

## §7.943

for not more than 30 days if the mediator determines agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to FEMA.

### §7.943 Investigation.

(a) *Informal investigation.* (1) FEMA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, FEMA will use informal fact finding methods, including joint or separate discussion with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. FEMA may seek the assistance of any involved state agency.

(3) FEMA will put any agreement in writing and have it signed by the parties and an authorized official at FEMA.

(4) The settlement shall not affect the operation of any other enforcement effort of FEMA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If FEMA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of this regulation, FEMA will attempt to obtain voluntary compliance, it will begin enforcement as described in §7.945.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

### §7.944 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or this regulation; or

(b) Cooperates in any mediation, investigation, hearing, or other part of FEMA's investigation, conciliation and enforcement process.

## 44 CFR Ch. I (10-1-03 Edition)

### §7.945 Compliance procedure.

(a) FEMA may enforce the Act and this regulation through:

(1) Termination of a recipient's Federal financial assistance from FEMA under the program or activity involved where the recipient has violated the Act or this regulation. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this regulation.

(ii) Use of any requirement of or referral to any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this regulation.

(b) FEMA will limit any termination under §7.945(a)(1) to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of this regulation. FEMA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from FEMA.

(c) FEMA will take no action under paragraph (a) until:

(1) The Director has advised the recipient of its failure to comply with the Act and this regulation and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Director will file a report whenever any action is taken under paragraph (a).

(d) FEMA also may defer granting new Federal financial assistance from FEMA to a recipient when a hearing under §7.945(a)(1) is initiated.

(1) New Federal financial assistance from FEMA includes all assistance for which FEMA requires an application or

approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from FEMA does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 7.945(a)(1).

(2) FEMA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 7.945(a)(1). FEMA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) FEMA will limit any deferral to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of this regulation. FEMA will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not and would not, in connection with new funds, receive Federal financial assistance from FEMA.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

**§ 7.946 Hearings, decisions, post-termination proceedings.**

Certain FEMA procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to FEMA enforcement of this regulation. They are found at 44 CFR 7.10 through 7.16.

**§ 7.947 Remedial action by recipient.**

Where FEMA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that FEMA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that had discriminated, FEMA may require both recipients to take remedial action.

**§ 7.948 Alternate funds disbursement procedure.**

(a) When FEMA withholds funds from recipient under this regulation, the Di-

rector may, if allowable under the statute governing the assistance, disburse the withheld funds directly to an alternate recipient: Any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Director will require any alternate recipient to demonstrate:

(1) The ability to comply with this regulation; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[55 FR 23078, June 6, 1990, as amended at 68 FR 51380, Aug. 26, 2003]

**§ 7.949 Exhaustion of administrative remedies.**

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and FEMA had made no finding with regard to the complaint; or

(2) FEMA issues any finding in favor of the recipient.

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed.

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and