



Delaware Department
of Transportation

Contractor Compliance Program Plan 2011 through 2015

DELAWARE DEPARTMENT OF TRANSPORTATION

CONTRACTOR COMPLIANCE PROGRAM PLAN

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DELAWARE DEPARTMENT OF TRANSPORTATION

CONTRACTOR COMPLIANCE PROGRAM PLAN

I. INTRODUCTION

The Delaware Department of Transportation (DelDOT) is a recipient of federal funds and assistance for the construction of highways, bridges, and other structures within the State of Delaware. As a federal aid recipient, DelDOT is required to insure compliance with all federally mandated Equal Opportunity, Equal Employment Opportunity, and Affirmative Action regulations and provisions by all contractors, subcontractors, consultants, subconsultants, and suppliers participating on any federally assisted projects or contracts. Contractors are required to comply with Title VI of the Civil Rights Act of 1964 and certain Equal Employment Opportunity (EEO), Affirmative Action (AA), Disadvantaged Business Enterprise (DBE), On-the-Job Training and Wage Rate Special provisions to be eligible for participation in DelDOT programs. This Contractor Compliance Program Plan describes the centralized program implemented by DelDOT. This document embodies the procedures, methods, mechanisms and activities by which DelDOT will monitor and insure compliance with such regulatory and contractual requirements. This Contractor Compliance Program Plan is a five-year plan encompassing 2011 through 2015.

II. POLICY STATEMENT & ASSURANCES

State of Delaware Department of Transportation

IT IS THE POLICY OF THE DELAWARE DEPARTMENT OF TRANSPORTATION that no person in the United States shall on the grounds of race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity which is administered by the Delaware Department of Transportation, regardless of the funding source, (i.e. State, Federal Highway Administration (FHWA), or Federal Transit Authority (FTA)).

It is also the policy of DeIDOT to require the mandatory Standard Federal Equal Employment Opportunity Contract Specifications be included in the contract provisions of all federally assisted contracts. Similarly the Training Special Provisions language is also incorporated in all federally assisted contracts, whether a trainee requirement has been assigned or not. To insure compliance with these provisions, DeIDOT hereby establishes its Contractor Compliance Program.

ASSURANCE

Pursuant to the requirements of Section 22(a) of the Federal-Aid Highway Act of 1968, the State of Delaware, desiring to avail itself of the benefits of Chapter 1, Title 23, United States Code, and as a condition to obtaining the approval of the Secretary of Transportation of any programs for projects as provided for in Title 23, United States Code, Section 105(a), hereby gives its assurance that employment in connection with all proposed projects approved on or after August 23, 1968, will be provided without regard to race, color, creed or national origin. More specifically, and without limiting the above general assurance, the Delaware Department of Transportation (DeIDOT) hereby gives the following specific assurances:

1. DeIDOT will establish an Equal Opportunity Program in furtherance of the above General Assurance, which shall include a system to ascertain whether contractors and subcontractors are complying with their equal employment opportunity contract obligations and the degree to which such compliance is producing substantial progress on the various project sites in terms of minority group employment. DeIDOT will furnish such information and reports regarding contractor and subcontractor compliance as may be requested by the Federal Highway Administration.
2. The DeIDOT program shall include effective procedures to assure that discrimination in employment on the grounds of race, color, creed or national origin will not be permitted on any projects and if discrimination exists at the time this assurance is made, it will be corrected promptly.
3. DeIDOT has appointed an Equal Opportunity Coordinator whose primary duty shall be to administer DeIDOT's Equal Employment Opportunity Program as established pursuant to these assurances.

4. DeIDOT will, on its own initiative, take affirmative action, including the imposition of contract sanctions and the initiation of appropriate legal proceedings under any applicable State or Federal law, to achieve equal employment opportunity on Federal-aid highway projects and will actively cooperate with the Federal Highway Administration in all investigations and enforcement actions undertaken by the Federal Highway Administration.

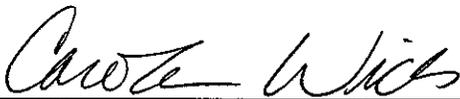
5. DeIDOT will establish and maintain effective liaison with public and private agencies and organizations which are, or should be, involved in equal opportunity programs. Such agencies and organizations include, but are not limited to, labor unions, contractor associations, minority group organizations, the U. S. and Delaware Employment Services, the U. S. and Delaware Department of Labor.

6. DeIDOT hereby agrees that it will seek the cooperation of unions, contractors, appropriate State agencies and other related organizations in the establishment of skill training programs, and will assure that all persons will have an opportunity to participate in such programs without regard to race, creed, color or national origin.

7. DeIDOT hereby agrees that its own employment policies and practices with regard to DeIDOT employees any part of whose compensation is reimbursed from Federal funds will be without regard to race, color, creed or national origin.

8. DeIDOT shall include in the advertised specifications notification of the specific equal employment opportunity responsibilities of the successful bidder as those responsibilities are currently defined and required by the Federal Highway Administration. No requirement or obligation shall be imposed as a condition precedent to the award of a contract for a project unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

9. DeIDOT will obtain and furnish to the Federal Highway Administration such information and reports as may be requested to enable the Federal Highway Administration to determine compliance by DeIDOT with this assurance.



Carolann Wicks, P.E.

Secretary, Department of Transportation

1/18/11

Date

III. Organizational Responsibilities for Contractor Compliance

Exhibit A contains an organizational chart showing DelDOT senior management along with individual positions within the Civil Rights group.

A. DelDOT Senior Management

In support of the assurances and policy of DelDOT related to civil rights issues, Directors of DelDOT commit to affirmative steps to monitor the compliance of contractors, subcontractors, consultants, and subconsultants with the Equal Employment Opportunity regulatory and contractual requirements. Cooperation with contractor compliance activities is required of all seeking to do business with DelDOT.

B. Civil Rights Administrator

DelDOT has created the position of Civil Rights Administrator, to serve as Equal Opportunity Coordinator, whose responsibilities include: providing oversight and coordination of civil rights-related activities; developing programs and plans for the department consistent with federal regulations, i.e. Contractor Compliance and OJT; establishing, maintaining, and communicating the processes (including timeliness goals) used to ensure contractor compliance to DelDOT personnel and business partners. This position is full-time and is dedicated 100% to external equal opportunity program functions. The Civil Rights Administrator oversees and directs the operation of the Civil Rights Section, which is centralized at DelDOT's Administrative Building. The Civil Rights Section performs external equal opportunity and related contractor compliance program functions throughout the state.

The Civil Rights Administrator establishes compliance review goals annually and facilitates accomplishment of such goals utilizing resources available. The Civil Rights Administrator oversees the application of and the maintenance of the contractor compliance review selection process outlined herein. The Civil Rights Administrator serves as the sole point of contact for deliverables to FHWA or other agencies relating to civil rights issues.

The Civil Rights Administrator is responsible for the investigation of allegations of discrimination and non-compliance and will insure the prompt investigation thereof in compliance with DelDOT's established External Employment Opportunity Complaint Procedure. The Civil Rights Administrator is responsible for reviewing planned projects and setting OJT Annual goals and project-specific Training Special Provisions (TSP) trainee assignments on appropriate projects based on established criteria. The Civil Rights Administrator is responsible for identifying, supervising, and training sufficient staff and where necessary

securing external resources to fulfill the goals and objectives of the various Equal Opportunity programs applicable to federal aid recipients, including but not limited to Contractor Compliance and On-the-Job Training programs.

The Civil Rights Administrator has held this position for over three years, has 20 years of civil rights experience along with a law degree with a focus in employment law, and nine years supervisory experience over civil rights personnel.

C. DBE Program Manager

The DBE Program Manager oversees the implementation of various monitoring activities pursuant to this contractor compliance program plan, including but not limited to the selection of business entities for contractor or DBE compliance review. The DBE Program Manager position is a full-time position and is dedicated 100% to various external equal opportunity program functions, including but not limited to contractor compliance. The DBE Program Manager is responsible for reviewing planned projects and setting DBE goals based on established criteria. The DBE Program Manager identifies and participates in the review of DBEs on a periodic basis to insure compliance with all equal opportunity requirements. The DBE Program Manager participates in the development and implementation of training components for prime contractors and consultants, DBEs, and subcontractors and subconsultants regarding the equal opportunity requirements and compliance therewith. The DBE Program Manager will participate in the investigation of allegations of discrimination and non-compliance and will participate in the development of recommendations for resolution, corrective action and follow-up.

The DBE Program Manager has held this position for less than a year, has two (2) years civil rights experience. The DBE Manager holds a bachelor's degree in Bachelor of Science in Integrated Strategic Communication and a master's in Public Administration.

D. DBE Staff and Other Resources

The DBE staff consists of two (2) DBE/EO Specialists positions and one DBE Administrative Specialist. Each of these positions is full-time and dedicated 100% to various external equal opportunity program activities including but not limited to contractor compliance. The DBE staff, under the direction of the DBE Program Manager and Civil Rights Administrator, is responsible for the completion of various monitoring activities contained in the DBE Program and the Contractor Compliance Program. DBE staff interacts directly with contractors as part of the monitoring processes for certain components of the Contractor Compliance Program. DBE staff assists individuals assigned to conduct contractor compliance review activities and serves as liaisons with prime contractors, subcontractors, consultants, subconsultants, and OJT trainees. DBE

staff assists in the dissemination of information regarding the mandated equal opportunity provisions contained in all federally assisted contracts through a variety of means.

One of the DBE/EO Specialists has two (2) years in their position. That DBE/EO Specialist has over ten (10) years of civil rights in transportation experience as well as 10 years of contractor compliance experience. The second DBE/EO Specialist is newly promoted to the position, but has six years of general transportation experience.

E. DelDOT Contract Administration

DelDOT Contract Administration personnel work closely with Civil Rights Section personnel to insure mandated language related to external equal opportunity programs and regulations authorizing the same are included on all federally assisted contracts and projects. Contract Administration personnel coordinate with Civil Rights Section personnel to provide multiple opportunities to interact with prospective bidders and successful contractors in the preliminary stages of contract advertising, bidding and execution to facilitate clear and repetitive dissemination of information related to responsibilities required for compliance with equal opportunity provisions embodied in the contracts, including but not limited to DBE and OJT goals and requirements (See Exhibit B). Contract Administration personnel participate in, assist in the development of, and attend a variety of training venues to maintain familiarity with federal regulations and equal opportunity requirements and regulations in order to provide information to components of the contractor and business communities regarding the same.

F. DelDOT Project Management Personnel

DelDOT Project Management personnel assist, as needed, in disseminating information to contractors, subcontractors, consultants and subconsultants regarding compliance with mandated regulations and contract provisions governing equal opportunity on federally assisted projects, contracts and programs. Such efforts will encompass inclusion of Civil Rights Section personnel in pre-bid, pre-construction and construction progress meetings on federally assisted projects. DelDOT project management personnel will receive training on a periodic basis to insure familiarity with regulations and authorities supporting external equal opportunity programs.

IV. COMPLIANCE REVIEW PROCEDURES

- A. Authorities – The authority and basis for contractor compliance procedures are in:
1. Laws:
 - a. Title VI and VII of the Civil Rights Act of 1964
 - b. Federal-Aid Highway Act of 1968 and 1973 (23 USC 140, 234)
 - c. Rehabilitation Act of 1973
 - d. Age Discrimination in Employment Act of 1975
 - e. Civil Rights Restoration Act of 1987
 - f. Americans with Disabilities Act of 1990
 - g. Executive Orders 11246, as amended by E.O. 11375 and E.O. 11478
 2. Regulations (See Exhibit C)
 - a. 23 CFR 200
 - b. 23 CFR 230, Subparts A, C and D
 - c. 23 CFR 633 Subpart A
 - d. 41 CFR Part 60-1
 - e. 41 CFR Part 60-4
 - f. 49 CFR 21
 - g. 49 CFR 26
 - h. FHWA Order 4710.8
 3. Contract Provisions: FHWA 1273
- B. Information Sharing Process
1. DelDOT personnel and designated persons with contract compliance responsibilities will maintain current knowledge and understanding of proper compliance review practices by participating in regular training activities. Where contractor compliance review tasks are assigned to designated individuals outside of DelDOT, DelDOT will insure that such individuals possess the requisite skills, knowledge, expertise and work experience to complete the tasks appropriately.
 2. DelDOT will conduct training seminars for the contractor community and its business partners to inform them of the EEO contract requirements. Additionally DelDOT will maintain Equal Opportunity, Equal Employment Opportunity, DBE, On-the-Job Training information and resources on its website for easy accessibility for contractors, consultants, and other interested parties. During 2007-2008 DelDOT conducted five workshops on EEO contract requirements.
 3. DelDOT Civil Rights Section personnel participate regularly in pre-bid, pre-award, and pre-construction meetings to advise contractors and subcontractors of the various EEO contract requirements and reporting obligations. This information is incorporated in the minutes of any such

meetings and is widely distributed to attendees and personnel connected with the projects in question.

