

§ 265.23

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§ 265.23 Procedures for effecting compliance.

(a) Whenever the Administrator determines that any recipient, or contractor has failed to comply with the provisions of this part, or with any Federal civil rights statute, or with any order or regulation issued under such a statute, and such failure has not been resolved by informal means pursuant to § 265.21 of this part, the Administrator shall within ten (10) days after such determination notify such recipient or contractor, and the appropriate labor organization if the matter may appear to affect a person who is covered by a collective bargaining agreement, in writing of the specific grounds for alleging noncompliance, and the right of such persons to respond to such determination in writing or to request an informal hearing. Where the Administrator determines that substantial noncompliance exists and it is unlikely that compliance will be obtained, or that lack of good faith exists, or that other good cause exists, he may order that further financial assistance be suspended in whole or in part pending a final decision in the matter. Subject to the provisions of paragraphs (b) through (e) of this section, the recipient or contractor shall have sixty (60) days from the date of delivery of the notice within which to comply. The recipient or contractor may be entitled to additional time if it is demonstrated that compliance is not possible within the sixty day period and that the necessary initial curative actions were undertaken promptly and have been diligently prosecuted toward completion. The Administrator shall specify the last day upon which curative action must be completed to his satisfaction. Unless the Administrator determines that compliance cannot be reasonably attained, failure to take curative action shall be grounds for the Administrator to:

(1) Direct that no further Federal financial assistance be provided to the recipient;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(3) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); or

(4) Take such other actions as may be provided by law or this part.

(b) Persons receiving notification and a directive pursuant to paragraph (a) of this section may within thirty (30) days after receipt respond to the notice in writing in lieu of requesting an informal hearing as specified in paragraph (c) of this section. The Administrator will make a determination as to compliance within thirty (30) days after receipt of such written response, and advise the person in writing of his determination. If the Administrator determines that compliance is reasonably attainable and that such person has failed to comply with the provisions of this part or with his determination within 30 days after receipt of his determination, the Administrator shall pursue the remedies set forth in the last sentence of paragraph (a) of this section.

(c) Persons receiving notification and a directive pursuant to paragraph (a) of this section may within ten (10) days after receipt request an informal hearing in lieu of filing a written response as specified in paragraph (b) of this section. The Administrator may, in his discretion, grant a request for an informal hearing for the purpose of inquiring into the status of compliance of such person. The Administrator will advise persons subject to his directive in writing as to the time and place of the informal hearings and may direct such persons to bring specific documents and records, or furnish other relevant information concerning their compliance status. When so requested, such person shall attend and bring the requested information. 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. The failure of such person to request a hearing or to appear at a hearing for which a date has been set shall be deemed to be a consent to the applicability of the procedures set forth in paragraph (a) of this section.

(d) The hearing shall be conducted by a hearing officer appointed by the Administrator. Such hearings shall commence within twenty (20) days from the date the hearing is granted and shall be concluded no later than thirty (30) days from the commencement date. Parties to informal hearings may be represented by counsel or other authorized representative and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings.

(e) *Decisions and notices.* (1) Within ten (10) days after the conclusion of such hearings, the hearing officer will advise the Administrator, in writing, of his views and recommendations as to compliance with this part and a copy of such decision shall be sent by registered mail, return receipt requested, to the recipient or contractor and participating labor organization. If the hearing officer in his decision determines that the recipient or contractor is in noncompliance with this part, he may, if he determines that it is unlikely that compliance will be obtained, or that a lack of good faith exists, or for other good cause, order that further financial assistance be suspended in whole or in part, pending a decision by the Administrator in the matter.

(2) The recipient, contractor or labor organization may file exceptions to the hearing officer's decision, with his reasons therefor, with the Administrator within thirty (30) days of receipt of the initial decision. Within twenty (20) days, after the time for filing exceptions, the Administrator shall determine, in writing, whether or not the parties involved are in compliance with this part. A copy of the Administrator's decision will be given to the recipient, contractor, labor organization, if appropriate, and to the complainant, if any.

(3) If the Administrator determines that compliance can reasonably be attained, his decision shall provide that if such person fails or refuses to comply with the decision of the Administrator within thirty (30) days after receipt of the decision, the Administrator shall:

(i) Direct that no further Federal assistance be provided to such a person;

(ii) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(iii) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964; and/or

(iv) Take such other actions as may be provided by law or this part.

(4) A recipient or contractor adversely affected by a decision of the Administrator issued under paragraph (a) or (b) of this section shall be restored to full eligibility to receive Federal assistance or award of a federally assisted contract if the recipient or contractor takes complete curative action to eliminate the noncompliance with this part and if the recipient or contractor provides reasonable assurance that the recipient or contractor will fully comply with this part.

§ 265.25 Other information.

(a) Each person required to submit a written affirmative action program pursuant to this part shall include as an appendix thereto, the following information except to the extent such information is already provided as part of the application for financial assistance;

(1) A brief description of other pending applications to other federal agencies for financial assistance, and of federal assistance being provided at the time of submission of the affirmative action program;

(2) A statement of any civil rights compliance reviews regarding applicant or recipient conducted in the two year period before the application, or affirmative action program; the name of the agency or organization performing the review, and the findings of the review;

(3) Where the project, program or activity receiving financial assistance will require the relocation of persons and businesses, a description of the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, or national origin;

(4) Where the project, program or activity receiving financial assistance will result in the construction of new