Federal Emergency Management Agency, DHS

§ 7.13

means, compliance with this regulation may be effected by the suspension or
termination of or refusal to grant or to
continue Federal financial assistance
or by any other means authorized by
law. Such other means may include,
but are not limited to, (1) a reference
to the Department of Justice with a
recommendation that appropriate pro-
ceedings be brought to enforce any
rights of the United States under any
law of the United States (including
other titles of the Act), or any assur-
ance or other contractual undertaking,
and (2) any applicable proceeding under
state or local law.

(b) Noncompliance with section 7. If an
applicant fails or refuses to furnish an
assurance required under section 7 or
otherwise fails or refuses to comply
with a requirement imposed by or pur-
suant to that section Federal financial
assistance may be refused in accord-
ance with the procedures of paragraph
(c) of this section. The agency shall not
be required to provide assistance in
such a case during the pend-
ency of the administrative proceedings under such
paragraph except that the agency shall
continue assistance during the pend-
ency of such proceedings where such
assistance is due and payable pursuant
to an application thereof approved
prior to the effective date of this regu-
lation.

(c) Termination of or refusal to grant or
to continue Federal financial assistance.
No order suspending, terminating or
refusing to grant or continue Federal
financial assistance shall become effec-
tive until (1) the responsible agency of-
ficial has advised the applicant or re-
cipient of his failure to comply and has
determined that compliance cannot be
secured by voluntary means, (2) there
has been an express finding on the
record, after opportunity for hearing,
of a failure by the applicant or recipi-
ent to comply with a requirement im-
posed by or pursuant to this regula-
tion, (3) the action has been approved
by the Administrator of the Federal
Emergency Management Agency pursu-
ant to section 14, and (4) the expiration
of 30 days after the Administrator has
filed with the committee of the House
and the committee of the Senate hav-
ing legislative jurisdiction over the
program involved, a full written report
of the circumstances and the grounds
for such action. Any action to suspend
or terminate or to refuse to grant or to
continue Federal financial assistance
shall be limited to the particular polit-
cal entity, or part thereof, or other ap-
plicant or recipient as to whom such a
finding has been made and shall be lim-
ited in its effect to the particular pro-
gram, or part thereof, in which such
noncompliance has been so found.

(d) Other means authorized by law. No
action to effect compliance by any
other means authorized by law shall be
taken until (1) the responsible agency
official has determined that compli-
ance cannot be secured by voluntary
means, (2) the action has been approved
by the Administrator of the Federal
Emergency Management Agency, (3)
the recipient or other person has been
notified of its failure to comply and of
the action to be taken to effect compli-
ance, and (4) the expiration of at least
10 days from the mailing of such notice
to the recipient or other person. Dur-
ing this period of at least 10 days addi-
tional efforts shall be made to persuade
the recipient or other person to comply
with the regulation and to take such
corrective action as may be appro-
priate.

§ 7.13 Hearings.

(a) Opportunity for hearing. Whenever
an opportunity for a hearing is re-
quired by section 12(c), reasonable no-
tice shall be given by registered or cer-
tified 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 ac-
tion, and either (1) fix a date not less
than 20 days after the date of such no-
tice within which the applicant or re-
cipient may request of the responsible
agency official that the matter be
scheduled for hearing or (2) advise the
applicant or recipient that the matter
in question has been set down for hear-
ing at a stated place and time. The
time and place so fixed shall be reason-
able 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 applicant or recipient to request a hearing under this subsection 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 602 of the Act and section 12(c) of this regulation and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the National Headquarters of the Federal Emergency Management Agency in Washington, DC, at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, 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 (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency 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 officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this regulation, 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 reasonably necessary by the officer conducting the hearing. The hearing officer 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 the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator of the Federal Emergency Management Agency 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 procedures not inconsistent with this regulation. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with section 14.

§ 7.14 Decisions and notices.

(a) Decision by person other than the responsible agency official. If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is