C. Contractor Compliance Review Planning Strategy

In light of the lack of documentation relating to contractor compliance reviews in Delaware and reviewing the various types of compliance reviews deemed appropriate by FHWA, DelDOT plans to conduct area-wide (i.e. state-wide) contractor-specific reviews. This determination will permit the establishment of a baseline of data and information related to civil rights compliance and will be conducted with well-defined incremental goals and tasks outlined.

To avoid undertaking more than can be reasonably accomplished, given the staffing and other limitations, efforts have been initiated to objectively select a small but viable goal for completion of contractor compliance review activities. To accomplish the selection of the prime contractors in an objective and appropriate manner, DelDOT Civil Rights Section staff has prepared a mechanism that will numerically compare contractors based on the criteria in established review guidelines, utilizing data already captured by DelDOT. By assigning specific point values to responses within a defined range for each of the specific inquiries, each contractor can be ranked so as to objectively determine which contractors should be targeted for review and in which order.

DelDOT will generally determine which type of compliance review is to be conducted. This is generally at DelDOT's discretion. Notification to any contractor/company being reviewed will clearly communicate the type of review being conducted. This will facilitate the gathering of appropriate documentation by the contractor/company.

D. Selection Process

1. To accomplish the selection of contractors/companies for compliance review DelDOT has adopted a mechanism that evaluates each company/contractor in an objective and quantifiable manner, resulting in a ranking.
 - a. An objective analysis will be conducted of contractors based on: the awarding of contracts to any contractor/company;
 - (1) contractors/companies with current contracts will receive greater points in the valuation of this criteria, based on the number of contracts entered into with DelDOT, than contractors/companies who do not have current contracts with DelDOT;
 - b. the nature of funding on any contracts awarded to any contractor/company within a designated evaluation period;
 - (1) the greater the total percentage of a contractor's/company's total contracts during the designated review period which are federally funded (in whole or in part), as opposed to fully state

- funded, will result in greater points being assessed in the valuation of this criteria;
- c. the percentage value of the contract(s) awarded to any contractor/company as compared to total value of contracts awarded by DelDOT within the designated evaluation period;
 - (1) the greater the aggregate dollar value of a contractor's/company's total contracts during the designated review period, the greater the points assessed in the valuation of this criteria;
 - d. the potential for employment opportunities for minorities and females for the contractor/company based on work performed during the designated evaluation period, utilizing geographic census demographic data related to actual projects awarded;
 - (1) the greater the minority population in the geographic areas where a contractor/company has contracted work, the greater the point value will be assessed for this criteria;
 - e. an assessment of the contractor's/company's business practices during the designated evaluation period.
 - (1) The accomplishment of and/or exceeding of DBE goals as compared to executing contracts without DBE goals or failing to meet established DBE goals will affect the assessment of points in the valuation of this criteria.
3. Each of these areas will be valued and all contractors/companies will be ranked as part of the analysis. Selection for contractor compliance review will be made solely on this analysis, except where issues of potential non-compliance have been detected. (See Exhibit D)
 4. In addition to the selection rating system described above, contractors/companies will also be selected for compliance reviews in those instances where credible information creates a presumption of potential compliance deficiencies in any of the EEO Program areas or a request to conduct a compliance review is received from FHWA Headquarters.

E. Scheduling and Notification

1. Once DelDOT has determined the type of compliance review and the selection process has been completed, the selected contractor/company will be formally notified, in writing, of the compliance review.
2. This notice will contain requests for specific information, documentation and records, including *but not limited to*:
 - a. Identifying information regarding the contractor/company EEO Officer and documentation of required meetings, etc.;
 - b. The most recent certified payroll, broken down by race, gender, national origin, job classifications of all employees;
 - c. Copies of any current collective bargaining agreements;
 - d. Copies of executed purchase orders and subcontracts;

- e. Information on any complaints of discrimination filed against the company/contractor within one (1) year of the review;
 - f. A list of new hires, rehires, promotions or firings/terminations during the six month period immediately preceding the notice of compliance review;
 - g. A list of all recruitment sources utilized;
 - h. A list of all firms including minority and women-owned firms contacted as possible subcontractors and material suppliers, and those firms selected, with contact information for all listed.
3. The notice of compliance review will include a timeframe for responding and a deadline by which documentation must be received. (See Exhibit E)
 4. In the instance of a project-specific compliance review, the Contractor/ Company will be provided sufficient time to secure the requested documentation from all subcontractors on the project as well. It is the responsibility of the Contractor/Company to secure such documentation from the subcontractors or to provide sufficient evidence of a *good faith effort* to do so.

F. Types of Reviews

1. Project Reviews

Project reviews are probably the most common type of contract compliance review. This type of review primarily insures equal opportunity for minority and females within a company's/contractor's workforce by analyzing the number of hours worked on specific projects. The contract compliance review procedures outlined in 23 CFR 230 cover this type of review more than any other type of review. Project reviews generally include the following:

- a. Review scheduling, contractor notification, preliminary analysis, on-site verification, exit conference and compliance determination coordinated with only the prime contractor.
- b. The prime contractor is held responsible for obtaining from all active subcontractors the documentation listed in 23 CFR 230.409 c(3):
 - (1) PR-1391 from a recent payroll
 - (2) Copies of bargaining agreements
 - (3) Copies of purchase orders
 - (4) Lists of recruitment sources
 - (5) Lists of promotions during the last six months
 - (6) An annotated payroll
 - (7) The identity and telephone numbers of subcontractor, EEO officer and DBE Liaisons
 - (8) The status of any actions taken by other governmental agencies (i.e. EEOC, OFCCP)
 - (9) Any other necessary documents.

Any preliminary compliance determination reached by DelDOT will be based on the project's work force, not the prime contractor's full work force, and only one determination is made for all business entities reviewed based on participation on the selected project. Any compliance notice or Show Cause Notice issued as a result of the review will be submitted to the prime contractor for the entire project because the prime contractors are responsible for informing subcontractors and DBEs of their civil rights requirements and insuring subcontractors and DBEs comply with those requirements.

Additionally, DBEs on the selected project need to be reviewed to determine whether they are performing a commercially useful function (CUF) and whether the DBE Program's eligible owner is managing and controlling the DBE firm's operations and employees.

2. Area-Wide Reviews

This type of compliance review is not as common as the project reviews. DelDOT has committed to engage in this type of review to develop a baseline of data on its prime contractors, subcontractors, consultants, subconsultants, vendors and DBEs to support the effectiveness of this Contractor Compliance Program. The procedures are similar to those outlined for project reviews with the exception that the selected contractor/consultant/DBE must provide documentation, data and information about its own entire work force. Compliance determinations will be made for the selected contractor/consultant/DBE, separate from any prime contractor. An area work force (in this instance the state of Delaware is the area being reviewed) involving multiple projects is reviewed. In addition to the listed information noted above, the following applies to area-wide reviews:

- a. Area work force is defined as *Employees at all Federal-aid and Federal and non-federal projects in a specific geographical area.*
- b. Equal employment opportunity is covered and reviewed on a state-wide basis rather than based on a project.
- c. Each selected contractor/company is responsible for its own work force with respect to fulfilling the Non-discriminatory, EO and EEO requirements, including mandatory contractor provisions, displaying posters, not discriminating in selecting/retaining subcontractors, training, demonstrating good faith efforts, DBE goal attainment, etc.
- d. A Show Cause Notice will be issued to each non-compliant prime or subcontractor or DBE with an informational copy to any concerned involved prime, if a subcontractor or DBE is cited. (See Exhibit E)
- e. Where more than one project is reviewed, based on the contractor/company selected for review, the responding contractor/company will list projects separately with the number of

total employees by ethnicity, craft, and gender on each project. The analysis of the work force data will be accomplished, and all workforce data will be compiled by a) the total number of employees by craft, ethnicity and gender and b) the total number of work hours for all employees by craft, ethnicity and gender (verified with payroll records). This compilation should also reflect new hires, promotions, rehires, recalls, etc.

- f. Lists of all active and committed subcontractors indicating the type of work performed, the value of each subcontract, and what DBE goals are fulfilled on all work of each prime contractor/consultant. Review of this information is done to ascertain a contractor's/company's appropriate use of DBEs whether a goal is set or not.

3. Consolidated Contract Compliance Reviews

Consolidated contract compliance reviews are normally conducted to determine if companies/contractors in a certain area are experiencing similar problems with obtaining an adequate representation of minorities and women. Consolidated reviews will remain a cooperative effort between DelDOT, FHWA and if appropriate the Office of Federal Contract Compliance Programs (OFCCP), with a team conducting the review.

- G. Implementation of the Contractor Compliance Review Process

1. **Preliminary Analysis:** DelDOT will insure that all contractors, subcontractors, consultants, subconsultants, and suppliers are provided clear guidance, information, and instructions regarding the Contractor Compliance Review Process. DelDOT has established a Contractor Compliance Manual for wide distribution to the contractor community, general public and DelDOT personnel. (See Exhibit C)
The Contractor Compliance Manual clearly outlines data and information to be retained by all contractors, subcontractors, consultants, subconsultants, and suppliers (including DBEs) regarding specifically designated activities required by regulations.

- a. Workforce Analysis

- (1) Availability Analysis

Availability is defined as an estimate of the number of qualified minorities or women available for employment in a particular job group. This estimate is generally derived from a number of sources outside of DelDOT such as the current census data, state employment offices, governmental entities etc. This estimate is expressed as a percentage of all qualified persons for employment in the particular job group and is used as a benchmark against which to compare the Company/Contractor's existing workforce.

2) Representation Analysis

The next step is to review the Contractor/Company's workforce to determine the number and percentage of minorities and women employed in a particular job classification/trade. If the percentage of minorities or women is less than would be reasonably expected, given the availability in the labor force of the geographic region, the Company/Contractor must demonstrate good faith efforts or equal employment opportunity in hiring and recruiting.

3) Utilization Analysis

Utilization analysis looks to the number of hours worked by minorities and women as compared to the total hours worked by all employees to determine if equal opportunity is provided to employees irrespective of race and gender. A comparison of the Company/Contractor's workforce, the hours they worked and their respective race and gender is done. Where there are disparities detected then further review is conducted to insure the reason for the disparity is non-discriminatory.

4) The purpose of these analyses is to determine if there is a reasonable representation and utilization of minorities and women in each craft, classification or occupation, based on their availability in the relevant labor market. Additionally, if disparities are determined, review must continue to ascertain what good faith efforts have been undertaken to reduce or eliminate such disparities by the Contractor/Company. These analyses are also instrumental in gathering evidence of discriminatory practices relating to employment terms and conditions.

b. DBE Utilization Analysis

This step looks into how the Company/Contractor solicits, reviews and selects subcontractors, vendors and suppliers for all of their work. Emphasis is placed on determining whether the Contractor/Company has an open process, inviting quotes from diverse business entities or considers quotes from a particular group and excludes others. Review is also made of any good faith efforts undertaken by the Company/Contractor to open up their subcontracting and vendor opportunities.

2. Upon initiation of a contractor compliance review, DelDOT personnel or designated representatives will conduct a detailed review of data and information submitted in response to a DelDOT contractor compliance review request. Analysis of submissions will include workforce analyses such as availability, representation and utilization analyses. Review will include DBE utilization analysis as well.

3. **On-site verification:** On-site verification reviews and interviews will be conducted by DeIDOT personnel or designated representatives.

- a. **Scheduling and Notification**

The on-site review process commences with official written notification. This written notification will inform the Contractor/Company management of the purpose, scope, date, and time of the review. Efforts will be made to provide any Contractor/Company ten (10) business days notice of the on-site review process. Efforts will also be made to adjust the timing of the on-site review, upon legitimate request by the Contractor/Company. The notification will clearly describe the responsibilities of the Contractor/Company to provide all pertinent documentation and information requested as well as to make all arrangements to have the other steps of the review process go smoothly, such as providing meeting space, facilitating requested interviews, and insuring needed individuals are present.

- b. A major purpose of an on-site review is to accomplish the following:

- 1) Verify information obtained in the desk-audit phase and to clarify and discrepancies in the material submitted;
 - 2) Conduct interviews with representative members of the Contractor's/Company's workforce and management;
 - 3) Verify implementation of employee referral sources and methods used to place employees;
 - 4) Conduct a physical tour to insure non-segregation of facilities;
 - 5) Discuss issues and concerns.

4. **Kick-off Meeting**

The Kick-off meeting should include company/contractor senior management/owner/executives. At the initial meeting the DeIDOT representative will discuss and review the following information:

- a. Objectives of the on-site review and visit;
 - b. Authorities for the review;
 - c. Materials submitted by the Contractor/Company;
 - d. Overview of analysis of materials provided for Desk Audit;
 - e. Arrangements for on-site inspections and employee/management interviews.

The DeIDOT representative will respond, as much as possible, to questions from the Contractor/Company.

