

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or any assurance or other contractual undertaking, and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 27.4.* In the event that a recipient fails or refuses to furnish an assurance required under § 27.4, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section the failure or refusal may, at the option of the Secretary, be grounds for authorizing proceedings to cause refusal of the Federal authorization in accordance with the procedures of paragraph (c) of this section. The Department of the Interior shall not be required to provide the authorization in such a case during the pendency of the administrative proceedings under such paragraph.

(c) *Termination of or refusal to grant or to continue the Federal authorization—(1) General.* In those instances where a recipient fails or refuses to observe or comply substantially with section 403 of Public Law 93-153 or implementing rules, regulations, and orders, non-compliance at the option of the Secretary, may be grounds for termination, suspension, refusal to grant or continue the Federal authorization.

(i) *Recommendation to proceed.* The Department Compliance Officer may request that the Secretary commence procedures to suspend, terminate, or refuse to grant or continue the Federal authorization or to cause such suspension, termination, or refusal to grant. He shall indicate the specific grounds for alleging noncompliance with section 403 and implementing rules, regulations, and orders, the actions which would create compliance, and the time necessary to achieve compliance.

(ii) *Commencement of proceedings.* Before the Secretary authorizes the commencement of an administrative proceeding for termination, suspension, or refusal to grant any Federal authorization to which this part applies, the Secretary or his designee shall give the recipient notice in writing of the alleged ground or grounds for termination or formal suspension, or refusal

to grant, with sufficient particularity to enable the recipient to comply with section 403 of Public Law 93-153 and implementing rules, regulations and orders. The recipient shall have sixty (60) days from the date of delivery of the notice within which to comply. If compliance cannot be achieved in sixty (60) days, the recipient shall be entitled to additional time if he demonstrates that compliance is not possible within the sixty (60) day period and that the necessary curative actions were undertaken promptly and have been diligently prosecuted toward completion; *Provided further* that the aforesaid additional time shall not exceed ninety (90) days from the last day of the said sixty (60) day period, without the prior written consent of the Secretary or his designee which shall specify the last day upon which the curative action must be completed to the satisfaction of the Secretary or his designee.

(iii) *Opportunity for a hearing.* No order suspending, terminating or refusing to grant or continue any Federal authorization to which this part applies shall become effective until there has been an express finding on the record, after opportunity for a formal hearing, of a failure by the applicant or recipient to comply substantially with section 403 of Public Law 93-153 or implementing rules, regulations, and orders and the action has been approved by the Secretary pursuant to § 27.11(e).

(2) [Reserved]

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the action has been approved by the Secretary, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply and to take such corrective action as may be appropriate.

§ 27.10 Hearings.

(a) *Informal hearings—(1) Purpose.* The Department Compliance Officer may convene such informal hearings as may

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be deemed appropriate for the purpose of inquiring into the status of compliance of any recipient, contractor, or subcontractor to which this part applies.

(2) *Notice.* Recipients, contractors, and subcontractors shall be advised in writing as to the time and place of the informal hearings and may be directed to bring specific documents and records, or furnish other relevant information concerning their compliance status. When so requested, the recipient, contractor, or subcontractor shall attend and bring requested documents and records, or other requested information.

(3) *Conduct of hearings.* The hearing shall be conducted by hearing officers appointed by the Department Compliance Officer. Parties to informal hearings may be represented by counsel or other authorized representative as provided in 43 CFR part 1 and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings.

(b) *Formal hearings*—(1) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.9(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (i) fix a date not less than twenty (20) days after the date of such notice within which the applicant or recipient may request of the Secretary or his designee or the administrative law judge to whom the matter has been assigned that the matter be scheduled for hearing or (ii) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an appli-

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cant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 403 of Public Law 93–153 and implementing rules, regulations, and orders and consent to the making of a decision on the basis of information on the record.

(2) *Time and place of hearing.* Hearings shall be conducted by the Office of Hearings and Appeals of the Department, at a time and place fixed by the administrative law judge to whom the matter has been assigned. Hearings shall be held before an administrative law judge designated by the Office of Hearings and Appeals in accordance with its procedures.

(3) *Right to Counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel or other authorized representative as provided in 43 CFR part 1.

(4) *Procedures, evidence, and record.* (i) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554 through 557 and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (b)(1) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the administrative law judge conducting the hearing at the outset of or during the hearing.

(ii) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the administrative law judge conducting the hearing. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to

examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent that the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(5) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more Federal authorizations to which this part applies, or asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with §27.11.

§27.11 Decisions and notices.

(a) *Initial decision by an administrative law judge.* The administrative law judge shall make an initial decision and a copy of such initial decision shall be sent by registered mail, return receipt requested, to the recipient or applicant.

(b) *Review of the initial decision.* The applicant or recipient may file his exceptions to the initial decision, with his reasons therefor, with the Director, Office of Hearings and Appeals, within thirty (30) days of receipt of the initial decision. In the absence of exceptions, the Director, Office of Hearings and Appeals, on his own motion within forty-five (45) days after the initial decision, may notify the applicant or recipient that he will review the decision. In the absence of exceptions or a notice of review, the initial decision shall constitute the final decision subject to the approval of the Secretary pursuant to paragraph (f) of this section.

(c) *Decisions by the Director, Office of Hearings and Appeals.* Whenever the Director, Office of Hearings and Appeals, reviews the decision of an administra-

tive law judge pursuant to paragraph (b) of this section, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contention, and a copy of the final decision of the Director, Office of Hearings and Appeals, shall be given to the applicant or recipient and to the complainant, if any.

(d) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to §27.10 (b)(1), a decision shall be made by the Director, Office of Hearings and Appeals, on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(e) *Rulings required.* Each decision of an administrative law judge or the Director, Office of Hearings and Appeals, shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(f) *Approval by Secretary.* Any final decision of an administrative law judge or of the Director, Office of Hearings and Appeals, which provides for the suspension or termination of, or the refusal to grant or continue a Federal authorization, or the imposition of any other sanction available under this part, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(g) *Content of decisions.* The final decision may provide for suspension or termination of, or refusal to grant or continue a Federal authorization, in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of section 403 of Public Law 93-153 and implementing rules, regulations, and orders, including provisions designated to assure that no Federal authorization will be extended under title II of Public Law 93-153 to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to section 403 and implementing rules, regulations, and orders or to have otherwise failed