

Department of Energy

§ 1040.3

- 1040.112 Noncompliance with assurances.
- 1040.113 Deferral.
- 1040.114 Termination of or refusal to grant or to continue Federal financial assistance.
- 1040.115 Other means authorized by law.

OPPORTUNITY FOR HEARING

- 1040.121 Notice of opportunity for hearing.
- 1040.122 Request for hearing or review.
- 1040.123 Consolidated or joint hearings.
- 1040.124 Responsibility of the Federal Energy Regulatory Commission.

JUDICIAL REVIEW

- 1040.131 Judicial review.
- APPENDIX A TO PART 1040—FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF ENERGY TO WHICH THIS PART APPLIES
- AUTHORITY: 20 U.S.C. 1681-1686; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d-4a, 3601-3631, 5891, 6101-6107, 6870, 7101 *et seq.*

SOURCE: 45 FR 40515, June 13, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 1040.1 Purpose.

The purpose of this part is to implement Title VI of the Civil Rights Act of 1964, Pub. L. 88-352; section 16 of the Federal Energy Administration Act of 1974, as amended, Pub. L. 93-275; section 401 of the Energy Reorganization Act of 1974, Pub. L. 93-438; Title IX of the Education Amendments of 1972, as amended, Pub. L. 92-318, Pub. L. 93-568 and Pub. L. 94-482; section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93-112; the Age Discrimination Act of 1975, Pub. L. 94-135; Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284; and civil rights provisions of statutes administered pursuant to authority under the DOE Organization Act, Pub. L. 95-91, so no person shall, on the ground of race, color, national origin, sex (when covered by section 16 and section 401), handicap, or age, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where a primary purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices (under section 504, all grantee and subgrantee employment practices are covered regardless of the purpose of the pro-

gram), in connection with any program or activity receiving Federal financial assistance from the Department of Energy (after this referred to as DOE or the Department). Employment coverage may be broader in scope when section 16, section 401, or Title IX are applicable.

§ 1040.2 Application.

(a) The application of this part is to any program or activity for which Federal financial assistance is authorized under laws administered by DOE. Programs to which this part applies are listed in Appendix A of this part. Appendix A is to be revised from time to time by notice published in the FEDERAL REGISTER. This part applies to money paid, property transferred, or other Federal financial assistance including cooperative agreements extended under any program or activity, by way of grant, loan, or contract by DOE, or grants awarded in the performance of a contract with DOE by an authorized contractor or subcontractor, the terms of which require compliance with this part. If any statutes implemented by this part are otherwise applicable, the failure to list a program in Appendix A does not mean the program is not covered by this part.

(b) This part does not apply to:

- (1) Contracts of insurance or guaranty;
- (2) Employment practices under any program or activity except as provided in §§ 1040.12, 1040.14, 1040.41, 1040.47 and 1040.66; or
- (3) Procurement contracts under Title 41 CFR part 1 or part 9.

§ 1040.3 Definitions—General.

(a) *Academic institution* includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(b) *Administrative law judge* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(c) *Agency* or *Federal agency* refers to any Federal department or agency which extends Federal financial assistance.

(d) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a primary recipient as a condition to becoming eligible for Federal financial assistance.

(e) *Assistant Attorney General* refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(f) *Director, FAPD* refers to the Director, Federally Assisted Programs Division, Office of Equal Opportunity, DOE.

(g) *Compliance Review* means an analysis of a recipient's selected employment practices or delivery of services for adherence to provisions of any of the subparts of this part.

(h) *Department* means the Department of Energy (DOE).

(i) *FERC* means the Federal Energy Regulatory Commission, DOE.

(j) Where designation of persons by race, color, or national origin is required, the following designations are to be used:

(1) *Black, not of Hispanic origin.* A person having origins in any of the black racial groups of Africa.

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Hawaiian Islands, and Samoa.

