

notice of initial decision, file with the Administrator his exceptions to the initial decision, and 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 notice of review, the Administrator shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Administrator.

(b) *Decisions on record on review by the Administrator.* Whenever the Administrator reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, the applicant or recipient, the Agency officials responsible, and the complainant, if any, shall be given reasonable opportunity to file with him briefs or other written statements of their contentions, and a written copy of the final decision of the Administrator shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 7.10(a), a decision shall be made by the Administrator on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner 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.

(e) *Approval by Administrator.* Any decision by an official of the Agency, other than the Administrator personally, which provides for the 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 Administrator personally, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the program involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purpose 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 have failed to comply with requirements imposed by or under this part unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance from the Agency if it satisfies the terms and conditions of that order for such eligibility and brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part in the future.

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

(3) If the Administrator denies any request made under paragraph (g)(2) of this section, the applicant or recipient may submit a request in writing for a hearing, specifying why it believes him to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Administrator. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. Failure to file such a request within 3 weeks after receipt of notice of such denial shall constitute consent to the Administrator's determination.

(4) While proceedings under paragraph (g) of this section are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 7.12 Judicial review.

Action taken under the Act is subject to judicial review as provided therein.

§ 7.13 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Agency, or by any predecessor of such an officer, 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 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 the discrimination against which they are directed is prohibited by this part, except that nothing in this part shall relieve any person of any obligation assumed or imposed under any such superseded regulations, order, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments

thereof): (1) Executive Order 11246 (3 CFR 1965 Supp., page 167) and regulations issued thereunder, or (2) any other orders, regulations, or instructions insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Administrator shall issue and promptly make available to all 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.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of the Agency, or to officials of other departments or agencies of the government with the consent of such departments or agencies, responsibilities in connection with effectuation of the purposes of title VI of the Act and this part including the achievement of effective coordination and maximum uniformity within the Agency and within the Executive Branch of the government in the application of title VI and this part to similar programs and in similar situations. The Administrator may delegate in writing any function assigned (other than responsibility for final decision as provided in § 7.11) to him by the Act or by this part. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment or delegation of responsibility under this paragraph shall have the same effect as though such action had been taken by the Administrator of the Agency. All actions taken pursuant to this part with respect to EPA grants including written communications to or from a grant applicant or grantee shall be effected through the appropriate EPA Grants Officer.

[FR Doc.73-13298 Filed 7-3-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

PART 101-6 MISCELLANEOUS REGULATIONS

Nondiscrimination in Federally Assisted Programs

On pages 23488 through 23491 of the FEDERAL REGISTER of December 9, 1971, there was published a notice of a proposed rule making to issue regulations designed to ensure nondiscrimination in programs for which Federal financial assistance is authorized to be provided by GSA. Interested persons were invited to submit comments, suggestions, or objections regarding the proposed regulations.

Comments were submitted to and reviewed by the Civil Rights Division, Department of Justice, which determined that no additions are required to the GSA regulations. Accordingly, the proposed regulations are hereby adopted without change and are set forth below.

Effective date. These regulations shall be effective July 5, 1973.

ARTHUR F. SAMPSON,
Acting Administrator of
General Services.

JULY 11, 1972.

The table of contents for Part 101-6 is amended to provide a revised title for Subpart 101-6.2 and new and revised section entries, as follows:

Subpart 101-6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

Sec.	
101-6.207	[Reserved]
101-6.208	[Reserved]
101-6.213-7	Post termination proceedings.
101-6.217	Laws authorizing Federal financial assistance for programs to which this subpart applies.

Subpart 101-6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

1. Section 101-6.201 is revised to read as follows:

§ 101-6.201 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under title VI of the Civil Rights Act of 1964 (52 U.S.C. 2000d-2000d-4) concerning nondiscrimination in federally assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA.

2. Section 101-6.203 is revised to read as follows:

§ 101-6.203 Application of subpart.

(a) Subject to paragraph (b) of this section, this subpart applies to any program for which Federal financial assistance is authorized under a law administered in whole or in part by GSA, including the laws listed in § 101-6.217. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program after the effective date of this subpart pursuant to an application approved prior to such effective date. This subpart does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended to any such program before the effective date of this subpart, except to the extent otherwise provided by contract, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 101-6.204-2(d). The fact that a statute which authorizes GSA to extend Federal financial assistance to a program or activity is not listed in § 101-6.217 shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs involving statutes now in force or hereinafter enacted may be added to this list by notice published in the *FEDERAL REGISTER*.

