

(18) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980): from \$25,000 to \$27,500.

(19) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980: from \$25,000 to \$27,500.

#### § 6.5 Effective date of adjustments.

The *First Adjustments* made by § 6.4 of this part, of the penalties there specified, are effective on October 23, 1996, and said penalties, as thus adjusted by the *First Adjustments* made by § 6.4 of this part, shall apply only to violations occurring after October 23, 1996, and before the effective date of any future inflation adjustment thereto made subsequent to October 23, 1996, as provided in § 6.6 of this part. The penalties specified in § 6.4 of this part which became effective prior to October 23, 1996, shall, without any *First Adjustments* thereto, apply only to violations occurring before October 24, 1996.

#### § 6.6 Subsequent adjustments.

The *Secretary or his or her designee* by regulation shall, at least once every four years after October 23, 1996, make the inflation adjustment, described in *Section Five* and required by *Amended Section Four*, of each civil monetary penalty provided by law and within the jurisdiction of the *Department*.

### PART 7 [RESERVED]

## PART 8—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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#### APPENDIX A TO PART 8—PROGRAMS COVERED BY TITLE VI

AUTHORITY: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d-1).

SOURCE: 38 FR 17938, July 5, 1973, unless otherwise noted.

### Subpart A—General Provisions; Prohibitions: Nondiscrimination Clause; Applicability to Programs

#### § 8.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the ‘‘Act’’) to the end that no person in the United States shall, on the ground 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 receiving Federal financial assistance from the Department of Commerce. This part is consistent with achievement of the objectives of the statutes authorizing the financial assistance given by the Department of Commerce as provided in section 602 of the Act.

#### § 8.2 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 the federally assisted programs listed in Appendix A to this part and as said Appendix may be amended. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 9, 1965, pursuant to an application approved prior to such effective date.

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(b) 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 under any such program before January 9, 1965, except where such assistance was subject to the title VI regulations of this Department or of any other agency whose responsibilities are now exercised by this Department, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization except to the extent described in §8.4(c). The fact that a program is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to the list by notice published in the FEDERAL REGISTER.

#### § 8.3 Definitions.

(a) *Department* means the Department of Commerce, and includes each and all of its operating and equivalent other units.

(b) *Secretary* means the Secretary of Commerce.

(c) *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.

(d) *Person* means an individual in the United States who is or is eligible to be a participant in or an ultimate beneficiary of any program which receives Federal financial assistance, and includes an individual who is an owner or member of a firm, corporation, or other business or organization which is or is eligible to be a participant in or an ultimate beneficiary of such a program. Where a primary objective of the Federal financial assistance to a program is to provide employment, "person" includes employees or applicants for employment of a recipient or other party subject to this part under such program.

(e) *Responsible department official* with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. It also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under this part.

(f) *Federal financial assistance* includes

(1) Grants, loans, or agreements for participation in loans, of Federal funds,

(2) The grant or donation of Federal property or interests in property,

(3) The sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or in property in which the Federal Government has an interest, 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 or use by the recipient,

(4) Waiver of charges which would normally be made for the furnishing of Government services,

(5) The detail of Federal personnel,

(6) Technical assistance, and

(7) Any Federal agreement, arrangement, contract, or other instrument which has as one of its purposes the provision of assistance.

(g) *Program* includes any program, project, or activity for the planning or provision of services, financial aid, property, other benefits, or facilities for furnishing services, financial aid, property, or other benefits, whether provided by the recipient or by others through contracts or other arrangements with the recipient, with the aid of Federal financial assistance, or with the aid of any non-Federal funds, property, facilities or other resources which are provided to meet the conditions under which Federal financial assistance is extended or which utilizes federally assisted property, facilities or resources.

(h) *Facility* includes all or any portion of structures, equipment, vessels, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, contract for use, or acquisition of facilities.

(i) *Recipient* means any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which is an applicant for Federal financial assistance, or to whom Federal financial assistance is extended directly or through another recipient for or in connection with any program. Recipient further includes a subgrantee, an entity which leases or operates a facility for or on behalf of a recipient, and any successors, assignees, or transferees of any kind of the recipient, but does not include any person who is an ultimate beneficiary under any program.

