

§ 17.1

Subpart D [Reserved]

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of the Interior

- 17.501 Purpose.
- 17.502 Application.
- 17.503 Definitions.
- 17.504–17.509 [Reserved]
- 17.510 Self-evaluation.
- 17.511 Notice.
- 17.512–17.529 [Reserved]
- 17.530 General prohibitions against discrimination.
- 17.531–17.539 [Reserved]
- 17.540 Employment.
- 17.541–17.548 [Reserved]
- 17.549 Program accessibility: Discrimination prohibited.
- 17.550 Program accessibility: Existing facilities.
- 17.551 Program accessibility: New construction and alterations.
- 17.552–17.559 [Reserved]
- 17.560 Communications.
- 17.561–17.569 [Reserved]
- 17.570 Compliance procedures.

EDITORIAL NOTE: Nomenclature changes to Part 17 appear at 68 FR 51376–51379, Aug. 26, 2003.

Subpart A—Nondiscrimination on the Basis of Race, Color, or National Origin

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and the laws referred to in Appendix A.

§ 17.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of the Interior.

[29 FR 16293, Dec. 4, 1964, as amended at 43 FR 4259, Feb. 1, 1978]

§ 17.2 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including programs

43 CFR Subtitle A (10–1–11 Edition)

and activities that are federally-assisted under the laws listed in appendix A to this subpart. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of the regulation pursuant to an application approved prior to such effective date. This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended before the effective date of this part, (3) any assistance to any individual who is the ultimate beneficiary, or (4) except to the extent described in §17.3, any employment practice, under any such program, of any employer, employment agency, or labor organization. The fact that a statute under which Federal financial assistance is extended to a program or activity is not listed in appendix A to subpart A shall not mean, if title VI is otherwise applicable, that such program or activity is not covered. Other statutes now in force or hereafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of that part shall extend to any facility located wholly or in part of the space.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17975, July 5, 1973; 43 FR 4259, Feb. 1, 1978]

§ 17.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing ac-

complishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4)(i) In administering a program regarding which the recipient has previously discriminated against persons on the grounds of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(5) References in this section to services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(6) The enumeration of specific forms of prohibited discrimination in this paragraph (b) and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of

§ 17.4

compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.

(2) The requirements of paragraph (c)(1) of this section apply to programs under laws funded or administered by the Department where a primary objective of the Federal financial assistance is (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals in meeting expenses incident to the commencement or continuation of their education or training, or (iii) to provide work experience which contributes to the education or training of such individuals. Assistance given under the following laws has one of the above purposes as a primary objective: Water Resources Research Act of 1964, title I, 78 Stat. 329, and those statutes listed in appendix A to this subpart where the facilities or employment opportunities provided are limited, or a preference is given, to students, fellows, or other persons in training or related employment.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefit of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

43 CFR Subtitle A (10-1-11 Edition)

(d) *Benefits for Indians, natives of certain territories, and Alaska natives.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from benefits which, in accordance with Federal law, are limited to Indians, natives of certain territories, or Alaska natives, if the individual is not a member of the class to which the benefits are addressed. Such benefits include those authorized by statutes listed in appendix B to this subpart.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17976, July 5, 1973; 43 FR 4259, Feb. 1, 1978; 68 FR 51376, Aug. 26, 2003]

§ 17.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, or improvement of real property or structures, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and

to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) *Continuing Federal financial assistance.* (1) Every application by a State

or any agency or political subdivision of a State for continuing Federal financial assistance to which this regulation applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (i) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (ii) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary or his designee to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under paragraph (b)(1)(i) of this section will be corrected.

(2) With respect to some programs which are carried out by States or agencies or political subdivisions of States and which involve continuing Federal financial assistance administered by the Department, there has been no requirement that applications be filed by such recipients. From the effective date of this part no Federal financial assistance administered by this Department will be extended to a State or to an agency or a political subdivision of a State unless an application for such Federal financial assistance has been received from the State or State agency or political subdivision.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school

§ 17.5

system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research for a special training project, for student assistance, or for another purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17976, July 5, 1973; 68 FR 51376, Aug. 26, 2003]

§ 17.5 Compliance information.

