

APPENDIX A

I. PROGRAMS TO WHICH THESE REGULATIONS APPLY

1. Programs assisting recipients in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).
2. Loans and other assistance to new or expanding businesses for projects in redevelopment areas (42 U.S.C. 2504).
3. Loans and grants to State or public or private organizations to construct or improve public facilities in redevelopment areas (42 U.S.C. 2506, 2507).
4. Technical assistance, including the results of studies obtained under contracts, under the Area Redevelopment Act (42 U.S.C. 2510).
5. Assistance to States in the operation of State Maritime Academies or colleges to train merchant marine officers (46 U.S.C. 1331-1338).
6. Assistance to mobile trade fair operators (46 U.S.C. 1122b).
7. Trade adjustment assistance to eligible U.S. businesses under the Trade Expansion Act of 1962 (19 U.S.C. 1901 et seq.).
8. Grants and contracts to non-profit institutions or organizations to further or obtain scientific research which is to be made available to the public or interested businesses or organizations (e.g., 42 U.S.C. 1891-1893).
9. Operating differential subsidy contracts with operators of U.S. flag vessels engaged in U.S. foreign commerce, to protect passengers and shippers thereon (46 U.S.C. 1171 et seq.).

Note: (a) Occupational training, retraining, and retraining subsistence assistance programs in redevelopment areas (42 U.S.C. 2513, 2514) are administered by the U.S. Department of Labor, and its regulations under section 602 of the Act are applicable.

(b) Grants-in-aid to States for the acceleration of public works in eligible areas (42 U.S.C. 2041 et seq.) are administered by the various participating Federal agencies, and their respective regulations apply.

II. PROGRAMS TO WHICH THESE REGULATIONS APPLY WHERE A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Redevelopment area business loan programs (42 U.S.C. 2505).
2. Redevelopment area public facility loan and grant programs (42 U.S.C. 2506, 2507).
3. Technical assistance under the Area Redevelopment Act (42 U.S.C. 2510).
4. Retraining and retraining assistance programs in redevelopment areas (42 U.S.C. 2513, 2514).
5. Accelerated public works programs (42 U.S.C. 2041 et seq.).
6. Trade adjustment assistance programs under the Trade Expansion Act of 1962 (19 U.S.C. 1901 et seq.).

[F.R. Doc. 65-303; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter II—Tennessee Valley Authority

PART 302—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF TVA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Chapter II of Title 18 CFR is hereby amended by adding the following new Part 302:

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| Sec. | Purpose. |
| 302.1 | Application of this part. |
| 302.2 | Discrimination prohibited. |
| 302.3 | Assurances required. |
| 302.4 | Compliance information. |
| 302.5 | Conduct of investigations. |
| 302.6 | Procedure for effecting compliance. |
| 302.7 | Hearings. |
| 302.8 | Decisions. |
| 302.9 | Judicial review. |
| 302.10 | Effect on other regulations. |

AUTHORITY: The provisions of this Part 302 are issued under the TVA Act, 48 Stat. 58 (1933), as amended, 16 U.S.C. secs 831-831dd (1958; Supp. V, 1959-63), and section 602 of the Civil Rights Act of 1964, 78 Stat. 252.

§ 302.1 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 or activity receiving financial assistance from TVA.

§ 302.2 Application of this part.

This part applies to any program in which financial assistance is provided by TVA. The programs to which this part applies are listed in Appendix A of this part. Financial assistance, as used in this part, includes the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be made, in order to assist the recipient; the entry into a contract where a purpose is to give financial assistance to the contracting party; and similar transactions. This part does not apply to (a) any financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization. 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 may be added to this list by notice published in the FEDERAL REGISTER.

§ 302.3 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 actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground 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 manner 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.

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

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving 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 the financial assistance.

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

§ 302.4 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the

agreement shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreements, and the extent to which an agreement shall be applicable to subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(b) In the case of a transfer of real property there shall be inserted in the instrument effecting the transfer of such land: (1) A condition coupled with a right to be reserved to TVA to revert title to the property in the event of breach of such nondiscrimination condition, and (2) a covenant running with the land.

§ 302.5 Compliance information.

(a) *Cooperation and assistance.* TVA 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.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under 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 TVA 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 under which the recipient receives financial assistance, and make such information available to them in such manner as TVA finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 302.6 Conduct of investigations.