(j) *Primary recipient* means any recipient which is authorized or required to extend or distribute Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) *Applicant* means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(l) *Other parties subject to this part* includes any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which, like a recipient, is not to engage in discriminatory acts with respect to applicable persons covered by this part, because of his or its direct or substantial participation in any program, such as a contractor, subcontractor, provider of employment, or user of facilities or services provided under any program.

#### § 8.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground 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 acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to this part under any program to which this part applies, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color, or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

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

(iii) Subjects a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or nonreceipt) of any such service, financial aid, property, or other benefit under the program.

(iv) Restricts a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, property, or benefit provided to others under the programs;

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

(vi) Denies a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords 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) Denies a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee when a program is applicable thereto;

(viii) Denies 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, or other party subject to this part under any program, 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 persons 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 persons to be afforded an opportunity to participate in any such program, shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or other party subject to this part 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 part 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) As used in this section, the 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 or made available in or through or utilizing a facility provided with the aid of Federal financial assistance.

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

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground 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.

(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 compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipients and other parties subject to this part shall take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, or national origin. Such recipients and other parties subject to this part shall, as may be required by supplemental regulations, develop a written affirmative action program. The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department which has as a primary objective the providing of employment include those set forth in Appendix A II of this part.

(2) Where a primary objective of the Federal financial assistance to a program to which this part applies is not to provide employment, but discrimination on the grounds of race, color, or national origin, in the employment practices of the recipient or other party subject to this part, tends, on the grounds of race, color, or national origin, to exclude persons from participating in, to deny them the benefits of, or to subject them to discrimination

under any such program, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other party subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of such persons.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

#### § 8.5 Nondiscrimination clause.

(a) *Applicability.* Every application for, and every grant, loan, or contract authorizing approval of, Federal financial assistance to carry out a program and to provide a facility subject to this part, and every modification or amendment thereof, shall, as a condition to its approval and to the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to this part. The assurances shall be set forth in a nondiscrimination clause. The responsible Department official shall specify the form and contents of the nondiscrimination clause for each program as appropriate.

(b) *Contents.* Without limiting its scope or language in any way, a nondiscrimination clause shall contain, where determined to be appropriate, and in an appropriate form, reference to the following assurances, undertakings, and other provisions:

(1) That the recipient or other party subject to this part will not participate directly or indirectly in the discrimination prohibited by § 8.4, including employment practices when a program covering such is involved.

(2) That when employment practices are covered, the recipient or other party subject to this part will (i) in all solicitations or advertisements for employees placed by or for the recipient, state that qualified applicants will receive consideration for employment without regard to race, color, or national origin; (ii) notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding of the recipient's commitments under this section; (iii) post the nondiscrimination clause and the

notice to labor unions in conspicuous places available to employees and applicants for employment; and (iv) otherwise comply with the requirements of § 8.4(c).

(3) That in a program involving continuing Federal financial assistance, the recipient thereunder (i) will state 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, and (ii) will provide for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that all recipients of Federal financial assistance under such program and any other parties connected therewith subject to this part will comply with all requirements imposed by or pursuant to this part.

(4) That the recipient agrees to secure the compliance or to cooperate actively with the Department to secure the compliance by others with this part and the nondiscrimination clause as may be directed under an applicable program. For instance, the recipient may be requested by the responsible Department official to undertake and agree (i) to obtain or enforce or to assist and cooperate actively with the responsible Department official in obtaining or enforcing, the compliance of other recipients or of other parties subject to this part with the nondiscrimination required by this part; (ii) to insert appropriate nondiscrimination clauses in the respective contracts with or grants to such parties; (iii) to obtain and to furnish to the responsible Department official such information as he may require for the supervision or securing of such compliance; (iv) to carry out sanctions for noncompliance with the obligations imposed upon recipients and other parties subject to this part; and (v) to comply with such additional provisions as the responsible Department official deems appropriate to establish and protect the interests of the United States in the enforcement of these obligations. In the event that the cooperating recipient becomes involved in litigation with a noncomplying party

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as a result of such departmental direction, the cooperating recipient may request the Department to enter into such litigation to protect the interests of the United States.

(5) In the case of real property, structures or improvements thereon, or interests therein, which are acquired for a program receiving Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property 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, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where 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 responsible Department official, such a condition and right of reverter is appropriate to the program 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 responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(6) In programs 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 such assistance the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

(7) That a recipient shall not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(8) Provisions specifying the extent to which like assurances will be required of subgrantees, contractors and subcontractors, lessees, transferees, successors in interest, and other participants in the program.