(a) *Cooperation and assistance.* The Secretary or his designee shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

43 CFR Subtitle A (10-1-11 Edition)

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Secretary or his designee timely, complete and accurate compliance reports, at such times, and in such form and containing such information, as the Secretary or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally—assisted programs. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner as the Secretary or his designee finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[38 FR 17976, July 5, 1973]

§ 17.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary or his designee shall from

Office of the Secretary, Interior

§ 17.7

time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary, or his designee.

(c) *Investigations.* Whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part, a prompt investigation shall be made. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the recipient shall be informed in writing and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in §17.7.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the recipient and complainant, if any, shall be informed in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investiga-

tion, hearing, or judicial proceeding arising thereunder.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17977, July 5, 1973]

§ 17.7 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part 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 proceedings 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 assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 17.4.* If an applicant fails or refuses to furnish an assurance required under §17.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(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 effective until (1) the Secretary or his designee has advised the applicant or recipient 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,

§ 17.8

of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to §17.9(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having 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 political entity, or part thereof, or other applicant or recipient as to whom such finding has been made and shall be limited in its effect to the particular program, 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 Secretary or his designee has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional effort shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17977, July 5, 1973]

§ 17.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §17.7(c), reasonable notice shall be given by registered or certified 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 action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or re-

43 CFR Subtitle A (10-1-11 Edition)

ipient may request of the administrative law judge to whom the matter has been assigned that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. 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 under section 602 of the act and §17.7(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 Office of Hearings and Appeals of the Department in the Washington, DC, area, at a time fixed by the administrative law judge to whom the matter has been assigned 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 an administrative law judge designated by the Office of Hearings and Appeals in accordance with 5 U.S.C. 3105 and 3344.

(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, 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 at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, 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 that 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 non-compliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the act, the Secretary 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 procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 17.9.

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17977, July 5, 1973]

§ 17.9 Decisions and notices.

(a) *Initial decision by an administrative law judge.* The administrative law judge shall make an initial decision and a copy of such initial decision shall be sent by registered mail, return receipt requested, to the recipient or applicant.

(b) *Review of the initial decision.* The applicant or recipient may file his exceptions to the initial decision, with

his reasons therefor, with the Director, Office of Hearings and Appeals, within thirty days of receipt of the initial decision. In the absence of exceptions, the Director, Office of Hearings and Appeals, on his own motion within forty-five days after the initial decision, may notify the applicant or recipient that he will review the decision. In the absence of exceptions or a notice of review, the initial decision shall constitute the final decision subject to the approval of the Secretary pursuant to paragraph (f) of this section.

(c) *Decisions by the Director, Office of Hearings and Appeals.* Whenever the Director, Office of Hearings and Appeals, reviews the decision of a hearing examiner pursuant to paragraph (b) of this section, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contention, and a copy of the final decision of the Director, Office of Hearings and Appeals, shall be given to the applicant or recipient and to the complainant, if any.

(d) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 17.8(a), a decision shall be made by the Director, Office of Hearings and Appeals 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.

(e) *Rulings required.* Each decision of an administrative law judge or the Director, Office of Hearings and Appeals, 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 part with which it is found that the applicant or recipient has failed to comply.

(f) *Approval by Secretary.* Any final decision of a hearing examiner or of the Director, Office of Hearings and Appeals, 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 part of the act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

§ 17.10

(g) *Content of decisions.* The final decision may provide for the 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 effectuate the purposes of the act and this part, 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 regulation, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(h) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (g) 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 part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (g) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance.

(3) If the Secretary denies any such request, the applicant or recipient may submit to the Secretary a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with the procedures set forth in subpart I of part 4 of this title. The applicant or recipient shall be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (h)(1) of this section.

