

receipt of the notice in which to submit to the Department a written statement setting forth any legal and factual reasons why it believes the proposed remedial action would be inappropriate. If no response is received by the Department within the 30-day period, the Department may make the proposed remedial action effective immediately. If a response opposing the taking of remedial action is received from the recipient organization within the 30-day period, no remedial action will be taken until a final decision has been reached under paragraph (c) of this section. (2) The Department may prepare a written reply to the recipient organization's response. Any such reply will be forwarded to the deciding official together with the notice sent to the recipient organization and the organization's response, and a copy of the reply will be served on the recipient organization.

(c) *Departmental decision.* The Department's decision to take remedial action under this part will be made by an official of the Department who had no involvement with the initial determination to seek remedial action. The deciding official may affirm, reverse, or modify the initial determination. In making the decision, the official will consider only the notice provided by the Department, the recipient organization's statement, the Department's reply, together with any other documents attached to them, and statements at any informal conference held pursuant to paragraph (d) of this section. The official's decision will be provided to the recipient organization in writing and will constitute the Department's final administrative action on the matter.

(d) *Informal conference.* If, in the judgment of the official designated to make a final decision, it would materially enhance his ability to resolve the matters in dispute, he may convene an informal conference to question or hear an oral presentation by the parties. If an informal conference is convened it will be transcribed.

(e) *Effect of decision.* The decision in a proceeding under this section affects only the recipient organization's obligations related to its letter of credit and does not determine the organiza-

tion's ultimate liability with respect to improperly spent funds or other misconduct.

#### § 77.6 Emergency procedures.

(a) Should the Department determine that it cannot adequately protect assets of the Federal government available to a recipient organization under its letter of credit without taking remedial action prior to the procedures specified in § 77.5, it may immediately take remedial action subject to the subsequent completion of those procedures.

(b) Where the Department has taken remedial action as described in paragraph (a) of this section, it will notify the recipient organization orally of the remedial action within one business day of its imposition and in writing within seven business days of its imposition. The written notice will conform to that described in § 77.5(a).

(c) After receipt of the written notice, the recipient organization will have the same opportunity to respond as described in § 77.5(b)(1).

(d) The Department will issue a final decision in writing no later than twenty days following receipt of any response submitted by the recipient organization.

### PART 78—CONDITIONS FOR WAIVER OF DENIAL OF FEDERAL BENEFITS

Sec.

78.1 Applicability.

78.2 Definitions.

78.3 Benefits not denied to rehabilitated offenders.

AUTHORITY: Section 5301 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, 102 Stat. 4310, 21 U.S.C. 853a.

SOURCE: 56 FR 29592, June 28, 1991, unless otherwise noted.

#### § 78.1 Applicability.

This part is applicable to any decision to deny Federal benefits, under authority of 21 U.S.C. 853a, to an individual convicted of a Federal or State offense involving distribution or possession of a controlled substance as defined by the Controlled Substances Act, 21 U.S.C. 802.