(9) Provisions which give the United States a right to seek judicial enforcement of the assurances.

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility. That requirement may be waived by the responsible Department official if the party furnishing the assurances establishes to the satisfaction of the responsible Department official that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is or is sought to be provided, or affect the beneficiaries of or participants in such program. If in any such case the assistance is or is sought for the construction of a facility or part of a facility, the assurances shall in any event extend to the entire facility and to facilities operated in connection therewith.

(11) In the case where the Federal financial assistance is in the form of or to aid in the acquisition of personal

property, or real property or interest therein or structures thereon, the assurance shall obligate the recipients, 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 and benefits, or for as long as the recipient or transferee retains ownership or possession of the property, whichever is longer. In the case of any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

**§ 8.6 Applicability of this part to Department assisted programs.**

The following examples illustrate the applicability of this part to programs which receive or may receive Federal financial assistance administered by the Department. The fact that a particular program is not listed does not indicate that it is not covered by this part. The discrimination referred to is that described in § 8.4 against persons on the ground of race, color, or national origin.

(a) *Assistance to support economic development programs.* Discrimination in which recipients and other parties subject to this part shall not engage, directly or indirectly, includes discrimination in

(1) The letting of contracts or other arrangements for the planning, designing, engineering, acquisition, construction, rehabilitation, conversion, enlargement, installation, occupancy, use, maintenance, leasing, subleasing, sales, or other utilization or disposition of property or facilities purchased or financed in whole or in part with the aid of Federal financial assistance;

(2) The acquisition of goods or services, or the production, preparation, manufacture, marketing, transportation, or distribution of goods or services in connection with a program or its operations;

(3) The onsite operation of the project or facilities;

(4) Services or accommodations offered to the public in connection with the program; and

(5) In employment practices in connection with or which affect the program (as defined in § 8.4(c)); in the following programs:

(i) Any program receiving Federal financial assistance for the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage.

(ii) Any program receiving Federal financial assistance in the form of loans or direct or supplementary grants for the acquisition or development of land and improvements for public works, public service or development facility usage, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment.

(iii) In any program receiving any form of technical assistance designed to alleviate or prevent conditions of excessive employment or underemployment.

(iv) In any program receiving Federal financial assistance in the form of administrative expense grants.

(b) *Assistance to support the training of students.* A current example of such assistance is that received by State maritime academies or colleges, by contract, of facilities (vessels), related equipment and funds to train merchant marine officers. In this and other student training programs, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection of persons to be trained and in their treatment by the recipients in any aspect of the educational process and discipline during their training, or in the availability or use of any academic, housing, eating, recreational, or other facilities and services, or in financial assistance to students furnished or controlled by the recipients or incidental to the program. In any case where selection of trainees is made from a predetermined group, such as the students in an institution or area, the group must be selected without discrimination.

(c) *Assistance to support mobile or other trade fairs.* In programs in which operators of mobile trade fairs using U.S. flag vessels and aircraft and designed to exhibit and sell U.S. products abroad, or in which other trade fairs or exhibitions, receive technical and financial assistance, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in the selection or retention of any actual or potential exhibitors, or in access to or use of the services or accommodations by, or otherwise with respect to treatment of, exhibitors or their owners, officers, employees, or agents.

(d) *Assistance to support business entities eligible for trade adjustment assistance.* In programs in which eligible business entities receive any measure or kind of technical, financial or tax adjustment assistance because of or in connection with the impact of U.S. international trade upon such business, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in their employment practices as defined in § 8.4(c).

(e) *Assistance to support research and development and related activities.* In programs in which individuals, educational or other institutions, public governmental or business entities receive Federal financial assistance in order to encourage or foster research or development activities as such, or to obtain, promote, develop, or protect thereby technical, scientific, environmental, or other information, products, facilities, resources, or services which are to be made available to or used by others; but where such programs do not constitute Government procurement of property or services, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination with respect to (1) the choice, retention or treatment of contractors, subcontractors, subgrantees or of any other person; (2) the provision of services, facilities, or financial aid; (3) the participation of any party in the research activities; (4) the dissemination to or use by any person of the results or benefits of the research or development, whether in the form of information, products, services,

facilities, resources, or otherwise. If research is performed within an educational institution under which it is expected that students or others will participate in the research as a part of their experience or training, on a compensated or uncompensated basis, there shall be no discrimination in admission of students to, or in their treatment by, that part of the school from which such students are drawn or in the selection otherwise of trainees or participants. The recipient educational institutions will be required to give the assurances provided in § 8.5(b)(10).

