 658.704 Remedial actions.

(a) If a State agency fails to correct violations as determined pursuant to § 658.702, the Regional Administrator shall apply one or more of the following remedial actions to the State agency:

(1) Imposition of special reporting requirements for a specified period of time;

(2) Restrictions of obligational authority within one or more expense classifications;

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for State agency personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant

Secretary, the imposition of Federal staff in key State agency positions;

(7) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, funding of the State agency on a short-term basis or partial withholding of funds for a specific function or for a specific geographical area;

(8) Holding of public hearings in the State on the State agency's deficiencies;

(9) Disallowance of funds pursuant to § 658.702(g); or

(10) If the matter involves a serious or continual violation, the initiation of decertification procedures against the State agency, as set forth in paragraph (e) of this section.

(b) The Regional Administrator shall send, by registered mail, a Notice of Remedial Action to the State agency. The Notice of Remedial Action shall set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (20 CFR 653.100 *et seq.*) or the JS complaint system (20 CFR 658.400 *et seq.*), a copy of said notice shall be sent to the OWI Administrator, who shall publish the notice promptly in the FEDERAL REGISTER.

(c) If the remedial action is other than decertification, the notice shall state that the remedial action shall take effect immediately. The notice shall also state that the State agency may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 working days of the State agency's receipt of the notice. The offer of hearing, or the acceptance thereof, however, shall not stay the implementation of remedial action.

(d) Within 60 working days after the initial application of remedial action, the Regional Administrator shall conduct a review of the State agency's compliance with JS regulations unless the Regional Administrator determines that a longer time period is necessary. In such cases, the Regional Administrator shall notify the OWI Administrator in writing of the circumstances which necessitate a longer time period, and specify that time period. If nec-

essary, ETA staff shall conduct a follow-up visit as part of this review. If the State agency is in compliance with the JS regulations, the Regional Administrator shall fully document these facts and shall terminate the remedial actions. The Regional Administrator shall notify the State agency of his/her findings. When the case involves violations of regulations governing services to MSFWs or the JS complaint system, a copy of said notice shall be sent to the OWI Administrator, who shall promptly publish the notice in the FEDERAL REGISTER. The Regional Administrator shall conduct, within a reasonable time after terminating the remedial actions, a review of the State agency's compliance to determine whether any remedial actions should be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds that the State agency remains in noncompliance, the Regional Administrator shall continue the remedial action and/or impose different additional remedial actions. The Regional Administrator shall fully document all such decisions and, when the case involves violations of regulations governing services to MSFWs or the JS complaint system, shall send copies to the OWI Administrator, who shall promptly publish the notice in the FEDERAL REGISTER.

(f)(1) If the State agency has not brought itself into compliance with JS regulations within 120 working days of the initial application of remedial action, the Regional Administrator shall initiate decertification unless the Regional Administrator determines that circumstances necessitate continuing remedial action for a longer period of time. In such cases, the Regional Administrator shall notify the OWI Administrator in writing of the circumstances which necessitate the longer time period, and specify the time period.

(2) The Regional Administrator shall notify the State agency by registered mail of the decertification proceedings, and shall state the reasons therefor. Whenever such a notice is sent to a State agency, the Regional Administrator shall prepare five indexed copies

containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy shall be retained. Two shall be sent to the ETA national office, one shall be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the complaint system, one copy shall be sent to the National MSFW Monitor Advocate. The notice sent by the Regional Administrator shall be published promptly in the FEDERAL REGISTER.

[45 FR 39468, June 10, 1980, as amended at 71 FR 35523, June 21, 2006]

§ 658.705 Decision to decertify.

(a) Within 30 working days of receiving a request for decertification, the Assistant Secretary for ETA shall review the case and shall decide whether to proceed with decertification.

(b) The Assistant Secretary shall grant the request for decertification unless he/she makes a finding that (1) the violations of JS regulations are neither serious nor continual; (2) the State agency is in compliance; or (3) the Assistant Secretary has reason to believe that the State agency will achieve compliance within 80 working days unless exceptional circumstances necessitate a longer time period, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 working days in order to obtain any available additional information.) In making a determination of whether violations are “serious” or “continual,” as required by this subsection, the Assistant Secretary shall consider:

(i) Statewide or multiple deficiencies as shown by performance data and/or on-site reviews;

(ii) Recurrent violations, even if they do not persist over consecutive reporting periods, and

(iii) The good faith efforts of the State to achieve full compliance with JS regulations as shown by the record.

(c) If the Assistant Secretary denies a request for decertification, he/she

shall write a complete report documenting his/her findings and, if appropriate, instructing that an alternate remedial action or actions be applied. Copies of the report shall be sent to the Regional Administrator. Notice of the Assistant Secretary’s decision shall be published promptly in the FEDERAL REGISTER, and the report of the Assistant Secretary shall be made available for public inspection and copying.

(d) If the Assistant Secretary decides that decertification is appropriate, he/she shall submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e) Within 30 working days after receiving the report of the Assistant Secretary, the Secretary shall determine whether to decertify the State agency. The Secretary shall grant the request for decertification unless he/she makes one of the three findings set forth in § 658.705(b). If the Secretary decides not to decertify, he/she shall then instruct that remedial action be continued or that alternate actions be applied. The Secretary shall write a report explaining his/her reasons for not decertifying the State agency and copies will be sent to the State agency. Notice of the Secretary’s decision shall be published promptly in the FEDERAL REGISTER, and the report of the Secretary shall be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and order further remedial action, the Regional Administrator shall continue to monitor the State agency’s compliance. If the agency achieves compliance within the time period established pursuant to § 658.705(b), the Regional Administrator shall terminate the remedial actions. If the State agency fails to achieve full compliance within that time period after the Secretary’s decision not to decertify, the Regional Administrator shall submit a report of his/her findings to the Assistant Secretary who shall reconsider the request for decertification pursuant to the requirements of § 658.705(b).