

**§ 801.67**

**29 CFR Ch. V (7-1-05 Edition)**

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into, in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

**§ 801.67 Decision and Order of Administrative Law Judge.**

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers, a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 801.53 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) If any party desires review of the decision of the Administrative Law Judge, a petition for issuance of a Notice of Intent shall be filed in accordance with § 801.69 of this subpart.

(g) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the Secretary, pursuant to § 801.70 of this subpart issues a Notice of Intent to Modify or Vacate the Decision and Order.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

**MODIFICATION OR VACATION OF DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE**

**§ 801.68 Authority of the Secretary.**

(a) The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(1) Is inconsistent with a policy or precedent established by the Department of Labor;

(2) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(3) Awards attorney fees and/or other litigation expenses pursuant to the

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Equal Access to Justice Act which are unjustified or excessive; or

(4) Otherwise warrants modifying or vacating.

(b) The Secretary may modify or vacate a finding of fact only where the Secretary determines that the finding is clearly erroneous.

### § 801.69 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 801.70. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

### § 801.70 Implementation by the Secretary.

(a) Review of the Decision and Order by the Secretary shall not be a matter of right but of the sound discretion of the Secretary. At any time within 30 days after the issuance of the Decision and Order of the Administrative Law Judge the Secretary may, upon the Secretary's own motion or upon the acceptance of a party's petition, issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the

date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

### § 801.71 Filing and service.

(a) Filing. All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) Number of copies. An original and two copies of all documents shall be filed.

(c) Computation of time for delivery by mail. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time thereafter was made by mail.

(d) Manner and proof of service. A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

### § 801.72 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, forward a copy of the complete hearing record to the Secretary.

### § 801.73 Final decision of the Secretary.

The Secretary's final Decision and Order shall be served upon all parties and the Chief Administrative Law Judge.