(b) The regulations issued by the following Departments pursuant to title VI of the Act shall be applicable to the programs involving Federal financial assistance of the kind indicated, and those Departments shall respectively be responsible for determining and enforcing compliance therewith:

(1) Department of Health, Education, and Welfare—donation or transfer of surplus property for purposes of education or public health (§ 101-6.217 (a) (2) and (b)).

(2) Department of Defense—donation of surplus personal property for purposes of civil defense (§ 101-6.217(a) (2)).

(3) Department of Transportation—donation of property for public airport purposes (§ 101-6.217(c)). GSA will, however, be responsible for obtaining such assurances as may be required in applications and in instruments effecting the transfer of property.

(4) Department of the Interior—disposal of surplus real property, including improvements, for use as a public park, public recreational area, or historic monument (§ 101-6.217(d) (1) and (2)). GSA will, however, be responsible for obtaining such assurances as may be required in applications and in instruments effecting the transfer of property for use as a historic monument.

(5) Department of Housing and Urban Development—disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (§ 101-6.217(q)).

(c) Each Department named in paragraph (b) of this section shall keep GSA advised of all compliance and enforcement actions, including sanctions imposed or removed, taken by it with respect to the programs specified in paragraph (b) of this section to which the regulations of such Department apply.

3. Section 101-6.204-2 is amended to read as follows:

§ 101-6.204-2 Specific discriminatory actions prohibited.

(a) (1) In connection with any program to which this subpart applies, a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

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

(4) This subpart does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participa-

tion in, the program or activity receiving Federal financial assistance, on the ground of race, color, or national origin. Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this subpart applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(d) (1) Where a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including, but not limited to, recruitment or recruitment advertising; employment; layoff or termination; upgrading, demotion, or transfer; rates of pay or other forms of compensation; selection for training, including apprenticeship; and use of facilities). The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or the corresponding provisions of any Executive order which supersedes it.

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

4. Section 101-6.205-1 is amended to read as follows:

§ 101-6.205-1 General.

(b) In the case of real property, structures or improvements thereon, or interests therein, which is acquired with Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision

of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by GSA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible GSA official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

5. Section 101-6.205-2 is revised to read as follows:

§ 101-6.205-2 Continuing State programs.

Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this subpart applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (a) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this subpart, and (b) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible GSA official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this subpart.

6. Section 101-6.205-3 is revised to read as follows:

§ 101-6.205-3 Elementary and secondary schools.

The requirements of §§ 101-6.205-1 and 101-6.205-2 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the re-

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

7. Section 101-6.206 is amended to read as follows:

§ 101-6.206 Illustrative applications.

The following examples will illustrate the application of the foregoing provisions of this subpart to certain programs for which Federal financial assistance is extended by GSA (in all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin, prohibited by title VI of the Act and this subpart):

(g) In the program involving the transfer of surplus real property for use in the provision of rental or cooperative housing to families or individuals of low or moderate income (§ 101-6.217(q)), discrimination in the selection and assignment of tenants is prohibited.

In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 101-6.209-4 to provide information as to the availability of the program or activity and the rights of beneficiaries under this subpart have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will ensure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nation-

ality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

8. Sections 101-6.207, including the subsections thereof, and 101-6.208 are deleted and reserved as follows:

§ 101-6.207 [Reserved]

§ 101-6.208 [Reserved]

9. Section 101-6.211-4 is revised to read as follows:

§ 101-6.211-4 Other means authorized by law.

No action to effect compliance by an other means authorized by law shall be taken until (a) the responsible GSA official has determined that compliance cannot be secured by voluntary means, (b) the recipient or other person has been notified of his failure to comply and of the action to be taken to effect compliance, and (c) 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 subpart and to take such corrective action as may be appropriate.

10. Section 101-6.212-2 is revised to read as follows:

§ 101-6.212-2 Time and place of hearing.