(a) *Periodic compliance reviews.* TVA shall from 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 TVA a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by TVA.

(c) *Investigations.* TVA 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 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, TVA will so inform the recipient 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 § 302.7.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, TVA will so inform the recipient and the complainant, if any, 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 regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 302.7 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 regulation may be effected by the suspension or termination of or refusal to grant or to continue 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), (2) institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and (3) any applicable proceeding under State or local law.

(b) *Noncompliance with § 302.4.* If anyone requesting financial assistance declines to furnish the assurance required under § 302.4, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section; and for such purposes, the term "recipient" shall be deemed to include one who has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the 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, or a failure by the recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the TVA Board pursuant to § 302.9, and (4) the expiration of 30 days after the TVA Board 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 financial assistance shall be limited to the particular political entity, or part thereof, or recipient 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) TVA has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the TVA Board, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) 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 efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 302.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 302.7(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the 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 recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. 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 may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection 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 § 302.7(b) 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 time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before the TVA Board, or a member thereof, or, at the discretion of the Board, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA 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 the procedures contained in sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the 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 the substance thereof is stipulated for the record. All decisions shall be based upon the hear-

ing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this 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 TVA Board 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 § 302.9.

§ 302.9 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing examiner.* If the hearing is held by a member of the TVA Board or a hearing examiner he shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the TVA Board for a final decision, and a copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a member of the TVA Board or a hearing examiner, the recipient may within 30 days of the mailing of such notice of initial decision file with the TVA Board his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the TVA Board may on its own motion within 45 days after the initial decision serve on the recipient a notice that it will review the decision. Upon the filing of such exceptions or of such notice of review the TVA Board shall review the initial decision and issue its 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 TVA Board.

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

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 302.8(a) a decision shall be made by the TVA Board on the record and a copy of such decision shall be given to the recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision shall set forth a 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 has failed to comply.

(e) *Approval by TVA Board.* Any final decision (other than a decision by the TVA Board) which provides for the suspension or termination of, or the refusal to grant or continue financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the TVA Board, which 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 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 financial assistance will thereafter be extended under such program to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

§ 302.10 Judicial review.

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

§ 302.11 Effect on other regulations.

All regulations, orders, or like directions heretofore issued by TVA 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 regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any recipient 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 person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (a) Executive Orders 10925 and 11114 and regulations issued thereunder, or (b) any other regulations or instructions, insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

Effective date. This part shall become effective on the thirtieth day following the date of its publication in the FEDERAL REGISTER.

Dated: December 24, 1964.

TENNESSEE VALLEY
AUTHORITY,
L. J. VAN MOL,
General Manager.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A—PROGRAMS TO WHICH THESE REGULATIONS APPLY

1. Transfers, leases and licenses of real property for nominal consideration to states, counties, municipalities, and other public agencies for development for public recreation.

2. Furnishing funds, property and services to state agencies, local governments and citizen organizations to advance economic growth in watersheds of Tennessee River tributaries through cooperative resource development programs.

3. Furnishing funds, property and services to land grant colleges for use in a cooperative program utilizing test-demonstration farms to test experimental fertilizers developed by TVA and to educate farmers and other interested persons concerning these new fertilizers. This program also includes the furnishing of fertilizers at reduced prices by TVA, through its fertilizer distributors, to such test-demonstration farms.

4. Furnishing space and utilities without charge under agreements with state agencies for use in accordance with the Vending Stands for Blind Act.

[F.R. Doc. 65-304; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER C—CIVIL RIGHTS

PART 141—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Chapter I, Title 22, CFR is hereby amended by adding the following new Part 141:

- Sec.
- 141.1 Purpose.
 - 141.2 Application of this part.
 - 141.3 Discrimination prohibited.
 - 141.4 Assurances required.
 - 141.5 Compliance information.
 - 141.6 Conduct of investigations.
 - 141.7 Procedure for effecting compliance.
 - 141.8 Hearings.
 - 141.9 Decisions and notices.
 - 141.10 Judicial review.
 - 141.11 Effect on other regulations; forms and instructions.
 - 141.12 Definitions.

AUTHORITY: The provisions of this Part 141 issued under sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, sec. 4, 63 Stat. 111, as amended; 5 U.S.C. 1510.

§ 141.1 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 or activity receiving Federal financial assistance from the Department of State.