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic origin.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Paragraphs (j) (1) through (5), inclusive, set forth in this section are in conformity with Directive No. 15 of the Office of Federal Statistical Policy and

Standards. To the extent that these designations are modified, paragraphs (j) (1) through (5), inclusive, set forth in this section are to be interpreted to conform with those modifications.

(k) *Director* means the Director, Office of Equal Opportunity, DOE.

(l) *Disposition* means any treatment, handling, decision, sentencing, confinement, or other proscription of conduct.

(m) *Employment practices*, see individual section headings.

(n) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(o) *Federal financial assistance* includes:

(1) Grants and loans of Federal funds,

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

(3) The detail of or provision of services by 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, the furnishing of services 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 the sale, lease, or furnishing of services to the recipient, and

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

(p) *General Counsel* mean the Office of the General Counsel Department of Energy.

(q) *Government organization* means the political subdivision for a prescribed geographical area.

(r) *Investigations* include fact-finding efforts and attempts to secure voluntary resolution of complaints.

(s) *Noncompliance* means the failure of a recipient or subrecipient to comply with any subpart of this part.

(t) *Primary recipient* means any person, group, organization, state, or local unit of government which is authorized or required to extend Federal financial

assistance to another recipient for the purpose of carrying out a program.

(u) *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 an employee of the grantee or provided by others through contracts or other arrangements with the grantee, 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 resources or such non-Federal resources.

(v) *Responsible Departmental or DOE Official* means the official of the Department of Energy that has been assigned the principal responsibility for administration of the law extending Federal financial assistance.

(w) *Reviewing authority* means the component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(x) *Secretary* means the Secretary of the Department of Energy.

(y) The term *United States* includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States, and the term *State* includes any one of the foregoing.

(z) *Headquarters* means DOE offices located in Washington, D.C.

§ 1040.4 Assurances required and preaward review.

(a) *Assurances*. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Director that the program or activity will be operated in compliance with applicable subparts. Such assurances are to include provisions which give the United States a right to seek judicial enforcement.

(b) *Duration of obligation*. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structure on the property, the assurance obligates 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 the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance obligates the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance obligates the recipient to all terms and conditions contained in the certificate of assurance for the period during which Federal financial assistance is extended.

(c) *Covenants*. Where Federal financial assistance is provided in the form of real property, structures, improvements on or interests in the property, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest in the property from the Department:

(1) The instrument effecting or recording this transfer is to contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits; or

(2) Where no transfer of property is involved or imposed with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in

the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant is to 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 material breach of the covenant. If a transferee of real property manages to mortgage or otherwise encumber the real property as security for financing construction of new or improvement of existing facilities on the property for the purpose for which the property was transferred, the Director may, upon request of the transferee and, if necessary to accomplish such financing and upon such conditions, as he or she deems appropriate, agree to forbear the exercise of the right to revert title for so long as the lien of the mortgage or other encumbrance remains effective.

(d) *Assurances from government agencies.* In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section is to extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Department official if the applicant establishes, to the satisfaction of the responsible Department official, that the practices in other agencies or parts of programs of the governmental unit will in no way affect:

(1) Its practices in the program for which Federal financial assistance is sought;

(2) The beneficiaries of or participants in or persons affected by such program; or

(3) Full compliance with the subpart as respects such program.

(e) *Assurance from academic and other institutions.* (1) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this

section is to extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility.

(f) *Continuing State programs.* Any State or State agency administering a program which receives continuing Federal financial assistance subject to this part shall, as a condition for the extension of such assistance:

(1) Provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with applicable subparts; and

(2) Provide for such methods of administration as are found by the Director or a designee to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this part.

(g) *Assistance for construction.* Where the assistance is sought for the construction of a facility, or a part of a facility, the assurance is to extend to the entire facility. If a facility to be constructed is part of a larger system, the assurance is to extend to the larger system.