Hearings shall be held, at a time fixed by the responsible GSA official, at the offices of GSA in Washington, D.C., unless such official determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings shall be held before the responsible GSA official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 or 3344 (section 11 of the Administrative Procedure Act).

11. Section 101-6.212-4 is amended to read as follows:

§ 101-6.212-4 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative 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 § 101-6.212-1, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA 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.

12. Section 101-6.213-7 is added as follows:

§ 101-6.213-7 Post termination proceedings.

(a) An applicant or recipient adversely affected by an order issued under § 101-6.213-6 shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart. An elementary or secondary school or school system which is unable to file an assurance of compliance with § 101-6.24 shall be restored to full eligibility to receive financial assistance if it files a court order or a plan for desegregation meeting the requirements of § 101-6.205-3 and provides reasonable assurance that it will comply with this court order or plan.

(b) Any applicant or recipient adversely affected by an order entered pursuant to § 101-6.213-6 may at any time request the responsible GSA official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (a) of this section. If the responsible GSA official determines that those requirements have been satisfied, he shall restore such eligibility.

(c) If the responsible GSA official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible GSA official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, the sanctions imposed by the order issued under § 101-6.213-6 shall remain in effect.

13. Section 101-6.215-1 is amended to read as follows:

§ 101-6.215-1 Effect on other regulations.

(a) Executive Orders 10925, 11114, and 11246, and regulations issued thereunder.

(b) Any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this subpart is inapplicable, or prohibit discrimination on any other ground.

14. Section 101-6.215-3 is revised to read as follows:

§ 101-6.215-3 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 departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this subpart (other

than responsibility for final decision as provided in § 101-6.213), including the achievement of effective coordination and maximum uniformity within GSA and within the executive branch of the Government in the application of title VI and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the responsible GSA official.

15. Section 101-6.217 is amended to read as follows:

§ 101-6.217 Laws authorizing Federal financial assistance for programs to which this subpart applies.

(a) (1) Donation of surplus personal property to educational activities which are of special interest to the armed services (section 203(j) (2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(j) (2)).

(2) Donation of surplus personal property for use in any State for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(j) (3) and (4) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(j) (3) and (4)), and the making available to State agencies for surplus property, or the transfer of title to such agencies, of surplus personal property approved for donation for purposes of education, public health, or civil defense, or for research for any such purposes (section 203(n) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(n)).

(b) Disposal of surplus real and related personal property for purposes of education or public health, including research (section 203(k) (1) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k) (1)).

(c) Donation of property for public airport purposes (section 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g); section 23 of the Airport and Airway Development Act of 1970, Public Law 91-258).

(d) (1) Disposal of surplus real property, including improvements, for use as a historic monument (section 13(h) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(h)).

(2) Disposal of surplus real and related personal property for public park or public recreational purposes (section 203(k) (2) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484(k) (2)).

(q) Disposal of surplus real property for use in the provision of rental or cooperative housing to be occupied by families or individuals of low or moderate income (section 414 of the Housing and Urban Development Act of 1969, Public Law 91-152).

(Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1)
[FR Doc.73-13300 Filed 7-3-73; 8:45 am]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

The following amendments were published as proposed rulemaking in 36 FR 23491 (Dec. 9, 1971). As a result of comments received, certain changes have been made in the proposal to conform to the uniform agency amendments. A new provision (vii) is added to § 17.3(b) to prohibit discrimination in the selection of planning and advisory boards. The requirement that a recipient take affirmative action to eliminate discrimination is clarified in § 17.3(b) (4) (i) and (ii). A sentence has been added to § 17.5(b) to require that recipients maintain data showing the extent to which minority group persons receive the benefits of Federal financial assistance. The time for filing complaints in § 17.6(b) has been extended from 90 to 180 days. Other minor technical corrections have been made in the original proposal.

§ 17.2 [Amended]

1. The present text of § 17.2 is designated as paragraph (a) and paragraphs (a), (b), (c), and (d) thereof are redesignated as subparagraphs (1), (2), (3), and (4).