5. **Exit Conference**

The purpose of the exit conference is not to communicate the results or findings of the on-site review to the Contractor/Company. The exit conference is to advise the Contractor/Company that the on-site process has been completed. The DeIDOT representative will advise the

Contractor/Company of the time frame within which a formal determination will be provided, in writing. A formal determination will be rendered within fifteen (15) days of the exit interview.

6. Documentation of all contractor compliance activities will be embodied in a detailed narrative report including supporting documentation, prepared by the reviewer. Such reports shall include the reviewer's detailed notes, documentary evidence, and any supporting information utilized in the analysis of the data and information. All data and information gathered during any contractor compliance or DBE compliance review will be maintained for a period of five years by the Department.

H. COMPLIANCE REVIEW DETERMINATIONS

1. Within 15 days from the completion of the onsite verification and exit conference, the personnel performing the compliance review forward to DelDOT's Civil Rights Administrator a completed compliance review report, based on information obtained. DelDOT's Civil Rights Administrator will prepare all determinations of the contractors' compliance status and notify the contractor(s) of the compliance determination by sending either a notice of compliance or show cause notice to the contractor. Pursuant to regulations governing contractor compliance, copies of the compliance review report will be forwarded to FHWA for concurrence, non-concurrence or any other necessary action.
2. Compliance
 - a) A Contractor/Company is in compliance when there is sufficient information, data and evidence obtained during the compliance review to determine the equal opportunity requirements have been effectively implemented.
 - b) Compliance determinations are based on the data, records and other information gathered during the entire compliance review process, including but not limited to the on-site review process.
 - c) Compliance determinations will be made by the DelDOT Civil Rights Section, considering the following:
 - (1) Is there reasonable representation and utilization of minorities and women in each craft, classification, occupation or job based on their availability in the relevant labor force?
 - (2) Has the Contractor/Company taken any action to increase recruitment, hiring opportunities, promotions, and training of minorities and women?
 - (3) Have the Contractor's/Company's efforts to provide equal opportunity been effective or are those efforts likely to result in an increase in the representation and utilization of minorities and women?

(4) Is there impartiality in the treatment of minorities and women?

(5) Are the Contractor's/Company's affirmative action efforts an isolated or of an on-going nature?

(6) Have the Contractor's/Company's efforts produced results?

3. Good Faith Efforts

- a) A Contractor/Company is deemed to be in compliance with equal opportunity requirements where there is evidence that ***every good faith effort*** has been made, in spite of continued disparities in representation, etc.
- b) Good faith efforts must be targeted, specific and reasonably calculated to result in the desired compliance. Repeated use of unsuccessful activities, such as sending form letters, which produce no results, will not be considered good faith efforts.
- c) Documentation of good faith efforts must include specific information such as which referral sources were used, with whom the Contractor/Company interacted, documentation of telephone requests for women and minorities in specific crafts with underrepresentation, etc.
- d) Good faith efforts also apply to a Contractor's/Company's efforts to do business with minority-owned and women-owned businesses and suppliers. A pattern of using DBE business partners only on federally aided projects, with no similar involvement in other business ventures, will require closer examination to be considered good faith efforts.

4. Non-compliance with Supporting Findings

- a) A Contractor/Company is in non-compliance when there is sufficient information, data and evidence to make a determination that the Contractor/Company failed to effectively implement the mandated equal opportunity requirements.
- b) Non-Compliance determinations are based on the data, records and other information gathered during the entire compliance review process, including but not limited to the on-site review process.
- c) Efforts to bring a Company/Contractor into compliance may be accomplished through negotiating immediate corrective action or through the issuance of a Show Cause Notice.
- d) Negotiation of immediate corrective action(s) is appropriate where the findings of non-compliance are based on relatively minor deficiencies in the Company's/Contractor's implementation of the equal opportunity requirements.
- e) A Show Cause Notice is required when the finding of non-compliance is based on any one of the following:
 - (1) The findings of a compliance review;

- (2) The results of an investigation, which verifies the existence of discrimination;
 - (3) Reports reflect underutilization of minorities and women throughout the Company's/Contractor's workforce.
- f) Once a Show Cause Notice has been issued, a compliance conference will be scheduled, during which further negotiations may take place to achieve compliance. (See § IV. I. 1. C and/or § VII. C.)

I. CORRECTIVE ACTION and ENFORCEMENT

1. Voluntary Corrective Action Plan (VCAP) and Corrective Action Plan
 - a) A Company/Contractor determined to be in non-compliance has thirty (30) days from the receipt of a Show Cause Notice to develop and submit an acceptable Corrective Action Plan, in writing.
 - b) If cited deficiencies can be corrected within thirty (30) days, no written Corrective Action Plan is necessary. However the time frame for corrective action remains thirty (30) days for completion.
 - c) If cited deficiencies are major and/or require more than thirty (30) days to correct, a Show Cause Notice will be issued. Pursuant to a Show Cause Notice a compliance conference will be scheduled. Negotiations will take place between DelDOT and the Contractor/Company. The Contractor/Company must enter into a Corrective Action Plan detailing how the identified deficiencies will be address and providing timeframes for the corrections, which DelDOT must approve.
 - d) Any Show Cause Notice is rescinded upon submission and approval of a Corrective Action Plan.
 - e) The written Corrective Action plan must state a clear action plan with time limits for the Company/Contractor to correct each cited deficiency. The Corrective Action Plan submitted to DelDOT must be sufficient to correct deficiencies or DelDOT will not approve it.
2. Follow-Up
 - a) In circumstances where cited deficiencies can be corrected within thirty (30) days, DelDOT personnel will monitor progress on the corrective action during that thirty (30) day period. At the completion of the corrective action or the thirty (30) day period, whichever comes first, a report of progress will be generated, sent to the Company/Contractor, and become part of the compliance review record.
 - b) Failure to correct deficiencies where those deficiencies could have been corrected within thirty (30) days will result in a formal finding of non-compliance, reinstatement of the Show Cause Notice and time frame, and appropriate enforcement action taking place.

- c) In those circumstances where a Voluntary Corrective Action Plan has been approved, DelDOT will monitor progress on the correction of deficiencies cited.
- d) Failure to complete a Corrective Action Plan, once approved, or failure to make reasonable progress under a Corrective Action Plan on correction of deficiencies cited will result in a formal finding of non-compliance, reinstatement of the Show Cause Notice and time frame, and appropriate enforcement action taking place.
- e) Satisfactory completion of a Corrective Action Plan, written or otherwise, will remove any finding of non-compliance. A final closure letter will be sent to the Company/Contractor culminating the review process. Such documentation will be retained by DelDOT.

3. Enforcement

- a) Administrative action to address non-compliance after a Show Cause Notice has been issued will be the same as those taken for other failure to perform issues pursuant to a contract.
- b) Contract administration procedures may also be invoked against a non-compliant Contractor/Company. Such measures include but are not limited to:
 - (1) Determining the Contractor/Company a non-responsible bidder on contracts containing the provisions which were violated and not subsequently corrected when the opportunity existed;
 - (2) Future bids being held irregular and non-responsive based on deficiencies on other contract(s);
 - (3) Disqualification as a bidder pending correction of deficiencies;
 - (4) Creating the Contractor's/Company's bid ceiling;
 - (5) Canceling or suspending the contract(s) on which the violations were found;
 - (6) Determining Contractor/Company is in default on the contract where the violation occurred and terminating the Contractor's/Company's right to do work on that contract and initiating action pursuant to the termination of the contract;
 - (7) Debarment from future federal contracts.

4. Should a contractor or consultant wish to appeal a finding of non-compliance and efforts to negotiate corrective action under a Show Cause Notice fail, the contractor or consultant may appeal, pursuant to the following procedures:

- a) The appeal of the non-compliance determination must be made to DelDOT's Director of Technology and Support Services. Appeals must be requested in writing within fifteen (15) days of receipt of the Show Cause Notice or within fifteen days (15) of failure of negotiations intended to result in a Corrective Action Plan.

- b) The written request for appeal must specifically outline, in detail, information indicating the basis for the contractor's/consultant's appeal, with supporting documentation.
- c) A hearing will be granted at the discretion of DelDOT's Director of Technology and Support Services.
- d) Consideration of all appeals will be made by a panel consisting of DelDOT's Director of Technology and Support Services, DelDOT's Chief Engineer and the Deputy Attorney General assigned to DelDOT.
- e) The panel will render its determination in writing. Appeal determinations will be final.

5. Documentation of all enforcement efforts, including final reports and appeal determinations, will be forwarded to FHWA.

J. Accomplishments

DelDOT has not conducted any contractor compliance reviews. Focused attention has been placed on the development of a contractor compliance program plan which fulfills regulatory obligations.

K. Major problems encountered

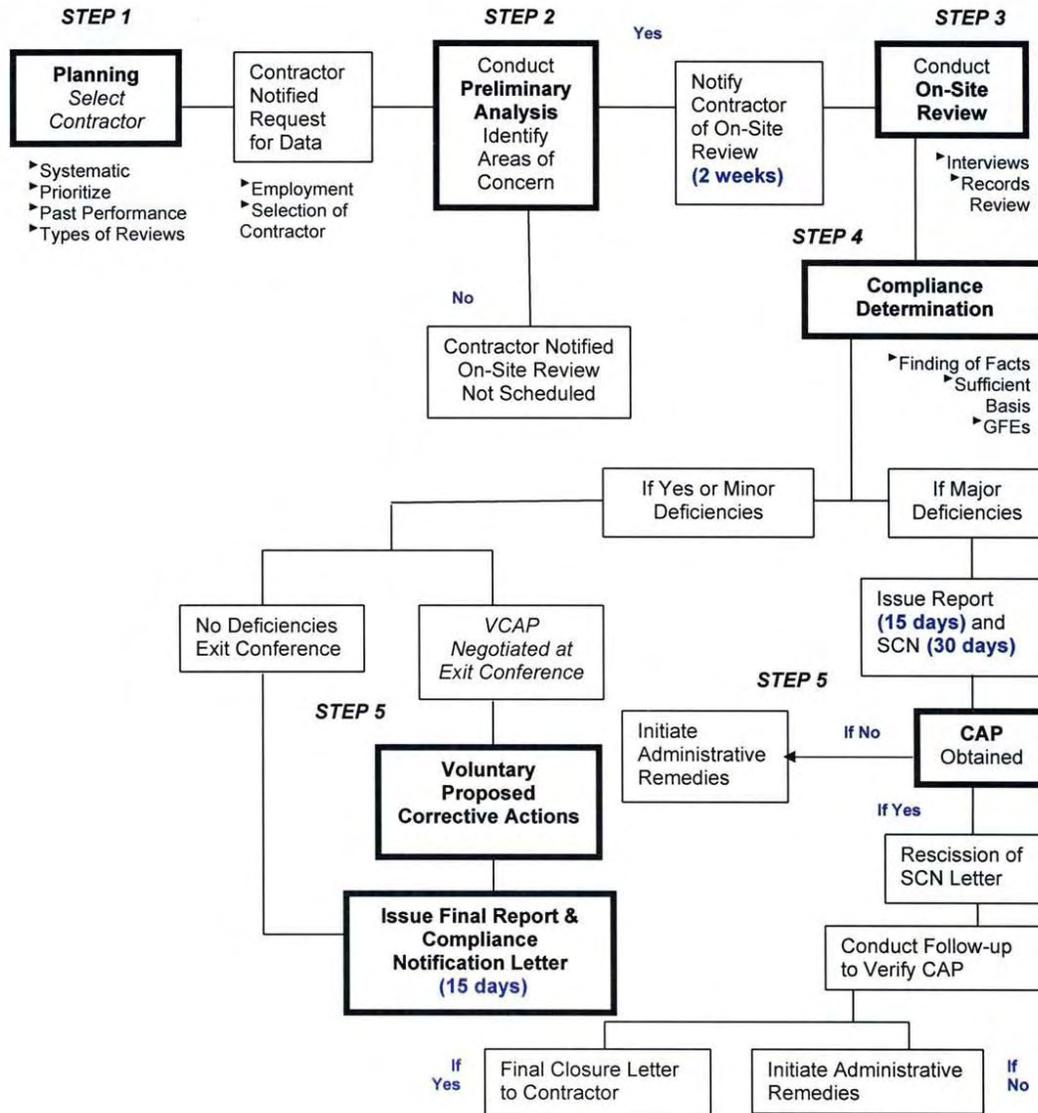
The fiscal challenges related to the limited staffing in Delaware preclude development and adoption of a contractor compliance program plan that would be impracticable. The length of time since the last contractor compliance review also impacts the establishment of new mechanisms to review projects and identify action areas.

L. Major breakthroughs

The creation and filling of the Civil Rights Administrator position has resulted in the rejuvenation of various monitoring and data gathering mechanisms supporting contractor compliance activities. DelDOT has initiated several automated processes to compile contractor information relevant to compliance monitoring.

