

of Breach of Conciliation Agreement under §37.104, 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 §37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes 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 under §37.112(b) constitutes final agency action.

**§37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?**

Any action to suspend, terminate, deny or discontinue WIA Title I financial assistance must 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 must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under §37.100 or Notification of Breach of Conciliation Agreement under §37.104;

(b) 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 under the nondiscrimination and equal opportunity provisions of WIA or this part;

(c) 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, under §37.112(b); and

(d) 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.

**§37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?**

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:

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

(b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIA.

**§37.115 What procedures does the Department follow for post-termination proceedings?**

(a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §37.112(b) will be restored, where appropriate, to full eligibility to receive WIA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §37.112(b) may at any time petition the Director to restore its eligibility to receive WIA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this

section are pending, sanctions imposed by the Final Decision and Order under §37.112(b) (1) and (2) must remain in effect.

(c) The Director must issue a written decision on the petition for restoration.

(1) If the Director determines that the grant applicant or recipient has not brought itself into compliance, he or she must issue a decision denying the petition.

(2) 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.

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

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

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

## 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 Em-

ployment 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 policies, guidelines and enforcement goals and strategies for the Department of Labor with respect to migrant farm labor-related enforcement efforts under the protective statutes; resolving policies which are in conflict between DOL agencies; advising the Secretary on legislative initiatives which would strengthen farm labor-related enforcement efforts; and providing guidance and recommendations to DOL agencies on related enforcement activities.