(4) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under para-

43 CFR Subtitle A (10-1-11 Edition)

graph (g) of this section shall remain in effect.

[38 FR 17977, July 5, 1973; 44 FR 54299, Sept. 19, 1979]

§ 17.10 Judicial review.

Action taken pursuant to section 602 of the act is subject to judicial review as provided in section 603 of the act.

[29 FR 16293, Dec. 4, 1964]

§ 17.11 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this regulation applies and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925, 11114 and 11246, as amended and regulations issued thereunder, (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions insofar as such order, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Secretary or his designee shall issue and promptly make available to interested persons instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to such officials of the Department as he deems appropriate, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the act and this part (other than responsibility for final decision as provided in §17.9), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI of the act and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of the Interior.

[29 FR 16293, Dec. 4, 1964, as amended at 43 FR 4259, Feb. 1, 1978]

§ 17.12 Definitions.

As used in this part:

(a) The term *act* means the Civil Rights Act of 1964 (Pub. L. 88-352 78 Stat. 241).

(b) The term *Department* means the Department of the Interior, and includes each of its bureaus and offices.

(c) The term *Secretary* means the Secretary of the Interior or, except in §17.9(f), any person to whom he has delegated his authority in the matter concerned.

(d) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term *Federal financial assistance* includes (1) grants and loans of Federal funds, (2) grants or donations of Federal property and interests in property, (3) the detail of Federal personnel (4) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal prop-

erty or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

(g) The term *facility* includes all or any portion of structures, equipment,

Pt. 17, Subpt. A, App. A

43 CFR Subtitle A (10–1–11 Edition)

or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assign, or transferee thereof, but such term does not include the ultimate beneficiary.

(i) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient.

(j) The term *applicant* means one who submits an application, request, or plan required to be approved by the head of a bureau or office, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term “application” means such an application, request, or plan.

(k) The term *Office of Hearings and Appeals* refers to a constituent office of the Department established July 1, 1970. 35 FR 12081 (1970).

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17978, July 5, 1973; 68 FR 51376, Aug. 26, 2003]

APPENDIX A TO SUBPART A OF PART 17

Federal financial assistance subject to part 17 includes, but is not limited to, that authorized by the following statutes:

I. *Public Lands and Acquired Lands.* (a) Grants and loans of Federal funds.

1. Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181–287).

2. Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359).

3. Alaska Grazing Act (44 Stat. 1452, 48 U.S.C. 471, *et seq.*).

4. Proceeds of Certain Land Sales (R.S. sec. 3689, as amended, 31 U.S.C. 711 (17)).

5. Taylor Grazing Act (48 Stat. 1269, as amended, 43 U.S.C. 315 *et seq.*).

6. Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (50 Stat. 874, 43 U.S.C. 1181f).

7. Payment to States for Swamp Lands Erroneously Sold by U.S. (R.S. sec. 3689, as amended, 31 U.S.C. 711 (18)).

8. Alaska Statehood Act, sec. 6(f), (72 Stat. 341, 48 U.S.C. note preceding sec. 21).

(b) Sale, lease, grant, or other disposition of, or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Materials Act (61 Stat. 681, as amended 30 U.S.C. 601–604).