(f) *Assistance to aid in the operations of vessels engaged in U.S. foreign commerce.* In programs in which the operators of American-flag vessels used to furnish shipping services in the foreign commerce of the United States receive Federal financial assistance in the form of operating differential subsidies, discrimination which is prohibited by recipients and other parties subject to this part includes discrimination in soliciting, accepting or serving in any way passengers or shippers of cargo entitled to protection in the United States under the Act.

## Subpart B—General Compliance

### § 8.7 Cooperation, compliance reports and reviews and access to records.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients and other parties subject to this part in obtaining compliance with this part and shall provide assistance and guidance to recipients and other parties to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient and other party subject to this part shall keep such records and submit to the responsible Department official timely, complete, and accurate compliance reports at such times and in such form and containing such information as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient or such other party 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 of any program under which a primary recipient extends Federal financial assistance to any other recipient, or under which a recipient is obligated to obtain or to cooperate in obtaining the compliance of other parties subject to this part, such other recipients or other parties shall also submit such compliance reports to the primary recipient or recipients as may be necessary to enable them to carry out their obligations under this part.

(c) *Access to sources of information.* Each recipient or other party subject to this part shall permit access by the responsible Department official 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 or other party is in the exclusive possession of another who fails or refuses to furnish this information, the recipient or other party 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 or other party subject to this part shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as this part and the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(e) *Compliance review.* The responsible Department official or his designee shall from time to time review the practices of recipients and other parties subject to this part to determine whether they are complying with this part.

#### **§ 8.8 Complaints.**

(a) *Filing complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimina-

tion prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint shall be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

[Reserved]

#### **§ 8.9 Intimidatory or retaliatory acts prohibited.**

(a) No recipient or other party subject to this part shall intimidate, threaten, coerce, or discriminate against, any person for the purpose of interfering with any right or privilege secured by section 601 of the Act of this part, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(b) 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 investigation, hearing, or judicial or other proceeding arising thereunder.

#### **§ 8.10 Investigations.**

(a) *Making the investigation.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient or other party subject to this part, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether there has been a failure to comply with this part.

(b) *Resolution of matters.* (1) If an investigation pursuant to paragraph (a) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient or other party subject to this part 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,

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action will be taken as provided for in § 8.11.

(2) If an investigation does not warrant action pursuant to paragraph (b)(1) of this section, the responsible Department official will so inform the recipient or other party subject to this part and the complainant, if any, in writing.

### **§ 8.11 Procedures 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 § 8.5.* If a recipient or other party subject to this part fails or refuses to furnish an assurance required under § 8.5 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 said 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 or contract 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 responsible Depart-

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ment official has advised the recipient or other party subject to this part 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 such recipient or other party to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 8.13(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 recipient or other party as to whom such a 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 responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other party 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 party. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other party to comply with this part and to take such corrective action as may be appropriate.

### **§ 8.12 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.11(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient or other party subject to this part. This notice shall advise the recipient or other party 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 recipient or other party may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the recipient or other party 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. A recipient or other party may waive a hearing and submit written information and argument for the record. The failure of a recipient or other party to request a hearing under this paragraph of this section 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 § 8.11(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, D.C., at a time fixed by the responsible Department official or hearing officer unless he determines that the convenience of the recipient or other party 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 officer.

(c) *Right to counsel.* In all proceedings under this section, the recipient or other party 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 Procedures 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

recipient or other party 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 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 programs 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 procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 8.13.

### § 8.13 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing officer such hearing officer 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

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shall be mailed to the recipient or other party subject to this part. Where the initial decision is made by the hearing officer, the recipient or other party 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 recipient or other party a notice that he will review the decision. Upon the 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 record or 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 officer pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the recipient or other party shall be given 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 recipient or other party and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 8.12(a) a decision shall be made by the responsible departmental official on the record and a copy of such decision shall be given in writing to the recipient or other party, and to the complainant, if any.

