

and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient or other party may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the recipient or other party that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient or other party may waive a hearing and submit written information and argument for the record. The failure of a recipient or other party to request a hearing under this paragraph of this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 8.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official or hearing officer unless he determines that the convenience of the recipient or other party or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official, or at his discretion, before a hearing officer.

(c) *Right to counsel.* In all proceedings under this section, the recipient or other party and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedures Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the

recipient or other party shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 8.13.

§ 8.13 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification

§ 8.13

15 CFR Subtitle A (1-1-00 Edition)

shall be mailed to the recipient or other party subject to this part. Where the initial decision is made by the hearing officer, the recipient or other party may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the recipient or other party a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

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

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

(d) *Ruling required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient or other party has failed to comply.

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

official (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

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

(g) *Posttermination proceedings.* (1) Any recipient or other party which is adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

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

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

§8.14 Judicial review.

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

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

(a) *Effect on other laws.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to any recipient or other party subject to this part of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any one of any obligations assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 9, 1965. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

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

(2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such order, regulations, or instructions

prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested parties forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in §8.13), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

APPENDIX A TO PART 8—PROGRAMS COVERED BY TITLE VI

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

Economic Development Administration

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

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