2. Rights-of-way for Tramroads, Canals, Reservoirs (28 Stat. 635, as amended, 43 U.S.C. 956, 957).

3. Highway Rights-of-way (R.S. sec. 2477 43 U.S.C. 932).

4. Small Tract Act (52 Stat. 609, as amended, 43 U.S.C. 682a–682e).

5. Rights-of-way for Dams, Reservoirs, Water Plants, Canals, etc. (33 Stat. 628, 16 U.S.C. 524).

6. Rights-of-way for Power and Communication Facilities (36 Stat. 1253, as amended, 43 U.S.C. 961).

7. Recreation and Public Purposes Act (44 Stat. 741, as amended, 43 U.S.C. 869–869–4).

8. Stock-Watering Reservoirs (29 Stat. 434, as amended, 43 U.S.C. 952–955).

9. Alaska Housing Authority Act (63 Stat. 60, 48 U.S.C. 484c).

10. Railroad Rights-of-way in Alaska (30 Stat. 409, 48 U.S.C. 411–419).

11. Grants to States in Aid Schools (44 Stat. 1026 as amended, 43 U.S.C. 870).

12. Carey Act (28 Stat. 422, as amended, 43 U.S.C. 641).

13. Airports and Aviation Fields (45 Stat. 728, as amended, 49 U.S.C. 211–214).

14. Special Land Use Permits (R.S. sec. 453, as amended, 43 U.S.C. 2).

15. Rights-of-way for Irrigation and Drainage (26 Stat. 1101, as amended, 43 U.S.C. 946).

16. Rights-of-way for Pipelines to Transport Oil or Natural Gas (41 Stat. 449, as amended, 30 U.S.C. 185).

17. Townsite Laws (R.S. 2380 *et seq.*, as amended, 43 U.S.C. 711 *et seq.*).

18. Leases of Lands near Springs (43 Stat. 1133, 43 U.S.C. 971).

19. Rights-of-way for Railroads (18 Stat. 482, 43 U.S.C. 934).

20. Grants of Easements (76 Stat. 1129, 40 U.S.C. 319–319c).

II. *Water and Power.* (a) Grants and loans of Federal funds.

1. Federal Reclamation Program (32 Stat. 388, 43 U.S.C. 391, and Acts amendatory or supplementary thereto).

2. Reservation of Land for Park, Playground, or Community Center (38 Stat. 727, 43 U.S.C. 569).

3. Distribution System Loan Program (69 Stat. 244, as amended, 43 U.S.C. 421a–421d).

4. Rehabilitation and Betterment Loan Program (63 Stat. 724, as amended, 43 U.S.C. 504).

5. Small Reclamation Project Loan Program (70 Stat. 1044, 43 U.S.C. 422a–422k).

6. Assistance to School Districts on Reclamation Projects (62 Stat. 1108, 43 U.S.C. 385a).

7. Payment from Colorado River Dam Fund, Boulder Canyon Project (54 Stat. 776 as amended, 43 U.S.C. 618(c)).

8. Payment on In Lieu of Taxes Lands Acquired Pursuant to Columbia Basin Project Act (57 Stat. 19, 16 U.S.C. 835c-1).

9. Payment in Lieu of Taxes on Land to Trinity County, California (69 Stat. 729).

10. Saline Water Research Program (66 Stat. 328, as amended, 42 U.S.C. 1951).

11. Water User Repayment Obligations on Reclamation Projects (43 Stat. 703, 43 U.S.C. 501, 62 Stat. 273, 66 Stat. 754).

12. Water Resources Research Act (78 Stat. 329).

(b) Sale, lease, grant or other disposition of, or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Townsite Disposal on Reclamation Projects (34 Stat. 116, 43 U.S.C. 566).

2. Transfer of Federal Property in Coulee Dam, Washington (71 Stat. 529, 16 U.S.C. 835c note).

3. Transfer of Federal Property to Boulder City, Nevada (72 Stat. 1726, 43 U.S.C. 617u note).

4. Reservation of Land for Park, Playground, or Community Center (38 Stat. 727, 43 U.S.C. 569).

5. Saline Water Research Program-Donation of Laboratory Equipment (72 Stat. 1793, 42 U.S.C. 1892).

6. Reclamation Program-Conveyance of Land to School Districts (41 Stat. 326, 43 U.S.C. 570).

7. Recreation and Public Purposes Program (44 Stat. 741, as amended, 43 U.S.C. 869-869a).

8. Dedication of Land for Public Purposes, Page, Arizona (72 Stat. 1686, 1688).

9. Removal of Sand, Gravel, and Other Minerals, and Building Materials from Reclamation Project Lands (53 Stat. 1196, as amended, 43 U.S.C. 387).