(d) *Ruling 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 part with which it is found that the recipient or other party has failed to comply.

(e) *Approval by Secretary.* Any final decision of a responsible Department

official (other than the Secretary) 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.

(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, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the recipient or other party determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

(g) *Posttermination proceedings.* (1) Any recipient or other party which is 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 part and provides reasonable assurance that it will fully comply with this part.

(2) Any recipient or other party adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient or other party has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the recipient or other party may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules of procedure issued by the responsible Department official. The recipient or other party will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

**§8.14 Judicial review.**

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

**§8.15 Effect on other laws; supplementary instructions; coordination.**

(a) *Effect on other laws.* 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 ground of race, color, or national origin under any program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to any recipient or other party subject to this part of such assistance under such program 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 one of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 9, 1965. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Order 11246 and regulations issued thereunder, or

(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 ground 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.* Each responsible Department official shall issue and promptly make available to interested parties forms and detailed 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 officials of the Department, 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 §8.13), 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 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 responsible official of this Department.

APPENDIX A TO PART 8—PROGRAMS COVERED BY TITLE VI

I. FEDERAL FINANCIAL ASSISTANCE TO WHICH TITLE 15, SUBTITLE A, PART 8 APPLIES

*Economic Development Administration*

1. Loans, grants, technical and other assistance for public works and development facilities, for supplementing Federal grants-in-aid, for private businesses, and for other purposes, including assistance in connection with designated economic development districts and regions (Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121 *et seq.*).

2. Financial and technical assistance to firms to aid economic adjustment to the effects of increased imports in direct competition with firm products (Trade Act of 1974, 19 U.S.C. 2341-2354).

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3. Assistance to communities adversely affected by increased imports in direct competition with products manufactured in the community area (Trade Act of 1974, 19 U.S.C. 2371-2374).

4. Assistance to projects involving construction of local and State public facilities in order to reduce unemployment and provide State and local governments with badly needed public facilities (Local Public Works Capital Development and Assistance Act of 1976, 42 U.S.C. 6701-6710).

5. Trade adjustment assistance: Loans, dissemination of technical information (title II of the Trade Act of 1974, 19 U.S.C. 2341-2374).

*Maritime Administration*

1. Operating differential subsidy assistance to operators of U.S. flag vessels engaged in U.S. foreign commerce (46 U.S.C. 1171 *et seq.*).

2. Assistance to operate State maritime academies and colleges to train merchant marine officers (46 U.S.C. 1381-1388).

3. Ship construction differential subsidies, direct payments (Merchant Marine Act of 1936, as amended, 46 U.S.C. 1151-1161).

*National Bureau of Standards*

1. Grants to universities and other research organizations for fire research and safety programs (15 U.S.C. 278f).

*National Fire Prevention and Control Administration*

1. Academy planning assistance: To assist States in the development of training and education in the fire prevention and control area (15 U.S.C. 2201-2219).

2. State fire incident reporting assistance: To assist States in the establishment and operation of a statewide fire incident and casualty reporting system (15 U.S.C. 2201-2219).

3. Public education assistance planning: Publications, audiovisual presentations and demonstrations, research, testing, and experimentation to determine the most effective means for such public education (15 U.S.C. 2205c).

4. Policy development assistance: Studies of the operations and management aspects of fire services (15 U.S.C. 2207c).

*National Oceanic and Atmospheric Administration*

1. Assistance to States, educational institutions, and the commercial fishing industry for the development of tuna and other latent fisheries (16 U.S.C. 758e).

2. Assistance to States for the development and implementation of programs to protect and study certain species of marine mammals (16 U.S.C. 1379b).

3. Financial assistance to States with agencies which have entered into a cooperative agreement to assist in the preservation

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of threatened and endangered species (16 U.S.C. 1535).

4. Assistance to coastal States for the development of estuarine sanctuaries to serve as field laboratories and for acquiring access to public beaches (16 U.S.C. 1461).

5. Assistance to coastal States for the development, implementation, and administration of coastal zone management programs (16 U.S.C. 1454-1455).

6. Assistance to coastal States to help communities in dealing with the economic, social, and environmental consequences resulting from expanded coastal energy activity (16 U.S.C. 1456).

