

Department of Justice

§ 42.208

section 815(c) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208, *et seq.*

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.207 Compliance information.

(a) Each recipient shall:

(1) Keep such records, and submit to OJARS such timely, complete, and accurate information as OJARS may request to determine whether the recipient is complying with section 815(c)(1) of the JSIA; and

(2) Permit reasonable access by OJARS to its books, documents, papers, and records, to the extent necessary to determine whether the recipient is complying with section 815(c)(1) of the JSIA.

(b) Failure to comply with § 42.207(a) shall subject the recipient to the sanctions provided in section 803(a) of the JSIA, 42 U.S.C. 3783(a).

§ 42.208 Notice of noncompliance.

(a) Whenever the Office has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under section 815(c)(3) of the JSIA);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Office under paragraph (a)(2) of this section); to the effect that there has been a pattern or practice of discrimination in violation of section 815(c)(1) of the JSIA; or

(2) Made a determination after an investigation by the Office pursuant to § 42.205 or § 42.206 of this subpart that a State government or unit of general local government, or agency thereof, is not in compliance with this subpart, or section 815(c)(1) of the JSIA, or this subpart: the Office shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local government, that such program or activity has been so found or determined not to be in compliance with this subpart or section 815(c)(1) of the JSIA or this

subpart, and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in—

(i) Employment Practices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.; or

(iv) Federal Supplement, Federal Reporter, or Supreme Reporter, West Publishing Company; or

(2) Receipt by the Office of a reliable copy of a pattern or practice finding, made after a due process hearing from any source.

(c) When the Office receives notice of a finding which has been made more than 120 days prior to receipt, the Office will determine if the finding is currently applicable.

(1) In determining the current applicability of the finding, the Office will contact the clerk of the court and the office of the deciding judge (or the appropriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Office will contact the attorneys of record for both the plaintiff and defendant to determine whether any subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in paragraphs (c)(1) and (2) of this section, that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.211(b), the Office will notify the appropriate chief executive of the recipient's noncompliance as provided in § 42.208(a).

(d) For purposes of paragraph (a)(1)(iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5, title 5, U.S.

§ 42.209

28 CFR Ch. I (7-1-06 Edition)

Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for—

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing on notice, and a decision by an individual who did not participate in the investigation or prosecution of the matter.

(2) A party is entitled to be represented by counsel or other qualified representative, to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions, including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of—

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or definal thereof.

(f) If within 10 days of receipt of notice the Office cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under §42.208(a) to the appropriate chief executive(s).

(g) Each notification under § 42.208(a) shall advise the appropriate chief executive of:

(1) The program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Office's request to secure compliance;

(4) The action to be taken by the Office and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to §42.212, and a full hearing, pursuant to §42.213.

§ 42.209 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to §42.208, the terms and conditions with which the affected State government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government), and by the Director of OJARS.

(b) Prior to the effective date of the agreement, the Office shall send a copy of the agreement to each complainant, if any, with respect to such violation, and to the appropriate CJC.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Office detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Office shall send a copy to each complainant, if any.

(e) The Director of OJARS shall also determine a recipient to be in compliance if it complies fully with the final order or judgement of a Federal or State court, pursuant to §42.211 (a)(2) and (b), or if found by such court to be in compliance with section 815(c)(1).

§ 42.210 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with section 815(c)(1):

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government; and

(2) An administrative law judge has not made a determination under §42.212 that it is likely the State government or unit of local government will prevail on the merits;

the Office shall notify the Attorney General that compliance has not been secured and shall cause to have suspended further payment of any funds under the JSIA or Juvenile Justice