III. *Mineral Resources*. Grants and loans of Federal funds.

1. Control of Coal Mine Fires (68 Stat. 1009, 30 U.S.C. 551-558 *et seq.*)

2. Anthracite Mine Drainage and Flood Control and Sealing of Abandoned Mines and Filling Voids (69 Stat. 352, as amended, 30 U.S.C. 571-576).

3. Sealing and filling of voids in abandoned coal mines, reclamation of surface mine areas, and extinguishing mine fires (79 Stat. 13, as amended, 40 U.S.C., App., 205).

IV. *Fish and Wildlife*. (a) Grants of Federal funds.

1. Pittman-Robertson Act (50 Stat. 917, as amended, 16 U.S.C. 669).

2. Dingell-Johnson Act (64 Stat. 430, 16 U.S.C. 777).

3. Sharing of Refuge Revenues (49 Stat. 383, as amended, 16 U.S.C. 715s).

4. Aid to Alaska (Section 6(e) of the Alaska Statehood Act, 72 Stat. 340, and Act of February 28, 1944, 58 Stat. 101, 16 U.S.C. 631e).

5. Anadromous Fish Act of 1965 (79 Stat. 1125, 16 U.S.C. 757a-757f).

6. Aid to Education (70 Stat. 1126, 16 U.S.C. 760d).

7. Jellyfish Act of 1966 (80 Stat. 1149, 16 U.S.C. 1201-1205).

(b) Sale, lease, grant, or other disposition of, or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Cooperative Research and Training Program for Fish and Wildlife Resources (74 Stat. 733, 16 U.S.C. 753a)

2. Protection and Conservation of Bald and Golden Eagles (54 Stat. 251, as amended 16 U.S.C. 668a).

3. Wildlife Land Transfers (sec. 8 of Colorado River Storage Project Act of 1956, 70 Stat. 110, 43 U.S.C. 620g)

4. Fish and Wildlife Coordination Act (48 Stat. 401, as amended, 16 U.S.C. 661-664).

(c) Furnishing of services of a type for which the recipient would otherwise pay.

1. Lamprey Eradication Program (60 Stat. 930, as amended, 16 U.S.C. 921)

2. Cooperative Research and Training Program for Fish and Wildlife Resources (74 Stat. 733, 16 U.S.C. 753a)

3. Fish and Wildlife Coordination Act (48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.*).

V. *Parks and Territories*. (a) Grants and loans of Federal funds.

1. Payments to School Districts—Yellowstone National Park (62 Stat. 338, 16 U.S.C. 40a).

2. Payments in Lieu of Taxes—Grand Teton National Park (64 Stat. 851, 16 U.S.C. 406d-3).

3. Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 47a).

4. Bureau of Outdoor Recreation (77 Stat. 49, 16 U.S.C. 460l).

5. Revised Organic Act of the Virgin Islands (68 Stat. 497, as amended, 48 U.S.C. 1541-1644).

6. Guam Rehabilitation Act (77 Stat. 302).

7. Organic Act of Guam (64 Stat. 384 as amended, 48 U.S.C. 1421-1425 except sec. 9(a), 48 U.S.C. 1422c(a)).

8. Guam Agricultural Act (P.L. 88-584, 78 Stat. 926).

9. Outdoor Recreation Programs (78 Stat. 897, as amended, 16 U.S.C. 460l-460l-11).

(b) Sale, lease, grant or other disposition of, or the permission to, use Federal property or any interest in such property at less than fair market value.

1. Puerto Rico Federal Relations Act (39 Stat. 954, 48 U.S.C. 748).

2. Virgin Islands Corporation Act (63 Stat. 350, as amended, 48 U.S.C. 1407 *et seq.*).

3. Territorial Submerged Lands Act (77 Stat. 338, 48 U.S.C. 1701-1704).

4. Organic Act of Guam (64 Stat. 392, 48 U.S.C. 1421f(c)).

Pt. 17, Subpt. A, App. B

(c) Furnishing of services by the Federal Government of a type for which the recipient would otherwise pay.