7. Authority to enter into cooperative agreements with "colleges and universities, with game and fish departments of the several States, and with nonprofit organizations relating to cooperative research units." Assistance limited to assignment of personnel, supplies, and incidental expenses (16 U.S.C. 753 a and b).

8. Grants for education and training of personnel in the field of commercial fishing, "to public and nonprofit private universities and colleges \* \* \*" (16 U.S.C. 760d).

9. Grants for "office and any other necessary space" for the Northern Pacific Halibut Commission (16 U.S.C. 772).

10. The "Dingell Johnson Act": Apportionment of dollars to States for restoration and management of sport or recreational species (16 U.S.C. 777-777i; 777k).

11. Authority to cooperate with and provide assistance to States in controlling jellyfish, etc. (16 U.S.C. 1201, 1202).

12. Authority to cooperate with and provide assistance to certain States and territories in the study and control of "Crown of Thorns" starfish (16 U.S.C. 1211-1213).

13. Technical assistance to fishing cooperatives regarding catching and marketing aquatic products (15 U.S.C. 521-522).

14. Fish research and experimentation program cooperation with other agencies in acquisition of lands, construction of buildings, employment of personnel in establishing and maintaining research stations (16 U.S.C. 778a).

15. Assistance to upgrade commercial fishing vessels and gear (16 U.S.C. 742c).

16. Assistance to State projects designed for the research and development of commercial fisheries resources of the nation (16 U.S.C. 779a-779f).

17. Assistance to State and other non-Federal interests under cooperative agreements to conserve, develop, and enhance anadromous and Great Lakes Fisheries (16 U.S.C. 757a *et seq.*).

18. Grants and other assistance under the National Sea Grant College and Program Act of 1966: To support establishment of major university centers for marine research, education, training, and advisory services (33 U.S.C. 1121-1124).

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19. Geodetic surveys and services; advisory services; dissemination of technical information (33 U.S.C. 883a).

20. Nautical charts assistance; advisory services; dissemination of technical information (33 U.S.C. 883a).

21. River and flood forecast and warning services; advisory services (15 U.S.C. 313).

22. Weather forecast and warning services (15 U.S.C. 311 and 313, 49 U.S.C. 1351 and 1463).

23. Commercial fisheries disaster assistance (16 U.S.C. 779b).

24. Provision for the Weather Service to assist in joint projects "of mutual interest" (15 U.S.C. 1525).

### *National Telecommunications and Information Administration*

1. Grants for the planning and construction of public telecommunications facilities for the production and distribution of non-commercial educational and cultural radio and television programming and related instructional and informational materials. (Public Telecommunications Financing Act of 1978, 47 U.S.C. Sections 390-394).

### *Office of Minority Business Enterprise*

1. Assistance to minority business enterprises: Grants, contracts, advisory service, technical information (15 U.S.C. 1512; title III of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151; Executive Order 11625, Oct. 13, 1971).

### *Regional Action Planning Commissions*

1. Supplemental grants to Federal grant-in-aid programs and technical assistance funds for planning, investigations, studies, training programs, and demonstration projects, including demonstrations in energy, transportation, health and nutrition, education and indigenous arts and crafts (title V of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3181-3196).

### *United States Travel Service*

1. Assistance to strengthen the domestic and foreign commerce of the United States, and to promote friendly understanding and appreciation of the United States by encouraging foreign residents to visit the United States (22 U.S.C. 2121 *et seq.*).

### *Departmentwide*

1. Authority to make basis scientific research grants (42 U.S.C. 1891-1893; to be superseded no later than Feb. 3, 1979, by the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224).

II. A PRIMARY OBJECTIVE OF THE FINANCIAL ASSISTANCE AUTHORIZED BY THE FOLLOWING STATUTES, ALREADY LISTED ABOVE IN APPENDIX AI, IS TO PROVIDE EMPLOYMENT

1. Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*).

2. Trade Act of 1974 (19 U.S.C. 2341-2354).

3. Local Public Works Capital Development and Assistance Act of 1976 (42 U.S.C. 6701-6710)

[43 FR 49303, Oct. 23, 1978, as amended at 44 FR 12642, Mar. 8, 1979]

## PART 8a [RESERVED]

## PART 8b—PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OPERATED BY THE DEPARTMENT OF COMMERCE

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