The loss of four DBE/EO Specialists in the past three years has been a significant challenge. As of the preparation of this program plan, the two DBE/EO Specialist positions are filled.

CONTRACTOR COMPLIANCE REVIEW FLOW CHART



V. ADDITIONAL PERIODIC COMPLIANCE PROCEDURES

A. FHWA 1391 and EEO Report 1392 Monitoring Process

DelDOT is committed to soliciting required data and information from all contractors with active contracts at the scheduled time frame for 1392 reporting. On or about July 1 of each year, DBE staff, in cooperation with Contract Administration, will identify all contracts active and the prime and sub-contractors working on the active contracts/projects.

DBE staff will solicit by mail, from each contractor/consultant, the necessary data and information on each active contract. Prime contractors/consultants are responsible for insuring completion and submission of requested data and information by subcontractors/subconsultants on each active contract. DBE staff will compile submitted data and information on the required 1392 report and submit this report timely to FHWA. Documentation of failure to respond to the 1391 inquiry will be maintained. Such failure to cooperate as well as the results of the 1392 report will be considered, by DelDOT Civil Rights Section personnel, in determining the suitability of a contractor/consultant/DBE for contractor or DBE compliance review.

B. EEO Compliance Certification Form

1. To secure confirming statements of compliance from contractors and consultants doing business with DelDOT, an EEO Compliance Certification Form has been developed. (Exhibit G1)
2. Contractors will be required to submit this form annually and review of these forms will be performed by Civil Rights section staff. Such forms will also be used a historical data for full contractor compliance reviews.

C. Quarterly EEO Employment Report – Contractors (Exhibit G2)

1. To secure project-specific data to analyze contractor employment activities ad affirmative action effectiveness, DelDOT solicits workforce data from contractors and consultants on federally-assisted projects.
2. Instructions for Completion of the Report
 - a) Any prime contractor, consultant, subcontractor, or subconsultant performing work on a project or agreement funded with federal funds, in whole or in part, must complete the EEO QUARTERLY EMPLOMENT Report Form. This reporting responsibility begins with the first quarter during which active work was done on the project. The completed report must be submitted to DelDOT's Civil Rights Section no later than the 15th calendar day of the month following the report month. *For example, if a federally*

funded project contract began work on March 15, 2011. The first report due to DelDOT is due for the first quarter of the 2011 calendar year (January – March 2011). That report will be due no later than April 15, 2011 from the prime contractor/consultant and all subcontractors and/or subconsultants on that federally funded project.

- b) To facilitate accurate review and compilation of the data for reporting to the FHWA as required, DelDOT requests that the EEO Quarterly Employment Report be submitted electronically in Microsoft Excel format and in hardcopy, with original signature via mail for each report period. Failure to submit the required report may result in withholding of estimate payments due and may also result in a finding of non-compliance with attendant administrative sanctions.
- c) **Step 1** The prime contractor or consultant is responsible for filling in the DelDOT nine (9) digit project number in Section 1 (highlighted below). Copies of the form, with the DelDOT project number must be provided **by the prime contractor/consultant** to all subcontractors/ subconsultants performing work on the project during the reporting period/quarter.
- d) **Step 2.** The firm/company responsible for completion of the form must indicate the name and address of the firm/company in Section 2. Do not use project field office addresses.
- e) **Step 3.** Any firm/company completing the EEO Quarterly Employment Report must indicate in Section 3 whether that firm/company is working on the project noted in Section 1 as a prime contractor/consultant or as a subcontractor/subconsultant on that project.
- f) **Step 4.** Any firm/company completing the report form must indicate the period covered by the report. The quarter which the report covers should be identified as a quarter, (ie. 1st quarter) and the months covered (i.e. 10/10 – 12/10).
- g) **Step 5.** Any firm/company completing the EEO Quarterly Employment Report Form must indicate in Section 5 whether the project for which the report is being made is a construction project or a consultant project/agreement.
- h) **Step 6.** In capturing the specifically requested workforce data, any reporting firm/company must report information on **all** of its employees who worked on the project at any time during the report

month. Reporting firms or companies must breakdown the workforce on each project by the EEO Categories reflected to the left of Section 6.

- i) Specifically, data must be reported separately for existing and new employees. Existing employees are those employees who were on the reporting firm or company payroll in February 2011. New employees are those employees added or recalled to the reporting firm or company payroll after February 2011. The number of existing and new employees must be reported for each EEO Category on each project for which an EEO Quarterly Employment Report Form needs to be completed.
- j) **Step 7** The firm/company representative responsible for the compiling and reporting of the employment data on the form must sign and date the completed original. The title of the responsible firm or company representative must be included as well.
- k) **Step 8 – Submission** During the last week of each calendar quarter, DelDOT's Civil Rights Section will send correspondence to each prime contractor/consultant. This correspondence will list all federally funded projects for which an EEO Quarterly Report is due from the recipient contractor/ consultant along with the weblink to download the form. As noted in the General Information the EEO Quarterly Employment Report should be submitted electronically in Microsoft Excel format to DelDOT along with hardcopy forms, with original signature via mail for each project for which work was done during the report period. Time frames for submission are as follows:
 - i. Prime contractors/consultants must provide the report form/file to all subcontractors or subconsultants on the projects/agreements for which quarterly reports are due no later than the 5th of the month following the end of the quarter. (*i.e. April 5 for the first quarter of the year*)
 - ii. Subcontractors and subconsultants are expected to submit completed forms/files to the prime contractor/consultant no later than the 15th of the month following the end of the quarter. (*i.e. October 15 for the third quarter of the year*)
 - iii. Prime contractors and consultants must submit their completed reports and those of their subcontractors no later than the end of the month following the end of the quarter. (*i.e. January 31 for the fourth quarter of the year*)

3. Civil Rights Section staff review the quarterly reports submitted. Data is compiled by company for all federaly –assisted projects. Trends will be identified and annually contractors and consultants will be assessed on overall accomplishment of established minority and female employment goals. This data will also be included in any contractor compliance review conducted.

D. Quarterly EEO Employment Report – Consultants (Exhibit G3)

1. This form is similar to the FHWA 1391 form. It is used to secure similar workforce data from the professional services firms contracted on federally funded projects.

VI. EVALUATION, DETERMINATIONS AND SUBSEQUENT ACTIONS

- A. The Civil Rights Administrator will evaluate all information gathered during the contractor compliance review process utilizing established criteria.

B. EEO Policy – a compliant EEO Policy must contain the following:

1. A statement that the contractor will not discriminate against employees and applicants for employment because of race, color, religion, sex, or national origin.
2. A statement that it will take affirmative action to ensure that employees and applicants for employment will be employed and treated during employment without regard to race, color, religion, sex or national origin.
3. The name, telephone number, and means of access to the contractor’s EEO Officer.
4. An assurance that the EEO Policy will be followed in all personnel actions.
5. The signature of the CEO of the contractor with a date.

C. Evaluation of Workforce and Employment Action Data

1. Utilizing the procedures outlined in OFCCP’s Federal Contract Compliance Manual (Chapter 3) all data gathered through the preliminary analysis, submission of completed Employment Action Summary, Workforce Utilization, Training Data and Subcontractors forms, the Civil Rights Administrator or designated representative will identify any potential individual or systematic discrimination. This will be accomplished by completing adverse impact analyses, standard deviation analyses and other accepted methodologies for identifying problem areas.
2. The theoretical bases for identifying and possibly proving discrimination incorporated in the OFCCP Federal Contract Compliance Manual will be used in the evaluation of data gathered from any company undergoing a contractor compliance review.

3. The evaluation must include comprehensive review of data on all aspects of employment practices and conditions. Interviews as well as workforce, employment actions, and training data must be analyzed.

D. Good Faith Efforts Assessment

1. Where data gathered reflects quantifiable lack of parity between minority and/or female representation and/or utilization in any category, as compared with the relevant labor market, additional evaluation is necessary to determine if the company has made a *good faith effort* to address such disparity.
2. Such review must include ascertaining opportunities to hire/rehire or lack thereof. This involves analysis of employment, recruitment and advertisement for employment, promotion and hiring activity in the six months prior to the contractor compliance review, and documents verified utilization of minority- and female-oriented recruitment sources.
3. With respect to DBE utilization evaluation, information provided on all subcontractors by the company under review must be assessed. Procedures for determining *good faith efforts* for meeting advertised DBE goals will be utilized to assess compliance with contract DBE provisions. Such efforts must be documented and verified. Acceptable documentation **includes but is not limited to:**
 - a. Evidence of contact with diverse DBE firms in solicitation of quotes or bids;
 - b. Evidence that full and open communication has been undertaken regarding potential subcontracting opportunities on contracts for which the contractor bid or submitted a proposal;
 - c. Evidence that DBE firms responded negatively to full, open communicative requests for bids, quotes or proposals;
 - d. Evidence that the contractor invited or solicited bids, quotes and/or proposals from DBE firms where no DBE goals were established.

- E. Determinations of compliance or non-compliance, along with written documentation of the determination and the basis thereof, will be rendered and prepared by the Civil Rights Administrator. Exit interviews will be conducted by the DelDOT personnel or designated representative for the purpose of clearly communicating the preliminary results of the contractor compliance review, any recommendations or corrective actions deemed appropriate, and time frames applicable in each review situation. Follow-up actions will be pursued in accordance with the Contractor Compliance Manual. Written notification of determination of compliance will be rendered within fifteen (15) days of the exit interview. All contractor compliance review reports will be forwarded to FHWA for concurrence.

VII. CONTRACT SANCTIONS

- A. DeIDOT will pursue available administrative remedies against a contractor, consultant, subcontractor, subconsultant, DBE, or supplier in accordance with DeIDOT Contractor Compliance Manual where such business entity has:
1. refused to cooperate with the reporting, compliance review or other monitoring process intended to insure compliance with federally mandated equal opportunity provisions; or
 2. received a determination of non-compliance and corrective action has not been promptly taken.

Determinations as to which available administrative sanctions will be pursued will be made by DeIDOT personnel on a case-by-case basis. Determinations regarding administrative sanctions to be imposed will be reviewed and approved by the Secretary of the Department.

B. Available Sanctions

Contract administration procedures may be invoked against a non-compliant Contractor/Company. Such measures **include but are not limited to:**

1. Withholding payments due pending compliance with reporting and submission requirements;
2. Determining the Contractor/Company a non-responsible bidder on contracts containing the provisions which were violated and not subsequently corrected when the opportunity existed;
3. Future bids being held irregular and non-responsive based on deficiencies on other contract(s);
4. Disqualification as a bidder pending correction of deficiencies;
5. Creating the Contractor's/Company's bid ceiling;
6. Canceling or suspending the contract(s) on which the violations were found;
7. Determining Contractor/Company is in default on the contract where the violation occurred and terminating the Contractor's/ Company's right to do work on that contract and initiating action pursuant to the termination of the contract;
8. Debarment from future federal contracts.

- C. Prior to implementation of any appropriate sanctions, the contractor, consultant, subcontractor, subconsultant or DBE will be sent a Show Cause Notice (Exhibit E), advising of any detected deficiencies and the basis of the findings. This Show Cause Notice will advise the contractor, consultant, subcontractor, subconsultant or DBE that it has thirty (30) days within which to *show cause* why sanctions should not be imposed. The Show Cause Notice will also schedule a compliance conference, the purpose of which is to advise the non-compliant business entity of the availability of conciliation with DeIDOT and to provide an opportunity for the non-compliant business entity to propose a corrective action plan addressing the noted deficiencies.

VIII. COMPLAINT PROCEDURES

- A. DeIDOT has developed, published and adopted an External Equal Opportunity Complaint Procedure. Complaints related to the Contractor Compliance Program as well as complaints related to other external civil rights programs will be handled in accordance with the provisions of this procedure, incorporated in this plan. (See Exhibit H)
- B. Complaints
Listing of complaints filed pursuant to the DeIDOT's External Equal Opportunity Complaint Procedure is provided as Exhibit I.

IX. On-the-Job TRAINING

A. OJT Requirement Assignment Process

The DeIDOT Civil Rights Section has established an objective, quantifiable methodology to set the OJT requirement and Training Goals on federally assisted contracts/projects. In consultation with Contract Administration, Civil Rights Section personnel evaluate potential federally assisted projects prior to advertising to determine the suitability of the project/contract for an OJT requirement. Among the factors considered and weighed are:

1. the proximity of the project to eligible minority populations,
2. the dollar value of the estimated costs of the project,
3. the anticipated length of the project as compared to the needed time to complete training programs and,
4. readily-identifiable trainee tasks inherent in the project.

Each factor is valued, and a score is given which translates into the reasonable, objectively determined number of trainees to set on the project in question. (See Exhibit J) The Training Special Provisions language routinely included in federally assisted contracts is amended by Contract Administration to reflect the assigned number of trainees for the project/contract.