1. Bureau of Outdoor Recreation (77 Stat. 49, 16 U.S.C. 460l).

VI. *Indian Affairs*. (a) Grants and loans of Federal funds.

1. Menominee County, Wis. Educational Grants (76 Stat. 53).

(b) Sale, lease, grant, or other disposition of or the permission to use, Federal property or any interest in such property at less than fair market value.

1. Conveyance of School Property (67 Stat. 41, as amended, 25 U.S.C. 293a).

2. Adult Vocational Training Act (70 Stat. 986, 25 U.S.C. 309).

VII. *General*. 1. Department Projects under the Public Works Acceleration Act (76 Stat. 541, 42 U.S.C. 2641-2643).

2. Grants for Support of Scientific Research (72 Stat. 1793, 42 U.S.C. 1891-1893).

3. Special Use Permits (R.S. sec. 441, as amended, 43 U.S.C. 1457).

4. Land and Water Conservation Fund Act of 1964 (Pub. L. 88-578, 78 Stat. 897).

[29 FR 16293, Dec. 4, 1964, as amended at 38 FR 17978, July 5, 1973]

APPENDIX B TO SUBPART A OF PART 17

The following statutes authorize Federal financial assistance limited to individuals of a particular race, color, or national origin

I. *Indians and Alaska Natives*. 1. Snyder Act (42 Stat. 208, 25 U.S.C. 13).

2. Adult Vocational Training Act (70 Stat. 986, 25 U.S.C. 309).

3. Vocational and Trade School Act (48 Stat. 986, 25 U.S.C. 471)

4. Johnson-O'Malley Act (48 Stat. 596, as amended, 25 U.S.C. 452-53)

5. Revolving Fund for Loan to Indians (48 Stat. 986, 25 U.S.C. 470).

6. Revolving Fund for Loans to Tribes (77 Stat. 301).

7. Conveyance of Buildings, Improvements, or Facilities to Tribes (70 Stat. 1057, 25 U.S.C. 443a).

8. Alaska Reindeer Act (50 Stat. 900, 48 U.S.C. 250-250p)

9. Disposals to Alaskan Natives (44 Stat. 629, 48 U.S.C. 355a and 355c).

II. *Natives of Certain Territories*. 1. Acceptance of Samoan Cession Agreement (45 Stat. 1253, as amended, 48 U.S.C. 1661).

2. Samoan Omnibus Act (76 Stat. 586, 48 U.S.C. 1666)

3. Guam Organic Act (64 Stat. 387, 48 U.S.C. 1422c).

[29 FR 16293, Dec. 4, 1964, as amended at 68 FR 51376, Aug. 26, 2003]

43 CFR Subtitle A (10-1-11 Edition)

Subpart B—Nondiscrimination on the Basis of Handicap

AUTHORITY: 29 U.S.C. 794.

SOURCE: 47 FR 29546, July 7, 1982, unless otherwise noted.

§ 17.200 Purpose.

The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973 and its subsequent amendments, which are designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 17.201 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of the Interior and to each program or activity that receives such assistance.

§ 17.202 Definitions.

As used in this subpart, the term:

(a) *The Act* means the Rehabilitation Act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, and the Rehabilitation, Comprehensive Service, and Developmental Disabilities Act of 1978, Public Law 95-602, 29 U.S.C. 700 *et seq.*

(b) *Section 504* means section 504 of the Act.

(c) *Education of the Handicapped Act* means that statute as amended by the Education for All Handicapped Children Act of 1975, Public Law 94-142, 20 U.S.C. 1401 *et seq.*

(d) *Department* means the Department of the Interior.

(e) *Director* means the Director of the Office for Equal Opportunity of the Department.

(f) *Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) *Applicant for assistance* means one who submits an application, request, or