he has made a complaint, testified, as-
sisted, or participated in any manner
in an investigation, proceeding, or
hearing under this subpart. The iden-
tity of complainants shall be kept con-
fidential except to the extent necessary
to carry out the purpose of this sub-
part, including the conduct of any in-
vestigation, hearing, or judicial pro-
ceeding arising thereunder.

(Order No. 365–66, 31 FR 10265, July 29, 1966,
as amended by Order No. 519–73, 38 FR 17955,
July 5, 1973)

§ 42.108 Procedure for effecting com-
pliance.

(a) General. If there appears to be a
failure or threatened failure to comply
with this subpart and if the noncompli-
ance or threatened noncompliance can-
not be corrected by informal means,
the responsible Department official
may suspend or terminate, or refuse to
grant or continue, Federal financial as-
sistance, or use any other means au-
thorized by law, to induce compliance
with this subpart. Such other means
include, but are not limited to:

(1) Appropriate proceedings brought
by the Department 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 assurance re-
quirement. If an applicant or recipient
fails or refuses to furnish an assurance
required under § 42.105, or fails or re-
fuses to comply with the provisions of
the assurance it has furnished, or oth-
wise fails or refuses to comply with
any requirement imposed by or pursu-
ant to title VI or this subpart, Federal
financial assistance may be suspended,
terminated, or refused in accordance
with the procedures of title VI and this
subpart. The Department shall not be
required to provide assistance in such a
case during the pendency of adminis-
trative proceedings under this subpart,
except that the Department will con-
tinue assistance during the pendency of
such proceedings whenever such assist-
ance is due and payable pursuant to a
final commitment made or an applica-
tion finally approved prior to the effec-
tive date of this subpart.

(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 Department offi-
cial has advised the applicant or recipi-
ent of his failure to comply and has de-
termined 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
recipient to comply with a requirement
imposed by or pursuant to this subpart,

(3) The action has been approved by
the Attorney General pursuant to
§ 42.110, and

(4) The expiration of 30 days after the
Attorney General has filed with the
committee of the House and the com-
mittee of the Senate having legislative
jurisdiction over the program involved,

§ 42.109 Hearings.

(a) Opportunity for hearing. Whenever
an opportunity for a hearing is re-
quired by § 42.108(c), reasonable notice
shall be given by registered or certified
mail, return receipt requested, to the
affected applicant or recipient. That 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 that action. The notice shall (1) Fix a date, not less than 20 days after the date of such notice, within which the applicant or recipient may request that the responsible Department official schedule the matter for hearing, or (2) advise the applicant or recipient that a hearing concerning the matter in question has been scheduled and advise the applicant or recipient of the time and place of that hearing. 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. 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 paragraph 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 afforded by section 602 of the Act and §42.108(c) 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 offices of the Department in Washington, DC, at a time fixed by the responsible Department official, unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department 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 5 U.S.C. 554–557 (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 Department 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.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, 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 whenever 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 subpart with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal Departments or agencies issued under title VI of the Act, the Attorney General may, by agreement with such other departments or agencies, whenever appropriate, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this
subpart is concerned, shall be made in accordance with §42.110.


§ 42.110 Decisions and notices.

(a) Decisions by person other than the responsible Department 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 Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Whenever the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon filing of such exceptions, or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) Decisions on the record or on review by the responsible Department official. Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given a reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) Decisions on the record whenever a hearing is waived. Whenever a hearing is waived pursuant to §42.109(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Attorney General. Any final decision of a responsible Department official (other than the Attorney General) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or the Act, shall promptly be transmitted to the Attorney General, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of, the Act and this subpart, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart, or to have otherwise failed to comply with this subpart, unless and until, it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this subpart.

(g) Post-termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and