Once an assignment of an OJT requirement has been made, project management personnel are advised in writing. Advertisement and bid package documents sold to prospective bidders include correspondence from the Civil Rights Administrator advising of any DBE goal, as well as the OJT requirement, and the necessary steps a successful bidder must complete prior to the commencement of the contract. (See Exhibit B) Civil Rights Section staff also participates in pre-bid and pre-construction meetings to further disseminate information regarding equal opportunity requirements, especially OJT and record-keeping requirements.

B. OJT Monitoring Procedures

DelDOT has established timely monitoring practices for OJT trainees on projects and contracts. Civil Rights Section personnel conduct initial interviews with all proposed trainee candidates. Approval of trainees is dependent upon those candidates fulfilling the minority and/or female objectives of the OJT Program. Such interviews are conducted utilizing DelDOT's revised Initial Trainee Interview form. (See Exhibit J) The purpose of these revisions is to gather more information about trainees, their skills and activities, and their long- and short-term goals. By using technology, the Civil Rights Section now documents initial interviews with new trainees and receipt of monthly payroll documentation, calculates hours worked in training programs to date, and creates trainee progress reports. (See Exhibit J) This permits follow-up with prime contractors earlier in the project duration when there are issues of lack of progress, poor trainee performance or wage rate problems.

Civil Rights Section personnel will follow-up on any deficiencies in reporting OJT trainee status or progress. Failure to timely and fully respond can result in a determination of non-compliance with the Training Special Provisions of federally assisted contracts, triggering sanctions against the contractor/consultant.

C. OJT Accomplishments

As part of its approved OJT Program, DelDOT will submit Accomplishments annually with its Annual OJT Goal submission.

X. DBE PROGRAM

A. DBE Directory

DelDOT has and maintains a Directory of Certified DBE Firms. This directory is readily available on-line and hardcopy. This directory is updated quarterly to include new firms and remove firms deemed ineligible under the regulations.

B. DelDOT does not prequalify or license subcontractors or DBE firms.

C. DelDOT gathers payment data on a monthly basis and monitors the DBE participation on a quarterly basis for all projects, not just federal-aid projects.

D. DelDOT will conduct "Spot Inspections" to assure that DBE firms are providing Commercially Useful Functions on projects.

E. GLOSSARY OF TERMS

1. **Affirmative Action:** Specific actions in recruitment, hiring, upgrading and other areas designed and taken for the purpose of eliminating the present effects of past discrimination, or to prevent discrimination. Affirmative action achieves, maintains or leads to equal employment opportunity.
2. **Affirmative Action Program (AAP):** A written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness.
3. **Affirmative Recruitment:** Special targeted and focused recruitment efforts undertaken to assure that qualified minorities and females are well represented in the applicant pool for positions to be filled.
4. **Age Discrimination In Employment Act of 1967 (ADEA):** Protects individuals forty years of age or older except where age is a bona fide occupational qualification or where the person is a key executive or policy-maker and meets other criteria.
5. **Applicant:** One who is seeking work and conforms to the employer's policy definition of an "applicant". An employer's definition of applicant, for example, may be limited to include only those who submit a completed company employment application.
6. **Applicant Log:** A record of applicants for employment detailing each applicant's name, date of application, referral source, position applied for, race and sex. The status of the applicant is also recorded.
7. **Applicant Flow:** The number of applicants for employment for a given job over a stated period of time.
8. **Applicant Pool:** The collection of candidates from which an employer selects persons to fill available positions.
9. **Asian or Pacific Islander:** Persons having origins in any of the original peoples of the Far East, Southeast Asian, the Indian Subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa and on the Indian subcontinent, includes India, Pakistan, Afghanistan, Bangladesh, Sri-Lanka, Nepal, Sikkim and Bhutan.
10. **Black (Not of Hispanic Origin):** Persons having origins in any of the Black racial groups of Africa.
11. **Calendar Day:** Every day shown on the calendar, ending and beginning at midnight.
12. **Certification:** The Contractor's sworn statement that the company has complied with the Equal Opportunity Special Provisions requirements for Federal Aid projects.
13. **Certificate of Training:** Certificate issued as verification of the trainee's successful completion of the training requirements for the classification in which training occurred.
14. **Civil Rights Act of 1964:** The nation's first comprehensive law making it illegal to discriminate on the basis of race, color, religion, sex, and national origin. Title

- VII of that law, which is enforced by the Equal Employment Opportunity Commission, is specifically aimed at discrimination in employment.
15. **Clerical:** A Job Category on the DelDOT EEO Report, which includes personnel performing all clerical/administrative type work regardless of level of difficulty, and regardless of where the activities are performed (field site or office). Job classifications typically included are bookkeepers, typists, clerks, accounts receivables/ payables, etc.
 16. **Collective Bargaining Agreement:** A written contract between an employer and a labor union, for a definitive period of time, spelling out conditions of employment, wages, hours of work, rights of employees as well as rights of the union, and procedures to be followed in settling disputes.
 17. **Commercially Useful Function:** A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 18. **Complainant:** The person(s) who files a complaint.
 19. **Complaint:** A formal (written) discrimination charge filed in accordance with the company policy or Equal Employment Opportunity Commission (EEOC) guidelines or Delaware Commission on Human Relations (DCHR) guidelines, or DelDOT's Complaint Procedure, which allege a violation of federal, state, and/or civil rights laws.
 20. **Compliance:** A contractor's status when fully meeting the requirements and obligations imposed by the contract provisions and the state highway department pertaining to Equal Employment Opportunity, Disadvantaged Business Enterprise, On-the-Job Training, Wages and Payrolls and their implementing laws and regulations.
 21. **Concentration:** Preponderance of persons by race, sex and/or race and sex combination.
 22. **Contract:** The written Agreement between the DelDOT and the Contractor/ Company setting forth the obligation of the parties for the performance of the work. The Contract may include, but is not limited to, the advertisement, bid proposal, Agreement, Contract form; proposal, performance, payment, and other bonds or guaranties; specifications; working drawings; general and detailed plans; all required notices with respect to any of the foregoing; change orders; supplemental agreements; and Engineer's written directives. The Contract shall not be modified, altered, or otherwise changed by any oral promise, statement, or representation made either by the Department or Contractor, unless such modification, alteration, or change is reduced to writing in accordance with the Contract.
 23. **Contract Time:** The number of working days or number of calendar days allowed for the substantial completion of the Contract. When a calendar date of completion is specified, the work shall be substantially completed on or before that specified completion date. Calendar day contracts shall be completed on or before the day indicated even when that date is Saturday, Sunday, or holiday.
 24. **Contractor:** The individual or legal entity contracting with the Department for performance of the work.

- a. Prime Contractor: A company having a contract with DelDOT.
 - b. Subcontractor: A company having a contract with a Prime Contractor
25. **Corrective Action Plan:** A contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.)
 26. **Craft Workers:** Hourly paid workers exercising independent judgment and performing jobs of relatively high skill level based on extensive training. Includes all those in the construction trades, as well as hourly paid supervisors and lead operators. The EEO Categories included in CRAFT WORKERS are Equipment Operators, Mechanics, Truck Drivers, Ironworkers, Carpenters, Cement Masons, Electricians, Pipe Fitters, Pipe Layers, Painters, and Semi Skilled Laborers.
 27. **Disadvantaged Business Enterprise (DBE):** A for profit small business concern (a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 28. **Discrimination:** A distinction in treatment based on race, color, religion, sex, national origin or disability.
 29. **Deficiency:** A shortfall, insufficiency, lack or void regarding the equal opportunity requirements of the contract and/or the DelDOT Construction Compliance Program.
 30. **Disparity:** Inadequate representation of minorities and / or women in a work force or applicant pool.
 31. **Diversity:** The employment of women and minorities in each job category and in classifications typical of the workforce.
 32. **Employment Discrimination:** Any action associated with employment, which denies equal treatment or opportunity to an individual, or group of individuals, as compared to others similarly situated, based on race, color, disability, sex or other protections.
 33. **Employment Practice:** Recruitment, hiring, and selection practices, transfer or promotion policies, and other provisions or functions associated with the employer's employment or selection process, which contributes, intentionally or not to the analysis, screening, hiring and/or upgrading of employees.
 34. **Equal Employment Opportunity (EEO):** The absence of partiality or distinction in employment treatment so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained.
 35. **Equal Employment Opportunity Officer (EEO Officer):** The person appointed the responsibility for effectively administering and promoting a company's active Equal Employment Opportunity Program and insuring that the company's policy, plan and program are being carried out.
 36. **Equal Employment Opportunity Commission (EEOC):** An independent commission created by the Civil Rights Acts of 1964, as amended, which is

responsible for enforcing Title VII. The EEOC may bring suit, subpoena witnesses, issue guidelines which have the force of law, render decisions, and provide technical assistance to employers and provide legal assistance to Complainants.

37. **EEO Compliance Review:** An evaluation and determination of a company's/contractor's compliance with EEO requirements and contract provisions. Such compliance reviews may be conducted by DelDOT, the FHWA, or both. Determination of compliance is made by the reviewing agency.
38. **Federally or Federally Assisted Construction Contract:** Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the government or borrowed on the credit of the government pursuant to any program involving a grant, contract, loan, insurance or guarantee under which the applicant itself participates in the construction work.
39. **FHWA:** The Federal Highway Administration is a division of the U.S. Department of Transportation and is responsible for setting policies, writing procedures, and providing oversight, guidance and direction to State Departments of Transportation receiving Federal funds.
40. **Foremen/Forewomen:** A Job Category on the DelDOT EEO Report which includes salaried or hourly paid employees primarily responsible for the work of craft and/or laborer personnel on construction projects.
41. **Good-Faith Efforts:** Affirmative action measures designed to implement the established objectives of an Affirmative Action Plan or other recruitment plan.
42. **Graduation:** Action requested by the prime contractor when a trainee completes all training requirements. Graduation is based upon satisfactory completion of Proficiency Demonstrations set up as milestones in each specific training classification, completion of the minimum hours in a training classification range and the employer's satisfaction that the trainee does meet journeyman status in the classification of training.
43. **Handicapped or Disabled Individual(s):** Any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment. Persons with certain drug and/or alcohol abuse situations are excluded from this definition.
44. **Hispanic:** Persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race. Excludes persons of Portuguese descent or persons from Central or South America not of Spanish origin or culture.
45. **Inspector:** An authorized representative of the Engineer assigned to make detailed inspections of the material or work to determine compliance with the Contract.
46. **Job Category (or EEO Job Category):** Broad categories to which individual job classifications are assigned for reporting purposes.
47. **Journeyman/Journeywoman:** One who is able to perform all of the tasks of their trade or occupation. Includes those who have graduated from formal

- apprenticeship or formal on-the-job training programs such as the DelDOT/FHWA program.
48. **Minority (or Minorities):** Persons of Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native races. The term may mean these groups in the aggregate or an individual group.
 49. **National Origin:** Pertains to one's origin based on birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group. National origin may be expressed as a country (e.g. Nigeria, China, Jamaica) or as a continent or geographical area (e.g. African, Asian, Caribbean).
 50. **Non-Compliance (or Violation):** Failure to (a) conform with compliance related requirements of the contract, and/or (b) meet the requirements of the DelDOT Compliance program in the time period(s) required; and/or (c) provide timely submittals, which, upon review, evidence a lack of conformity with program requirements. Non-compliance pertains to EEO, DBE, OJT and payrolls/wages.
 51. **Office of Contract Compliance Programs (OFCCP):** OFCCP has the responsibility of assuring that employers doing business with the Government comply with the equal employment opportunity (EEO) and affirmative action provisions of their contracts. OFCCP is part of the U.S. Department of Labor's Employment Standards Administration.
 52. **Officials (Managers):** A Job Category on the DelDOT EEO Report which includes personnel who set broad policies, exercise overall responsibility for the execution of these policies and direct individual departments or sections of a business' operations. Typically includes, but may not be limited to officers of the company, executives, middle managers, department managers, etc.
 53. **Parity:** The percentage of minorities and women in the workplace mirrors the percentages of minorities and women in the available workforce.
 54. **Promotion:** A personnel action, which results in a employee moving to a position requiring higher skill, knowledge, or ability and usually involving greater pay or title.
 55. **Project Workforce:** Employees working at the physical location of a construction project.
 56. **Recruiting Source:** Any person, organization or agency used to refer or provide workers for employment consideration.
 57. **Race:** A group of people united or classified together on the basis of history, nationality, or geographical distribution.
 58. **Rehire:** To hire a formerly employed person.
 59. **Representation:** employment rates of minorities and women accumulating work hours in a contractor's workforce is compared to their availability in the relevant CLF.
 60. **Retaliation:** The act of discriminating against a person due to their filing of an employment discrimination charge or testifying, assisting, or participating in any manner in such a charge.
 61. **Segregated Facilities:** Facilities belonging to or used in the course of business by an employer which provide different or separate accommodations for members of one race or sex than those provided others. Separate lavatories,

lockers, showers, and other personal facilities for men and for women are not considered segregated facilities.