§ 141.2 Application of this part.

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 and activities listed in Appendix A of this part. It applies to Federal financial assistance of any form extended under any such program after the effective date of this part, even if the application is approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, or (e) any assistance to an activity carried on outside the United States by a person, institution, or other entity not located in the United States. Transfers of surplus property in the United States are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

§ 141.3 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 actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground 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.

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

(3) 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 in or through a facility provided with the aid of Federal financial assistance.

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

(c) *Special programs.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 141.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, shall 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. The assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, 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 unless the appli-

cant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program.

§ 141.5 Compliance information.

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

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or his complying with this part. In the case of any program under 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 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 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 under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 141.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from 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 him-

self or by a representative file with the responsible Department official a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* 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 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 responsible Department official or his designee will so inform the recipient 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 § 141.7.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, 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 investigation, hearing, or judicial proceeding arising thereunder.

§ 141.7 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.

(b) *Noncompliance with § 141.4.* If an applicant fails or refuses to furnish an assurance required under § 141.4 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 to continue Federal financial assistance shall become effective until (1) the responsible Department official 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, 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 § 141.9(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 a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such non-compliance 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 action has been approved by the Deputy Under Secretary for Administration, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) 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 efforts 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.

§ 141.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 141.7(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 or such notice within which the applicant or recipient may request of the responsible Department official 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 § 141.7(c) of this part 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 normally be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official. Hearings shall be held before an official designated by the Secretary other than the responsible Department official.

(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 with as much conformity as is practicable with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing 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 officer presiding at the hearing 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. The Secretary may also transfer the hearing of any complaint to any other department or agency, with the consent of that department or agency, where Federal financial assistance to the applicant or recipient is substantially greater than that of the Department of State. Final decisions in all such cases, insofar as this part is concerned, shall be made in accordance with § 141.9.

§ 141.9 Decisions and notices.

(a) *Decisions on record or review by the responsible Department official.* The applicant or recipient shall be given reasonable opportunity to file with the officer presiding at the hearing briefs or other written statements of its contentions, and a copy of the final decision shall be given in writing to the applicant or recipient and to the complainant, if any. The officer presiding at the hearing shall render a decision on the matter.

(b) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 141.8(a) a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Rulings required.* Each decision of an officer presiding at the hearing 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.

(d) *Appeal.* Either party may appeal from a decision of the officer presiding at the hearing to the responsible Department official within 30 days of the mailing of the officer's decision. In the absence of such an appeal the decision of the officer presiding at the hearing shall constitute the final decision of the Department subject to paragraph (e) of this section.

(e) *Approval by Secretary.* Any final decision by an officer (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 or 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 applicant or recipient 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.

§ 141.10 Judicial review.

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

§ 141.11 Effect on other regulations; forms and instructions.

Nothing in this part shall be deemed to supersede: Executive Orders 10925 and 11114 and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(a) *Forms and instructions.* Each responsible Department official shall issue, and promptly make available to interested persons, 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.

(b) *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 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.

§ 141.12 Definitions.

As used in this part—

(a) The term "Department" means the Department of State and includes each of its operating agencies and other organizational units except the Agency for International Development.

(b) The term "Secretary" means the Secretary of State.

(c) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the official of the Department having responsibility within the Department for the program extending such assistance or such official of the Department as the Secretary designates.

(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) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, and (4) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(g) 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 other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(h) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term "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 the term "application" means such an application, request, or plan.

Effective date. This part shall become effective on the thirtieth day following the date of its publication in the *FEDERAL REGISTER*.

Dated: December 23, 1964.

DEAN RUSK,
Secretary of State.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS AND ACTIVITIES TO WHICH THIS PART APPLIES

1. Mutual understanding between people of the United States and the people of other countries by educational and cultural exchange—studies, research, instruction and other educational activities—cultural exchanges (Mutual Educational and Cultural Exchange Act of 1961—75 Stat. 527-538).
2. Center for Cultural and Technical Interchange Between East and West—grant to State of Hawaii (Public Law 86-472, 74 Stat. 141).
3. Assistance to or in behalf of refugees designated by the President (Migration and Refugee Assistance Act of 1962—76 Stat. 121-124).
4. Donations of certain foreign language tapes and other training material to public and private institutions (Regulations of Administrator of General Services relating to surplus property—41 CFR 101-6.2).