(h) *Pre-award review.* Prior to and as a condition of approval, all applications for Federal financial assistance are to be reviewed by the appropriate Civil Rights Department official who is to make a written determination of the applicant's compliance with this part. The basis for such a determination is to be the submission of the assurance of compliance as specified in paragraph (a) and a review of data to be submitted by the applicant as specified by the Director. For purposes of this subsection, the appropriate departmental

official at headquarters level is the Director, FAPD, Office of Equal Opportunity, and at the regional level it is to be the Civil Rights Officer delegated by the Director as having review authority for determining compliance with requirements of this part. Where a determination of compliance cannot be made from this data, DOE may require the applicant to submit necessary additional information and may take other steps necessary to make the determination of compliance. Such other steps may include, for example, communicating with local government officials or protected class organizations and field reviews. Any agreement to achieve voluntary compliance as a result of a preaward review shall be in writing. In the case of Title VI, the Director will notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews. The opportunity for a hearing as provided under § 1040.113 is applicable to this section.

§ 1040.5 Designation of responsible employee.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to carry out its responsibilities under this part. The recipient shall publish the name, office address and telephone number of the employee or employees appointed under this paragraph.

(b) A recipient shall display prominently, in reasonable numbers and places, posters which state that the recipient operates a program or programs subject to the nondiscrimination provisions of applicable subparts, summarize those requirements, note availability of information regarding this part from the recipient and DOE, and explain briefly the procedures for filing a complaint. Information on requirements of this part, complaint procedures and the rights of beneficiaries are to be included in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to

publish or broadcast program information in the news media, the recipient shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by Federal law.

(c) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program requires service or information in a language other than English in order to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and size and concentration of such population, to provide information in appropriate languages (including braille) to such persons. This requirement applies to written material of the type which is ordinarily distributed to the public. The Department may require a recipient to take additional steps to carry out the intent of this subsection.

§ 1040.6 Notice.

(a) A recipient shall take appropriate, initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of race, color, national origin, sex (where sec. 16 or sec. 401 apply), handicap, or age. The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, and treatment of, or employment in its programs and activities and inform employees of their rights under this part. The notification is to include an identification of the responsible employee designated under § 1040.5. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The provisions of § 1040.5(c) to provide information in appropriate languages (including braille), apply to this section.

§ 1040.7 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of race, color, national origin, sex, handicap, or age in any program or activity receiving Federal financial assistance, the recipient shall take remedial action as the Director considers necessary to overcome the effects of the discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of race, color, national origin, sex, handicap, or age in any program or activity, a recipient may continue a program that will encourage participation by all persons regardless of race, color, national origin, sex, handicap, or age.

(c) *Self-evaluation.* Each recipient shall, within one year of the effective date of this part:

(1) Whenever possible, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(2) Modify any policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of discrimination which resulted or may have resulted from adherence to these questionable policies and practices.

(d) Availability of self-evaluation and related materials. Recipient shall maintain on file, for at least three years following its completion, the evaluation required under paragraph (c) of this section, and shall provide to the Director, upon request, a description of any modifications made under paragraph (c)(2) of this section and of any remedial steps taken under paragraph (c)(3) of this section.

§ 1040.8 Effect of employment opportunity.

Due to limited opportunities in the past, certain protected groups may be underrepresented in some occupations or professions. A recipient's obligation to comply with this part is not alleviated by use of statistical information which reflects limited opportunities in those occupations or professions.

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as Amended; and Section 401 of the Energy Reorganization Act of 1974

§ 1040.11 Purpose and application.

(a) The purpose of this subpart is to implement title VI of the Civil Rights Act of 1964 (title VI) and the pertinent regulations of DOE so 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 otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance of the type subject to title VI. This subpart also implements section 16 of the Federal Energy Administration Act of 1974, as amended (section 16) and section 401 of the Energy Reorganization of 1974 (section 401) so that no person shall be excluded on the ground of sex from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance subject to section 16 or 401. The coverage of employment practices is explained in § 1040.14.