62. **Sex Discrimination:** Discriminatory or disparate treatment of an individual due to their gender.
63. **Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors, and other written, verbal or physical conduct of a sexual nature constitute sexual harassment when: a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; b) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual; c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual Harassment is inclusive of unwelcome heterosexual and homosexual Advances.
62. **Special Provision:** Specific clauses adding to or revising the Standard Specifications, setting forth conditions varying from or additional to the Standard Specifications for a specific project.
63. **Show Cause Notice:** A written notification to a contractor based on the determination of the reviewer (or in appropriate cases by a higher level of authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.
64. **Supervisors:** Employees primarily responsible for the work of other employees and having oversight responsibilities for performance of assigned functions.
65. **Termination:** When an employee leaves employment voluntarily or involuntarily.
66. **Terms and Conditions of Employment:** This phrase includes all aspects of the employment relationship between an employee and their employer including, but not limited to, compensation, fringe benefits, leave policies, job placement, physical environment, work-related rules, work assignments, training and education, opportunities for promotion, etc. and maintenance of a nondiscriminatory working environment.
67. **Timetable:** A specified time frame, required in all affirmative action plans and programs, within which an employer seeks to achieve specific commitments.
68. **Trainee:** One who has not previously worked in or been paid as a journeyman in the classification for which they are to be trained and has not previously completed such a program.
69. **Training Classification:** A craft in which a trainee receives on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.
70. **Unskilled Laborers:** An employee who works under close supervision and performs basic tasks that are learned in a few days or hours. Unskilled laborers lift, dig, load, pull, etc., operate no equipment, and use no tools.
71. **Utilization:** For Contract compliance purposes, having minorities and/or women accumulating work hours in a particular occupation, craft, and job classification

or receiving contracts than would be reasonably expected based on their availability.

72. **White (Not of Hispanic Origin):** Persons having origins in any of the original peoples of Europe, or North Africa.
73. **Women:** Adult females.
74. **Workforce:** The total number of people employed in a company.
75. **Workplace:** the location where work is performed may include, work sites, properties, buildings, offices, structures, automobiles, trucks, trailers or other means of conveyance (private or public, while engaged in performance of duties), and parking areas, whether owned, leased or rented.

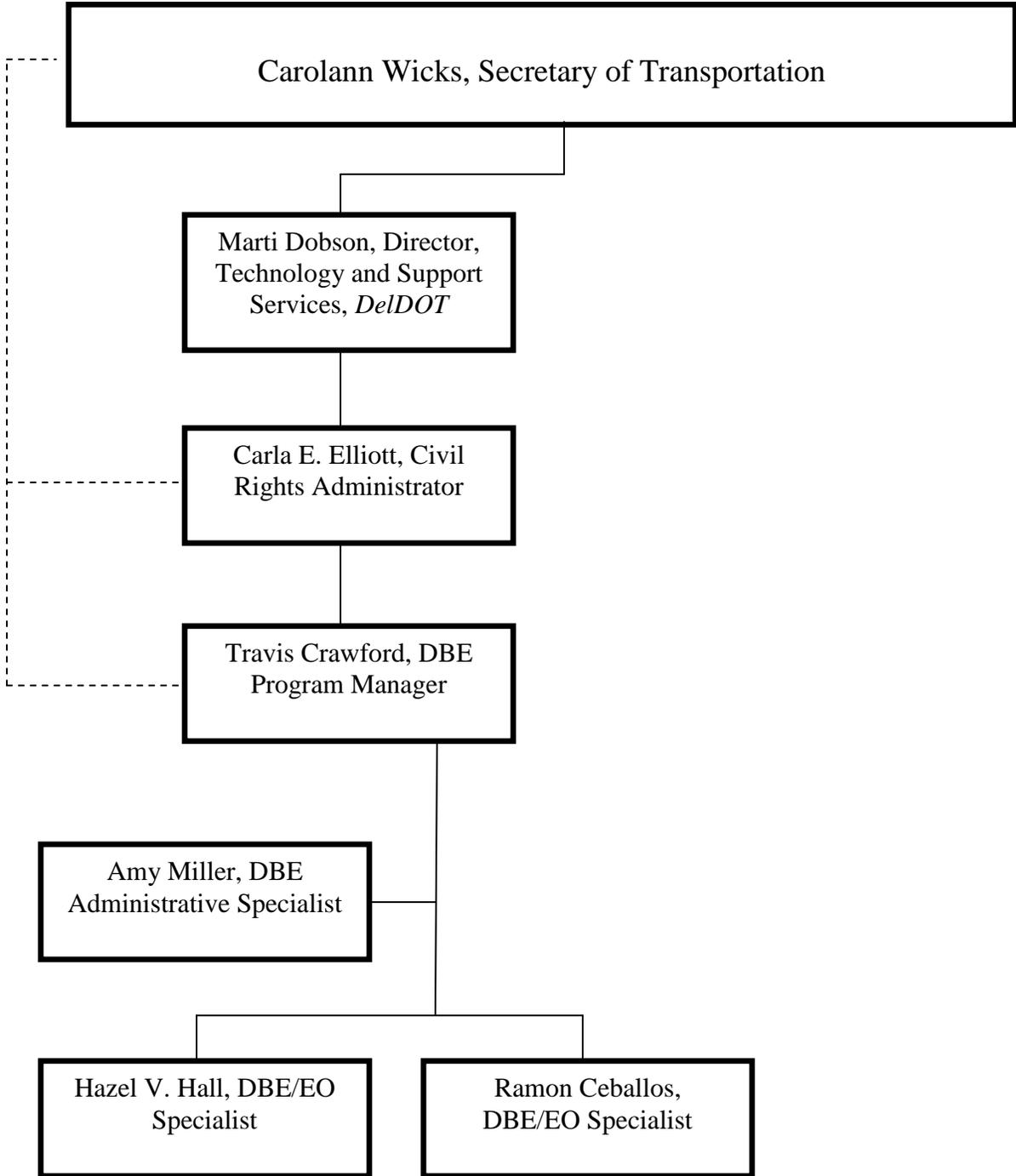
EXHIBIT LIST

- Exhibit A** Organizational Chart
- Exhibit B** Sample Pre-bid Notices Advising of DBE and OJT Goals and Requirements
- Exhibit C** Regulatory Authorities Supporting the Contractor Compliance Program
- Exhibit D** Valuation of Selection Criteria for Contractor Compliance Reviews
- Exhibit E** Sample Contractor Compliance Review Correspondence
- Exhibit E1 Scheduling Notice
 - Exhibit E2 Contractor Voluntary Compliance Plan Notice
 - Exhibit E3 Show Cause Notice
- Exhibit F** Contractor Compliance Review Forms
- Exhibit F1 Compliance Report Cover Sheet
 - Exhibit F2 List of Contracts
 - Exhibit F3 Employment Action Summary
 - Exhibit F4 Workforce Data Form
 - Exhibit F5 Training Data Form
 - Exhibit F6 Subcontractors Data Form
 - Exhibit F7 Action Plan Form
- Exhibit G** EEO Report Forms
- Exhibit G1 Sample EEO Compliance Certification
 - Exhibit G2 Quarterly EEO Report – Construction
 - Exhibit G3 Quarterly EEO Report – Consultant
- Exhibit H** DelDOT External Employment Opportunity Complaint Procedures
- Exhibit I** Complaint List
- Exhibit J** OJT Documentation
- Exhibit J1 OJT Annual Goal setting Methodology
 - Exhibit J2 OJT Assignment Methodology & Tool
 - Exhibit J3 OJT Program Guidelines
 - Exhibit J4 OJT Reporting Forms
 - Exhibit J5 OJT Monitoring Tool
- Exhibit K** Contractor Compliance Manual

EXHIBIT

A

DelDOT Civil Rights Section Organizational Chart



EXHIBIT

B



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

January 2008

Dear Prospective Bidders:

I would like to inform you that Project # 20-045-02, Governor's Ave Webb's Lane to Water Street, contains an On-the-Job Training (OJT) requirement of **one trainee**, as well as a DBE goal of **9%**. While most of you are familiar with the regulations and requirements, which are part of the DBE Program, you may not be similarly aware of the OJT Program requirements. Due to federal mandates, I wish to make you aware of the process in place for compliance with the OJT requirements.

As part of the bid proposal package, you will find DeIDOT's OJT Program guidelines. This document contains a wide variety of FHWA and DeIDOT approved OJT Training Programs. To comply with OJT requirements, a bidder should review the various Training Program and identify which Training Program would meet the needs of the project. In accordance with the bid proposal submission requirements, the apparent low bidder must submit a Training Program to DeIDOT for approval on the project along with identification of a proposed trainee meeting the program requirements. This is required within ten (10) days of designation as apparent low bidder. The OJT Program Guidelines also contain copies of the required forms to be used in reporting on the trainee progress.

The OJT Training requirement is a contractual provision that must be accomplished during the life of the contract. Compliance with the Training Special Provisions of the contract is mandatory and we wish to be supportive of your efforts to comply. Should you have any questions regarding OJT requirements, please feel free to contact me at 302-760-2555 or Richard Rexrode at 302-760-2029. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Carla E. Elliott".

Carla E. Elliott
Civil Rights Administrator

CEE:ce

EXHIBIT

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C1.23 CFR 200

SUBCHAPTER C—CIVIL RIGHTS

PART 200—TITLE VI PROGRAM AND RELATED STATUTES—IMPLEMENTATION AND REVIEW PROCEDURES

Sec.	
200.1	Purpose.
200.3	Application of this part.
200.5	Definitions.
200.7	FHWA Title VI policy.
200.9	State highway agency responsibilities.
200.11	Procedures for processing Title VI reviews.

AUTHORITY: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

SOURCE: 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

§ 200.1 Purpose.

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

§ 200.3 Application of this part.

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under § 200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

§ 200.5 Definitions.

The following definitions shall apply for the purpose of this part:

(a) *Affirmative action*. A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future non-discriminatory practices.

(b) *Beneficiary*. Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted pro-

gram, *i.e.*, relocatees, impacted citizens, communities, etc.

(c) *Citizen participation*. An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

(d) *Compliance*. That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

(e) *Deficiency status*. The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

(f) *Discrimination*. That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.

(g) *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, alternation or acquisition of facilities.

(h) *Federal assistance*. Includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and

§ 200.7

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

(i) *Noncompliance*. A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(j) *Persons*. Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

(k) *Program*. Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(l) *State highway agency*. That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* would be considered equivalent to *State highway agency* if the context so implies.

(m) *Program area officials*. The officials in FHWA who are responsible for carrying out technical program responsibilities.

(n) *Recipient*. Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or 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 assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term *recipient* does not include any ultimate beneficiary under any such program.

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(o) *Secretary*. The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) *Title VI Program*. The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–d4 (49 CFR part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);

(2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (49 CFR part 25; Pub. L. 91–646);

(3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601–3619);

(4) 23 U.S.C. 109(h);

(5) 23 U.S.C. 324;

(6) Subsequent Federal-Aid Highway Acts and related statutes.

§ 200.7 FHWA Title VI policy.

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR part 21; and related statutes and regulations.

§ 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied

the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) *State actions.* (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.

(3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by

State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

(4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, *i.e.*, relocatees, impacted citizens and affected communities.

(5) Develop a program to conduct Title VI reviews of program areas.

(6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.

(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.

(9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.

(10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(11) Beginning October 1, 1976, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.

(12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.

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(13) Establishing procedures for pregrant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; *i.e.*, highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

§ 200.11 Procedures for processing Title VI reviews.

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or nonconcurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is re-

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ferred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

PART 230—EXTERNAL PROGRAMS

Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)

- Sec.
- 230.101 Purpose.
 - 230.103 Definitions.
 - 230.105 Applicability.
 - 230.107 Policy.
 - 230.109 Implementation of specific Equal Employment Opportunity requirements.
 - 230.111 Implementation of special requirements for the provision of on-the-job training.
 - 230.113 Implementation of supportive services.
 - 230.115 Special contract requirements for “Hometown” or “Imposed” Plan areas.
 - 230.117 Reimbursement procedures (Federal-aid highway construction projects only).
 - 230.119 Monitoring of supportive services.
 - 230.121 Reports.

APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

APPENDIX C TO SUBPART A OF PART 230—FEDERAL-AID HIGHWAY CONTRACTORS ANNUAL EEO REPORT (FORM PR-1391)

APPENDIX D TO SUBPART A OF PART 230—FEDERAL-AID HIGHWAY CONSTRUCTION SUMMARY OF EMPLOYMENT DATA (FORM PR-1392)

APPENDIXES E-F TO SUBPART A OF PART 230 [RESERVED]

APPENDIX G TO SUBPART A OF PART 230—SPECIAL REPORTING REQUIREMENTS FOR “HOMETOWN” OR “IMPOSED” PLAN AREAS

Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

- 230.201 Purpose.
- 230.202 Definitions.
- 230.203 Policy.
- 230.204 Implementation of supportive services.
- 230.205 Supportive services funds obligation.
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- 230.207 Sources of assistance.