2. A new paragraph (b), reading as follows, is added to § 17.2:

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

§ 17.3 [Amended]

3. Paragraph (b) of § 17.3 is amended by adding the following subdivision (vii) to subparagraph (1):

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

4. Subparagraphs (3) and (4) of paragraph (b) of § 17.3 are respectively redesignated as subparagraphs (5) and (6), and new subparagraphs (3) and (4), reading as follows, are added to paragraph (b):

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

(4) (i) In administering a program regarding which the recipient has pre-

viously discriminated against persons on the grounds of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

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

5. Paragraph (c) of § 17.3 is revised to read as follows:

(c) *Employment practices.* (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246, as amended, or any Executive Order which supersedes it.

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

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefit of, or to subject them to discrimination under any program to which this regulation applies,

the provisions of subparagraph (1) of this paragraph shall apply to the employment practices of the recipient or other persons subject to this part, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

6. Paragraph (e) of § 17.3 is deleted.

§ 17.4 [Amended]

7. Paragraph (a) of § 17.4 is revised to read as follows:

(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. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, or improvement of real property or structures, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances 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) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal

Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

§ 17.4 [Amended]

8. In § 17.4(b)(1)(ii), the phrase "the Secretary or his designee" is substituted for the phrase "the head of the bureau or office administering the Federal financial assistance."

9. Subparagraph (2) in the first sentence of § 17.4(c) is revised to read as follows:

(2) Submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible official of the Department of Health, Education and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part.

10. Paragraph (d) of § 17.4 is revised by substituting in subparagraph (2) the phrase "the Secretary or his designee" for the phrase "the head of the bureau or office administering the Federal financial assistance."

11. Section 17.5 is revised to read as follows:

§ 17.5 Compliance information.

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

(b) *Compliance reports.* Each recipient shall keep such records and submit to

the Secretary or his designee timely, complete and accurate compliance reports, at such times, and in such form and containing such information, as the Secretary or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs. In the case 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 Secretary or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

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

12. Paragraphs (a), (b), (c) and (d) of § 17.6 are revised read as follows:

§ 17.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary 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 himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Secretary, or his designee.

(c) *Investigations.* Whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part, a prompt investigation shall be made. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the

circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

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

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

§ 17.7 [Amended]

13. In subparagraph (1) of paragraph (c) of § 17.7 the phrase "Secretary or his designee" is substituted for the phrase "head of the bureau or office administering the Federal financial assistance."

14. Paragraph (d) of § 17.7 is revised to read as follows:

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Secretary or his designee has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional effort shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 17.8 [Amended]

15. In the second sentence of paragraph (a) of § 17.8 the words "the head of the bureau or office or" are deleted.

16. Paragraph (b) of § 17.8 is revised to read as follows:

(b) *Time and place of hearing.* Hearings shall be held at the Office of Hearings and Appeals of the Department in the Washington, D.C., area, at a time fixed by the hearing examiner to whom the matter has been assigned unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated by the Office of Hearings and Appeals in accordance with 5 U.S.C. 3105 and 3344.

17. In subparagraph (1) of paragraph (d) of § 17.8 the phrase "in conformity with sections 5 through 8 of the Administrative Procedure Act (5 U.S.C. 1004 through 1007)" is amended to read "in conformity with 5 U.S.C. 554-557."

18. Section 17.9 is revised to read as follows:

§ 17.9 Decisions and notices.

(a) *Initial decision by a hearing examiner.* The hearing examiner shall

make an initial decision and a copy of such initial decision shall be sent by registered mail, return receipt requested, to the recipient or applicant.

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

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

(d) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to paragraph (a) of § 17.8, a decision shall be made by the Director, Office of Hearings and Appeals on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(e) *Rulings required.* Each decision of a hearing examiner or the Director, Office of Hearings and Appeals, shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(f) *Approval by Secretary.* Any final decision of a hearing examiner or of the Director, Office of Hearings and Appeals, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(g) *Content of decisions.* The final decision may provide for the suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance 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 regulation, or to have otherwise failed to comply with this part, unless and until it corrects its non-compliance and satisfies the Secretary that it will fully comply with this part.

(h) *Post termination proceedings.* (I) An applicant or recipient adversely affected by an order issued under paragraph (g) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

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

(3) If the Secretary denies any such request, the applicant or recipient may submit to the Secretary a request for a hearing in writing, specifying why it believes the Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with the procedures set forth in Part 17a of this Title. The applicant or recipient shall be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph.

