

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 6388]

PART 15—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE FEDERAL AVIATION AGENCY—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The purpose of this amendment adding Part 15 to the Federal Aviation Regulations is to implement section 601 of the Civil Rights Act of 1964 (P.L. 88-352).

Section 601 of the Civil Rights Act of 1964 forbids discrimination on the ground of race, color, or national origin under any program or activity that receives Federal financial assistance. Section 602 of the Civil Rights Act of 1964 authorizes and directs each Federal department or agency that is empowered to assist any program or activity to issue regulations implementing section 601. Accordingly, the Federal Aviation Agency is adopting a new Part 15 to accomplish this legislative directive.

In consideration of the foregoing, Chapter I of Title 14 of the Code of Federal Regulations is amended by adding a new Part 15, as hereinafter set forth, effective 30 days after publication in the FEDERAL REGISTER.

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AUTHORITY: The provisions of this Part 15 issued under sec. 602, Civil Rights Act of 1964 (42 U.S.C. 501), and the laws referred to in Appendix A.

§ 15.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (in this part 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 Federal Aviation Agency.

§ 15.3 Applicability.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the FAA including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance

extended under any such program after the effective date of this part pursuant to an application approved before that date.

(b) This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part;

(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.

(c) The fact that a program or activity is not listed in Appendix A does not mean, if Title VI of the Act is otherwise applicable, that the program is not covered. Other programs under statutes in force on the effective date of this part or enacted after that date may be added to this list by notice published in the FEDERAL REGISTER.

§ 15.5 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 that 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 that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(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 that 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 sit-

uations in which, such services, financial aid, other benefits, or facilities will be provided under 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 respects 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 are considered 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) *Examples.* The following examples illustrate the application of the non-discrimination provisions of Title VI of the Civil Rights Act and this part:

(1) The operator of an airport who is the recipient of Federal financial assistance must give assurance that an entrepreneur who rents space at the airport and there operates a restaurant will not in any manner discriminate between patrons for reasons of race, color, or national origin.

(2) The operator of an airport who is the recipient of Federal financial assistance is bound by the conditions and covenants in the conveyance that prohibit, among other things, discrimination for reason of color, race, or national origin in admission of the public to waiting rooms, sightseeing areas, sanitary facilities, and any other facilities under the control of the airport operator himself.

§ 15.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part 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. Where a facility is comprised of real property for which application is made under a program and, in addition, other real property of the applicant, the assurance applies to the entire facility. In the case of personal property the assurance obligates

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the recipient for the period during which he retains ownership or possession of the property. The Administrator specifies the form of the 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) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

(b) *Pre-existing contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part applies, has been executed before the effective date of this part, and the funds have not been fully disbursed by the FAA, the Administrator requires an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

§ 15.9 Compliance information.

(a) *Cooperation and assistance.* To the fullest extent practicable the Administrator seeks the cooperation of recipients in obtaining compliance with this part and provides 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.

(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 fails or refuses 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.

§ 15.11 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 after 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 § 15.13.

(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 may 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 by 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.

§ 15.13 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:

(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 § 15.7.* If an applicant fails or refuses to furnish an assurance required under § 15.7 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 FAA is not required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the FAA 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 continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance may become effective until:

(1) The Administrator 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 § 15.17 (e); 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 continue Federal financial assistance is limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and is 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 may be taken until:

(1) The Administrator 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 his failure to comply and of the action to be taken to effect compliance; and

(4) The expiration of at least 10 days after 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 part and to take such corrective action as may be appropriate.

§ 15.15 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 15.13(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 paragraph or to appear at a hearing for which a date has been set is considered to be a waiver of the right to a hearing under section 602 of the Act and § 15.13(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 FAA 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 FAA requires that another place be selected. Hearings shall be held before the Administrator or, at his discretion, 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 FAA 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 through 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 FAA and the applicant or recipient may 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 do 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 are 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 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 Administrator 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 § 15.17.

§ 15.17 Decisions and notices.

(a) *Decision by person other than the Administrator.* If the hearing is held by a hearing examiner the 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. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days after 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. In the absence of either exceptions or a notice of review the initial decision constitutes the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Whenever 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 to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is

waived pursuant to § 15.15(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 applicant or recipient has failed to comply.

(e) *Approval by Administrator.* Any final decision of any official of the FAA (other than the Administrator) that 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 Administrator, who may personally 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 Administrator that it will fully comply with this part.

§ 15.19 Judicial review.

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

§ 15.21 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued by any official of the FAA before the effective date of this part and 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 before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

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(1) Executive Orders 10925 and 11114 and regulations issued thereunder; or

(2) 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 part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The FAA will issue and promptly make available to interested persons forms and detailed instructions and procedures necessary for effectuating this part as applied to programs to which this part applies.

(c) *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 part (other than responsibility for final decision as provided in § 15.17), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations.

§ 15.23 Definitions.

As used in this part—

(a) "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 re-

duced 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.

(b) "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), 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.

(c) "Facility" includes all or any part 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.

(d) "Recipient" means any State, territory, possession, the District of Co-

lumbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(e) "Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(f) "Applicant" means a person 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 "application" means such an application, request, or plan.

Issued in Washington, D.C., on December 14, 1964.

N. E. HALABY,
Administrator.

Approved: December 28, 1964.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS PART APPLIES

1. Federal-aid Airport Program (Secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).

2. Acquisition of U.S. Land for Public Airports:

a. Section 16 of the Federal Airport Act (49 U.S.C. 1115); and

b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of October 1, 1949, 50 U.S.C. App. 1622b).

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