Subpart C—State Highway Agency Equal Employment Opportunity Programs

- 230.301 Purpose.
- 230.303 Applicability.

EXHIBIT

C

C2. 23 CFR 230
Subparts A, C and D

Federal Highway Administration, DOT

§ 230.103

- 230.305 Definitions.
- 230.307 Policy.
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- 230.311 State responsibilities.
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APPENDIX B TO SUBPART D OF PART 230—SAM- PLE CORRECTIVE ACTION PLAN

APPENDIX C TO SUBPART D OF PART 230—SAM- PLE SHOW CAUSE RESCISSION

APPENDIX D TO SUBPART D OF PART 230— EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

AUTHORITY: 23 U.S.C. 101, 140, and 315; 42 U.S.C. 2000d *et seq.*; 49 CFR 1.48 and 60-1.

SOURCE: 40 FR 28053, July 3, 1975, unless otherwise noted.

Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Sup- portive Services)

§ 230.101 Purpose.

The purpose of the regulations in this subpart is to prescribe the policies, procedures, and guides relative to the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts, except for those contracts awarded under 23 U.S.C. 117, and to the preparation and submission of reports pursuant thereto.

§ 230.103 Definitions.

For purposes of this subpart—

Administrator means the Federal Highway Administrator.

Areawide Plan means an affirmative action plan to increase minority utilization of crafts in a specified geographical area pursuant to Executive

Order 11246, and taking the form of either a “Hometown” or an “Imposed” plan.

Bid conditions means contract requirements which have been issued by OFCC for purposes of implementing a Hometown Plan.

Division Administrator means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

Division Equal Opportunity Officer means an individual with staff level responsibilities and necessary authority by which to operate as an Equal Opportunity Officer in a Division office. Normally the Equal Opportunity Officer will be a full-time civil rights specialist serving as staff assistant to the Division Administrator.

Hometown Plan means a voluntary areawide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

Imposed Plan means an affirmative action requirement for a specified geographical area made mandatory by OFCC and, in some areas, by the courts.

Journeyman means a person who is capable of performing all the duties within a given job classification or craft.

State highway agency means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency*.

Suggested minimum annual training goals means goals which have been assigned to each State highway agency annually for the purpose of specifying training positions on selected Federal-aid highway construction projects.

Supportive services means those services provided in connection with approved on-the-job training programs for highway construction workers and

§ 230.105

highway contractors which are designed to increase the overall effectiveness of training programs through the performance of functions determined to be necessary in connection with such programs, but which are not generally considered as comprising part of actual on-the-job craft training.

Trainee means a person who received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

[40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.105 Applicability.

(a) *Federal-aid highway construction projects.* This subpart applies to all Federal-aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:

(1) Federal-aided highway construction projects being constructed pursuant to 23 U.S.C. 117; and

(2) Those projects located in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or a "Hometown" Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.

(b) *Direct Federal highway construction projects.* This subpart applies to all direct Federal highway construction projects except:

(1) For those provisions relating to the special requirements for the provision of supportive services; and

(2) For those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or "Hometown" plan.

§ 230.107 Policy.

(a) *Direct Federal and Federal-aid highway construction projects.* It is the policy of the FHWA to require that all direct Federal and Federal-aid highway construction contracts include the same specific equal employment opportunity requirements. It is also the policy to require that all direct Federal

and Federal-aid highway construction subcontracts of \$10,000 or more (not including contracts for supplying materials) include these same requirements.

(b) *Federal-aid highway construction projects.* It is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. Moreover, it is the policy of the Federal Highway Administration to encourage the provision of supportive services which will increase the effectiveness of approved on-the-job training programs conducted in connection with Federal-aid highway construction projects.

§ 230.109 Implementation of specific Equal Employment Opportunity requirements.

(a) *Federal-aid highway construction projects.* The special provisions set forth in appendix A shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered Federal-aid highway construction subcontract.

(b) *Direct Federal highway construction projects.* Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Acquisition Regulations (48 CFR, chapter 1, section 22.803(c)). In order to obtain information required by 48 CFR, chapter 1, §22.804-2(c), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:

I expect to employ the following firms as subcontractors on this project: (Naming subcontractors at this time does not constitute a binding commitment on the bidder to retain such subcontractors, nor will failure to enter names affect the contract award):

Name _____
Address _____
Name _____
Address _____

[40 FR 28053, July 3, 1975, as amended at 51 FR 22800, June 23, 1986]

§ 230.111 Implementation of special requirements for the provision of on-the-job training.

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in §230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

(1) Availability of minorities, women, and disadvantaged for training.

(2) The potential for effective training.

(3) Duration of the contract.

(4) Dollar value of the contract.

(5) Total normal work force that the average bidder could be expected to use.

(6) Geographic location.

(7) Type of work.

(8) The need for additional journeymen in the area.

(9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

(1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.

(2) The development of full journeymen.

(3) The minimum length and type of training.

(4) The minimum wages of trainees.

(5) Trainees certifications.

(6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered

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in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of

the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 28053, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs. State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

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(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, followup procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office.

[40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas.

Direct Federal and Federal-aid contracts to be performed in "Hometown"

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or “Imposed” Plan areas will incorporate the special provision set forth in appendix G.

§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).

(a) *On-the-job special training provisions.* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year’s allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State’s need for and ability to use such funds.

§ 230.119 Monitoring of supportive services.

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

§ 230.121 Reports.

(a) Employment reports on Federal-aid highway construction contracts not subject to “Hometown” or “Imposed” plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every

month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to “Hometown” or “Imposed” plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to “Hometown” or “Imposed” plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where “Hometown” or “Imposed” plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works’ request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) [Reserved]

(e) Reports on supportive services contracts. The State highway agency is

to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978; 61 FR 14616, Apr. 3, 1996]

APPENDIX A TO SUBPART A OF PART
230—SPECIAL PROVISIONS

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY
RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract, Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment,

without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, *i.e.*, schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity

policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities

do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. *Training and Promotion.* a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, *i.e.*, apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and non-minority group members and women em-

ployed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be _____ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training

special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Further-

more, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length

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of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor

or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

APPENDIX C TO SUBPART A OF PART 230—FEDERAL-AID HIGHWAY CONTRACTORS ANNUAL EEO REPORT (FORM PR-1391)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT

OMB NO. 4040-0047
REPORT FOR
JULY 19__

1. CHECK APPROPRIATE BLOCK <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> SUBCONTRACTOR	2. NAME AND ADDRESS OF FIRM	3. FEDERAL AID PROJECT NUMBER	4. TYPE OF CONSTRUCTION
5. COUNTY AND STATE	6. PERCENT COMPLETE	7. BEGINNING CONSTR. DATE	8. DOLLAR AMOUNT OF CONTRACT
		9. ESTIMATED PEAK EMPLOYMENT MONTH AND YEAR (a)	NUMBER OF EMPLOYEES (b)

JOB CATEGORIES	10. EMPLOYMENT DATA										11. APPRENTICES ON THE JOB TRAINEES			
	Table A					Table B					Table C		Table D	
	TOTAL EMPLOYEES		BLACK Not of Hispanic Origin		HISPANIC	AMERICAN INDIAN ALASKAN NATIVE		ASIAN OR PACIFIC ISLANDER		WHITE Not of Hispanic Origin		ON THE JOB TRAINEES		DATE
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS (Management)														
SUPERVISORS														
FOREMEN/WOMEN														
CLERICAL														
EQUIPMENT OPERATORS														
MECHANICS														
TRUCK DRIVERS														
IRONWORKERS														
CARPENTERS														
CEMENT MASONS														
ELECTRICIANS														
PIPEFITTERS, PLUMBERS														
PAINTERS														
LABORERS, SEMI-SKILLED														
LABORERS, UNSKILLED														
TOTAL														

11. PREPARED BY: (Signature and Title of Contractor Representative) _____ DATE _____

12. REVIEWED BY: (Signature and Title of State Highway Official) _____ DATE _____

This report is required by law and regulation (23 U.S.C. 146 and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.

PR-1391 (4-1-10) (REV. 10-2009)

APPENDIX D TO SUBPART A OF PART 230—FEDERAL-AID HIGHWAY CONSTRUCTION SUMMARY OF EMPLOYMENT DATA (FORM PR-1392)

STATE REGION (6-8)		NUMBER OF PROJECTS (9-12)		TOTAL DOLLAR VALUE (13-23)												
DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FEDERAL-AID HIGHWAY CONSTRUCTION SUMMARY OF EMPLOYMENT DATA (INCLUDING MINORITY BREAKDOWN) FOR ALL FEDERAL-AID HIGHWAY PROJECTS FOR MONTH ENDING JULY 31st, 19____ OMB NO. 04-R-2427																
EMPLOYMENT DATA T-204 A																
JOB CATEGORIES	TOTAL EMPLOYEES		TOTAL MINORITIES		BLACK		HISPANIC		AMERICAN ALASKAN NATIVE		ASIAN PACIFIC ISLANDER		WHITE		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
02 OFFICIALS (MANAGERS)																
03 SUPERVISORS																
04 FOREMEN/WOMEN																
06 CLERICAL																
06 EQUIPMENT OPERATORS																
07 MECHANICS																
08 TRUCK DRIVERS																
09 IRONWORKERS																
10 CARPENTERS																
11 CEMENT MASONS																
12 ELECTRICIANS																
13 PIPEFITTERS, PLUMBERS																
14 PAINTERS																
16 LABORERS, SEMI-SKILLED																
16 LABORERS, UNSKILLED																
17 TOTAL																
Table B																
18 APPRENTICES																
19 ON THE JOB TRAINEES																
PREPARED BY (Signature & Title)											DATE	REVIEWED BY (Signature & Title of State Hwy. Official)		DATE		
This report is required by law and regulation (23 U.S.C. 14(f) and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.																

FORM PR-1392 (REV. 3-79)

PREVIOUS EDITIONS ARE OBSOLETE

GENERAL INFORMATION AND INSTRUCTIONS

This form is to be developed from the "Contractor's Annual EEO Report." This data is to be compiled by the State and sub-

mitted annually. It should reflect the total employment on all Federal-Aid Highway Projects in the State as of July 31st. The

staffing figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out section 22(A) of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than September 25.

Line 01—State & Region Code. Enter the 4-digit code from the list below.

Alabama	01-04	Montana	30-08
Alaska	02-10	Nebraska	31-07
Arizona	04-09	Nevada	32-09
Arkansas	05-06	New Hampshire	33-01
California	06-09	New Jersey	34-01
Colorado	08-08	New Mexico	35-06
Delaware	10-03	North Carolina	37-04
District of Columbia	11-03	North Dakota	38-08
Florida	12-04	Ohio	39-05
Georgia	13-04	Oklahoma	40-06
Hawaii	15-09	Oregon	41-10
Idaho	16-10	Pennsylvania	42-03
Illinois	17-05	Puerto Rico	43-01
Iowa	19-07	South Carolina	45-04
Kansas	20-07	South Dakota	46-08
Kentucky	21-04	Tennessee	47-04
Louisiana	22-06	Texas	48-06
Maine	23-01	Utah	49-08
Maryland	24-03	Vermont	50-01
Massachusetts	25-01	Virginia	51-03
Michigan	26-05	Washington	53-10
Minnesota	27-05	West Virginia	54-03
Mississippi	28-04	Wisconsin	55-05
Missouri	29-07	Wyoming	56-08

(23 U.S.C. sec. 140(a), 315, 49 CFR 1.48(b))

[44 FR 46832, Aug. 8, 1979. Correctly redesignated at 46 FR 21156, Apr. 9, 1981, and amended at 56 FR 4721, Feb. 6, 1991]

APPENDIXES E-F TO SUBPART A OF PART 230 [RESERVED]

APPENDIX G TO SUBPART A OF PART 230—SPECIAL REPORTING REQUIREMENTS FOR "HOMETOWN" OR "IMPOSED" PLAN AREAS

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR-1391 (appendix C to 23 CFR part 230) and in accordance with the instructions included thereon.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

SOURCE: 50 FR 51243, Dec. 16, 1985, unless otherwise noted.

§ 230.201 Purpose.

To prescribe the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

§ 230.202 Definitions.

(a) *Minority Business Enterprise*, as used in this subpart, refers to all small

measures by which the results of program efforts may be accurately assessed.

§ 230.207 Sources of assistance.

It is the policy of the FHWA that all potential sources of assistance to minority business enterprises be utilized. The State highway agency shall take actions to ensure that supportive services contracts reflect the availability of all sources of assistance in order to maximize resource utilization and avoid unnecessary duplication.

Subpart C—State Highway Agency Equal Employment Opportunity Programs

SOURCE: 41 FR 28270, July 9, 1976, unless otherwise noted.