(4) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (g) of this section shall remain in effect.

§ 17.11 [Amended]

19. Subparagraph (1) in the second sentence of paragraph (a) of § 17.11 is amended to read, "(1) Executive Orders 10925, 11114 and 11246, as amended, and regulations issued thereunder."

20. In paragraph (b) of § 17.11, the phrase "The Secretary or his designee" is substituted for the phrase "The head of each bureau and office administering Federal financial assistance."

21. Paragraph (c) of § 17.11 is revised by addition of the following as a final sentence: Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of the Interior.

22. Section 17.12 is revised by amending paragraph (c) and adding paragraph (k) to read as follows:

§ 17.12 Definitions.

(c) The term "Secretary" means the Secretary of the Interior or, except in § 17.9(f), any person to whom he has

delegated his authority in the matter concerned.

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

23. In Appendix A, part I(b), item 7 is deleted and item 8 through 21 are redesignated as items 7 through 20.

24. In Appendix A, part III, item 3 is added to read as follows:

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

25. In paragraph (a) of part IV in Appendix A, the heading is amended and items 5 and 7 are revised to read as follows:

(a) Grants of Federal funds.

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

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

26. Items 2 and 3 are deleted from paragraph (b) of part IV in Appendix A and items 4 through 6 are redesignated as items 2 through 4.

27. Items 1, 4 and 5 are deleted from paragraph (c) of part IV in Appendix A and items 2, 3, and 6 are redesignated as items 1, 2 and 3.

28. Item 3 in paragraph (a) of section V in Appendix A is revised and item 9 is added in the same paragraph, to read as follows:

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

9. Outdoor Recreation Programs (78 Stat. 897, as amended, 16 U.S.C. §§ 4601-4601-11).

29. Any rule, order, policy, guideline, finding, determination, authorization, requirement, designation or other action prescribed, issued or taken before the effective date of these amendments under Part 17 shall have the same effect as if these amendments to Part 17 had not been made. No administrative proceeding shall abate by reasons of the taking effect of these amendments. Administrative proceedings initiated under Part 17 prior to these amendments and not finally disposed of prior to such effective date shall be governed by the provisions of Part 17 as amended. In any case under Part 17 where a hearing examiner had rendered an initial or recommended decision, the case shall be concluded in accordance with the provisions of Part 17 as amended.

30. These amendments shall be effective on July 5, 1973.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc. 73-13287 Filed 7-3-73; 8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

Amendments to 45 CFR Part 80 are adopted for the purposes indicated below. Revisions similar to those described below (except for revisions described in items numbered 12-14) are uniform changes being adopted by other agencies which provide Federal financial assistance, pursuant to Title VI of the Civil Rights Act of 1964. The revisions described under items 12-14 below are not uniform; they are procedural in nature and designed for the regulation of this agency only. In addition, citations to statutory authority are added immediately after each section of 45 CFR Part 80.

1. A new subparagraph (1) (vii) is added to § 80.3(b) to prohibit discrimination in the selection of persons to planning or advisory bodies.

2. The present subparagraphs (3) and (4) of § 80.3(b) are renumbered (4) and (5), respectively, and a new subparagraph (3) is added to clarify nondiscrimination requirements with respect to the selection of sites and locations for facilities which affect the provision of federally-assisted benefits.

3. A new § 80.3(b) (6) is added as (i) to require recipients to take affirmative action to overcome the effects of prior discrimination, where the recipient has previously discriminated and as (ii) to indicate recipients are not prohibited from taking affirmative action to overcome the effects of conditions which resulted in limited program participation by persons of a particular race, color, or national origin.

4. A subparagraph is added to § 80.3(c) to state the rule concerning discriminatory employment practices which result in excluding individuals from participation in, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this regulation applies.

5. Subparagraph (b) under § 80.3(c) relating to community work and training assisted under Title IV of the Social Security Act, 42 U.S.C. 609, is deleted.

6. Subparagraph (d) (formerly (e)) of § 80.3(c) is changed to read "rehabilitation facilities" instead of "sheltered workshops."

7. Section 80.4(a)(2) is revised to delete the requirement that surplus property transfers contain a reverter for breach of the nondiscrimination provisions and instead to authorize a reverter discretionary with the responsible department official in the case of any real