[F.R. Doc. 65-305; Filed, Jan. 8, 1965; 8:50 a.m.]

Chapter II—Agency for International Development, Department of State

[A.I.D. Reg. 9]

PART 209—NON-DISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Part 209 of Chapter II, Title 22 of the Code of Federal Regulations is added as follows:

Sec.	Purpose.
209.1	Purpose.
209.2	Application of this part.
209.3	Definitions.
209.4	Discrimination prohibited.
209.5	Assurances required.
209.6	Compliance information.
209.7	Conduct of investigations.
209.8	Procedure for effecting compliance.
209.9	Hearings.
209.10	Decisions and notices.
209.11	Judicial review.
209.12	Effect on other regulations; supervision and coordination.
209.13	Delegation of authority.

AUTHORITY: The provisions of this Part 209 issued under sec. 602, 78 Stat. 252, and sec. 621 of the Foreign Assistance Act of 1961, 75 Stat. 445; 22 U.S.C. 2402.

§ 209.1 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 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 or activity receiving Federal financial assistance pursuant to any authority held or delegated by the Administrator of the Agency for International Development.

§ 209.2 Application of this part.

This part applies to all programs carried on within the United States by recipients of Federal financial assistance pursuant to any authority held or delegated by the Administrator of the Agency for International Development, including the Federally-assisted programs and activities listed in Appendix A of this part. (Appendix A may be revised from time to time by notice in the *FEDERAL REGISTER*.) It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this regulation, even if the application for such assistance is approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, (d) any employment practice under any such program of any employer, employment agency, or labor organization, or (e) any

procurement of goods or services, including the procurement of training. This part does not bar selection and treatment reasonably related to the foreign assistance objective or such other authorized purpose as the Federal assistance may have. It does not bar selections which are limited to particular groups where the purpose of the program calls for such a limitation nor does not bar special treatment including special courses of training, orientation or counseling consistent with such purpose.

§ 209.3 Definitions.

For purposes of this part—

(a) The term "Act" means the Civil Rights Act of 1964 (78 Stat. 241).

(b) The term "Administrator" means the Administrator of the Agency for International Development or any person specifically designated by him to perform any function provided for under this part.

(c) The term "applicant" means one who submits an application, request or plan required to be approved by the Administrator, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such application, request, or plan.

(d) The term "facility" includes all or any portion of structures, equipment, 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.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis) Federal property 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 term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) The term "program" includes any program, project or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits

provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(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, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or a sovereign foreign government.

(i) 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.

§ 209.4 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 subjected to discrimination under, any program or activity receiving Federal financial assistance from the Agency for International Development.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on the ground 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, or

(vii) Deny an individual an opportunity to participate in a program as an employee where a primary objective of the Federal financial assistance is to provide employment.

(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 race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefit 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.

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

§ 209.5 Assurance required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program 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. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which

Federal financial assistance is extended pursuant to the application. The head of the bureau or office administering the Federal financial assistance shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of real property, except where covered by subparagraph (3) of this paragraph (a), shall be inserted in the instrument effecting the transfer of any such land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the Agency to revert title to the property in the event of breach of such nondiscrimination condition during 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, and (ii) a covenant running with the land for the same period. In the event 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 Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

(b) *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 a student assistance program, or for any other 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 unless the applicant establishes, to the satisfaction of the head of the bureau or office administering the Federal financial assistance, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in

such program. If in any such case the assistance sought is 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.

§ 209.6 Compliance information.

(a) *Cooperation and assistance.* The Administrator 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.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Administrator timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Administrator may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under 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 Administrator 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 under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 209.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The Administrator shall from 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 Administrator a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Administrator.

(c) *Investigations.* The Administrator 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 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 Administrator will so inform the recipient 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 § 209.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the Administrator will so inform the recipient and the complainant, if any, 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 complainant 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 proceeding arising thereunder.

§ 209.8 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 § 209.4.* If an applicant fails or refuses to furnish an assurance required under § 209.4 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 Agency for International Development shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Agency 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 to continue Federal financial assistance shall become effective until (1) the head of the bureau or office administering the Federal financial assistance 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, 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 Administrator pursuant to paragraph (e) of § 209.10 and (4) the expiration of 30 days after the Administrator 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 head of the bureau or office administering the Federal financial assistance has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Administrator, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) 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 efforts 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.

§ 209.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 209.8(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 recipient may request of the Administrator 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 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 § 209.8(c) of this part 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 Agency for International Development in Washington, D.C., at a time fixed by the Administrator unless he determines that the convenience of the applicant or recipient or of the Agency requires that another place be selected. Hearings shall be held before the Administrator or before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient, and the Agency for International Development 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 sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Agency for International Development 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 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 Administrator may, by agreements with such other department 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 § 209.10.

§ 209.10 Decisions and notices.

(a) *Decision by a hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Administrator for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Administrator his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Administrator may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Administrator shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Administrator shall be mailed promptly to the applicant or recipient and the complainant, if any. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Wherever a record is certified to the Administrator for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient 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 Administrator shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Wherever a hearing is waived pursuant to § 209.8(a) a decision shall be made by the Administrator on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Administrator 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 ap-

plicant or recipient has failed to comply.

(e) *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 applicant or recipient 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 Administrator that it will fully comply with this part.

§ 209.11 Judicial review.

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

§ 209.12 Effect on other regulations; supervision and coordination.

(a) All regulations, orders or like directions heretofore issued by any officer of the Agency for International Development 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 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 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 person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114, and regulations issued thereunder, or (2) any other regulation or instruction insofar as it prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* The Administrator may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) 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 § 209.10), including the achievement of effective coordination and maximum uniformity within the Agency for International Development and within the Executive branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 209.13 Delegation of authority.

Responsibility for administration and enforcement of this part, with respect to programs administered by another Federal department or agency pursuant to delegation, transfer interagency service agreement, or other arrangement is vested in the head of such department or agency, or his delegate, and subject to such delegations or redelegations as he may make or authorize.

Effective date. This part shall become effective on the thirtieth day following the date of its publication in the FEDERAL REGISTER.

Dated: December 29, 1964.

WILLIAM S. GAUD,
Acting Administrator.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS REGULATION APPLIES

1. Grants to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of less developed friendly countries (Section 211, Foreign Assistance Act, 22 U.S.C. 2171).

2. Grants to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of the less developed friendly countries of Latin America (Section 251, Foreign Assistance Act, 22 U.S.C. 2211).

3. Grants to organizations and institutions to carry out programs in the United States of research into, and evaluation of, economic development in less developed foreign countries (Section 241, Foreign Assistance Act, 22 U.S.C. 2193).

[F.R. Doc. 65-306; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Emergency Planning

OEP REG. 5—CIVIL RIGHTS

Nondiscrimination in Federally-Assisted Programs of OEP—Effectuation of Title VI of the Civil Rights Act of 1964

- Sec.
1. Purpose.
 2. Definitions.
 3. Application of this regulation.
 4. Further application of this regulation.
 5. Specific discriminatory actions prohibited.
 6. Life, health, and safety.
 7. Assurances required.
 8. Elementary and secondary schools.
 9. Assurances from institutions.
 10. Compliance information.
 11. Conduct of investigations.
 12. Procedure for effecting compliance.
 13. Hearings.
 14. Decisions and notices.
 15. Judicial review.
 16. Effect on other regulations; forms and instructions.

AUTHORITY: The provisions of this regulation are issued under sec. 602, 78 Stat. 252, and the laws referred to in section 3.

No. 6—Pt. II—4

Section 1. Purpose.

The purpose of this regulation 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 or activity receiving Federal financial assistance from the Office of Emergency Planning.

Sec. 2. Definitions.

As used in this regulation:

(a) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Director of the Office of Emergency Planning or other official of the agency who by law or by delegation has the principal responsibility within the agency for the administration of the law extending such assistance.

(b) 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.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property 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.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services,

financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structures, equipment, 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.

(f) 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 other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible agency official, 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.

Sec. 3. Application of this regulation.

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 by those receiving assistance under the "Federal Disaster Assistance" program (Public Law 81-875; 42 U.S.C. 1855-1855g), or under the "Interim Emergency Management of Resources" program (section 103 of the National Security Act of 1947; Public Law 80-253, as amended; 50 U.S.C. 404).

Sec. 4. Further application of this regulation.

Other programs under statutes hereafter enacted may be covered by this regulation after notice is published in the FEDERAL REGISTER. This regulation applies to any program for which Federal financial assistance is authorized under a law administered by the Office of Emergency Planning. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under such program, of any employer, employment agency, or labor organization.