§ 230.301 Purpose.

The purpose of the regulations in this subpart is to set forth Federal Highway Administration (FHWA) Federal-aid policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and for assuring compliance with the equal employment opportunity requirements of federally-assisted highway construction contracts.

§ 230.303 Applicability.

The provisions of this subpart are applicable to all States that receive Federal financial assistance in connection with the Federal-aid highway program.

§ 230.305 Definitions.

As used in this subpart, the following definitions apply:

(a) *Affirmative Action Plan* means:

(1) With regard to State highway agency work forces, a written document detailing the positive action steps the State highway agency will take to assure internal equal employment opportunity (internal plan).

(2) With regard to Federal-aid construction contract work forces, the Federal equal employment opportunity bid conditions, to be enforced by a State highway agency in the plan areas established by the Secretary of Labor

and FHWA special provisions in nonplan areas (external plan).

(b) *Equal employment opportunity program* means the total State highway agency program, including the affirmative action plans, for ensuring compliance with Federal requirements both in State highway agency internal employment and in employment on Federal-aid construction projects.

(c) *Minority groups*. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging. As defined by U.S. Federal agencies for employment purposes, minority group persons in the U.S. are identified as Blacks (not of Hispanic origin), Hispanics, Asian or Pacific Islanders, and American Indians or Alaskan Natives.

(d) *Racial/ethnic identification*. For the purpose of this regulation and any accompanying report requirements, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one racial/ethnic category. The following group categories will be used:

(1) The category *White (not of Hispanic origin)*: All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian Subcontinent.

(2) The category *Black (not of Hispanic origin)*: All persons having origins in any of the Black racial groups.

(3) The category *Hispanic*: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(4) The category *Asian or Pacific Islanders*: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(5) The category *American Indian or Alaskan Native*: All persons having origins in any of the original peoples of North America.

(e) *State* means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 230.307

(f) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency* if the context so implies.

[41 FR 28270, July 9, 1976, as amended at 41 FR 46293, Oct. 20, 1976]

§ 230.307 Policy.

Every employee and representative of State highway agencies shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated thereunder, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in the performance of Federal-aid highway construction contracts.

§ 230.309 Program format.

It is essential that a standardized Federal approach be taken in assisting the States in development and implementation of EEO programs. The format set forth in appendix A provides that standardized approach. State equal employment opportunity programs that meet or exceed the prescribed standards will comply with basic FHWA requirements.

§ 230.311 State responsibilities.

(a) Each State highway agency shall prepare and submit an updated equal employment opportunity program, one year from the date of approval of the preceding program by the Federal Highway Administrator, over the signature of the head of the State highway agency, to the Federal Highway Administrator through the FHWA Division Administrator. The program shall consist of the following elements:

- (1) The collection and analysis of internal employment data for its entire work force in the manner prescribed in part II, paragraph III of appendix A; and
- (2) The equal employment opportunity program, including the internal

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affirmative action plan, in the format and manner set forth in appendix A.

(b) In preparation of the program required by § 230.311(a), the State highway agency shall consider and respond to written comments from FHWA regarding the preceding program.

§ 230.313 Approval procedure.

After reviewing the State highway agency equal employment opportunity program and the summary analysis and recommendations from the FHWA regional office, the Washington Headquarters Office of Civil Rights staff will recommend approval or disapproval of the program to the Federal Highway Administrator. The State highway agency will be advised of the Administrator's decision. Each program approval is effective for a period of one year from date of approval.

APPENDIX A TO SUBPART C OF PART 230—STATE HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Each State highway agency's (SHA) equal employment opportunity (EEO) program shall be in the format set forth herein and shall address Contractor Compliance (part I) and SHA Internal Employment (part II), including the organizational structure of the SHA total EEO Program (internal and external).

PART I—CONTRACTOR COMPLIANCE

I. *Organization and structure.* A. *Statehighway agency EEO Coordinator (External) and staff support.* 1. Describe the organizational location and responsibilities of the State highway agency EEO Coordinator. (Provided organization charts of the State highway agency and of the EEO staff.)

2. Indicate whether full or part-time; if part-time, indicate percentage of time devoted to EEO.

3. Indicate length of time in position, civil rights experience and training, and supervision.

4. Indicate whether compliance program is centralized or decentralized.

5. Identify EEO Coordinator's staff support (full- and part-time) by job title and indicate areas of their responsibilities.

6. Identify any other individuals in the central office having a responsibility for the implementation of this program and describe their respective roles and training received in program area.

B. *District or division personnel.* 1. Describe the responsibilities and duties of any district

EEO personnel. Identify to whom they report.

2. Explain whether district EEO personnel are full-time or have other responsibilities such as labor compliance or engineering.

3. Describe training provided for personnel having EEO compliance responsibility.

C. *Project personnel.* Describe the EEO role of project personnel.

II. *Compliance procedures.* A. *Applicable directives.* 1. FHWA Contract Compliance Procedures.

2. EEO Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 1)¹

3. Training Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 2)¹

4. FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 6 (Contract Procedures), and subsec. 8 (Minority Business Enterprise).¹

B. *Implementation.* 1. Describe process (methods) of incorporating the above FHWA directives into the SHA compliance program.

2. Describe the methods used by the State to familiarize State compliance personnel with all FHWA contract compliance directives. Indicate frequency of work shops, training sessions, etc.

3. Describe the procedure for advising the contractor of the EEO contract requirements at any preconstruction conference held in connection with a Federal-aid contract.

III. *Accomplishments.* Describe accomplishments in the construction EEO compliance program during the past fiscal year.

A. *Regular project compliance review program.* This number should include at least all of the following items:

1. Number of compliance reviews conducted.

2. Number of contractors reviewed.

3. Number of contractors found in compliance.

4. Number of contractors found in non-compliance.

5. Number of show cause notices issued.

6. Number of show cause notices rescinded.

7. Number of show cause actions still under conciliation and unresolved.

8. Number of followup reviews conducted.

(NOTE: In addition to information requested in items 4-8 above, include a brief summary of total show cause and followup activities—findings and achievements.)

B. *Consolidated compliance reviews.* 1. Identify the target areas that have been reviewed since the inception of the consolidated com-

pliance program. Briefly summarize total findings.

2. Identify any significant impact or effect of this program on contractor compliance.

C. *Home office reviews.* If the State conducts home office reviews, describe briefly the procedures followed by State.

D. *Major problems encountered.* Describe major problems encountered in connection with any review activities during the past fiscal year.

E. *Major breakthroughs.* Comment briefly on any major breakthrough or other accomplishment significant to the compliance review program.

IV. *Areawide plans/Hometown and Imposed (if applicable).* A. Provide overall analysis of the effectiveness of each areawide plan in the State.

B. Indicate by job titles the number of State personnel involved in the collection, consolidation, preparation, copying, reviewing, analysis, and transmittal of area plan reports (Contracting Activity and Post Contract Implementation). Estimate the amount of time (number of hours) spent collectively on this activity each month. How does the State use the plan report data?

C. Identify Office of Federal Contract Compliance Programs (OFCCP) area plan audits or compliance checks in which State personnel participated during the last fiscal year. On the average, how many hours have been spent on these audits and/or checks during the past fiscal year?

D. Describe the working relationship of State EEO compliance personnel with representatives of plan administrative committee(s).

E. Provide recommendations for improving the areawide plan program and the reporting system.

V. *Contract sanctions.* A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.

B. Indicate the State or Federal laws which are applicable.

C. Does the State withhold a contractor's progress payments for failure to comply with EEO requirements? If so, identify contractors involved in such actions during the past fiscal year. If not, identify other actions taken.

VI. *Complaints.* A. Describe the State's procedures for handling discrimination complaints against contractors.

B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.

C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.

VII. *External training programs, including supportive services.* A. Describe the State's process for reviewing the work classifications of trainees to determine that there is a

¹The Federal-Aid Highway Program Manual is available for inspection and copying at the Federal Highway Administration (FHWA), 1200 New Jersey Avenue, SE., Washington, DC 20590, or at FHWA offices listed in 49 CFR part 7, appendix D.

proper and reasonable distribution among appropriate craft.

B. Describe the State's procedures for identifying the number of minorities and women who have completed training programs.

C. Describe the extent of participation by women in construction training programs.

D. Describe the efforts made by the State to locate and use the services of qualified minority and female supportive service consultants. Indicate if the State's supportive service contractor is a minority or female owned enterprise.

E. Describe the extent to which reports from the supportive service contractors provide sufficient data to evaluate the status of training programs, with particular reference to minorities and women.

VIII. *Minority business enterprise program.* FHPM 6-4-1-8 sets forth the FHWA policy regarding the minority business enterprise program. The implementation of this program should be explained by responding to the following:

A. Describe the method used for listing of minority contractors capable of, or interested in, highway construction contracting or subcontracting. Describe the process used to circulate names of appropriate minority firms and associations to contractors obtaining contract proposals.

B. Describe the State's procedure for insuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors.

C. Describe the State's procedure for insuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.

D. Describe the action the State has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year, and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.

E. Outline the State's procedure for evaluating its prequalification/licensing requirements.

F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than \$100,000.

G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.

IX. *Liaison.* Describe the liaison established by the State between public (State, county, and municipal) agencies and private organizations involved in EEO programs.

How is the liaison maintained on a continuing basis?

X. *Innovative programs.* Identify any innovative EEO programs or management procedures initiated by the State and not previously covered.

PART II—STATE HIGHWAY AGENCY EMPLOYMENT

I. *General.* The State highway agency's (SHA) internal program is an integral part of the agency's total activities. It should include the involvement, commitment and support of executives, managers, supervisors and all other employees. For effective administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an EEO program and an AAP must be comprehensive, covering all elements of the agency's personnel management policies and practices. The major part of an AAP must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked, screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups.

Set forth are general guidelines designed to assist the State highway agencies in implementing internal programs, including the development and implementation of AAP's to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.

II. *Administration and implementation.* The head of each State highway agency is responsible for the overall administration of the internal EEO program, including the total integration of equal opportunity into all facets of personnel management. However, specific program responsibilities should be assigned for carrying out the program at all management levels.

To ensure effectiveness in the implementation of the internal EEO program, a specific and realistic AAP should be developed. It should include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency's individual need to overcome existing problems.

A. *State Highway Agency Affirmative Action Officer (internal).* 1. *Appointment of Affirmative Action Officer.* The head of the SHA should appoint a qualified Affirmative Action (AA) Officer (Internal EEO Officer) with responsibility and authority to implement the internal EEO program. In making the selection, the following factors should be considered:

a. The person appointed should have proven ability to accomplish major program goals.

b. Managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job.

c. Appointing qualified minority and/or female employees to head or staff the program may offer good role models for present and potential employees and add credibility to the programs involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the agency to achieve them.

2. *Responsibilities of the Affirmative Action Officer.* The responsibilities of the AA Officer should include, but not necessarily be limited to:

a. Developing the written AAP.

b. Publicizing its content internally and externally.

c. Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.

d. Handling and processing formal discrimination complaints.

e. Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed.

f. Reporting, at least quarterly, to the head of the SHA on progress and deficiencies of each unit in relation to agency goals.

g. In addition, consider the creation of:

(1) An EEO Advisory Committee, whose membership would include top management officials,

(2) An EEO Employee Committee, whose membership would include rank and file employees, with minority and female representatives from various job levels and departments to meet regularly with the AA officer, and

(3) An EEO Counseling Program to attempt informal resolution of discrimination complaints.

B. *Contents of an affirmative action plan.* The Affirmative Action Plan (AAP) is an integral part of the SHA's EEO program. Although the style and format of AAP's may vary from one SHA to another, the basic substance will generally be the same. The essence of the AAP should include, but not necessarily be limited to:

1. Inclusion of a strong agency policy statement of commitment to EEO.

2. Assignment of responsibility and authority for program to a qualified individual.

3. A survey of the labor market area in terms of population makeup, skills, and availability for employment.

4. Analyzing the present work force to identify jobs, departments and units where minorities and females are underutilized.

5. Setting specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.

6. Making every manager and supervisor responsible and accountable for meeting these goals.

7. Reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.

8. Finding minorities and females who are qualified or qualifiable to fill jobs.

9. Getting minorities and females into upward mobility and relevant training programs where they have not had previous access.

10. Developing systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, determine the reasons and make necessary changes.

11. Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal.

C. *Implementation of an affirmative action plan.* The written AAP is the framework and management tool to be used at all organizational levels to actively implement, measure and evaluate program progress on the specific action items which represent EEO program problems or deficiencies. The presence of a written plan alone does not constitute an EEO program, nor is it, in itself, evidence of an ongoing program. As a minimum, the following specific actions should be taken.

1. *Issue written equal employment opportunity policy statement and affirmative action commitment.* To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.

The statement should include, but not necessarily be limited to, the following elements:

a. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.

b. Personal commitment to and support of EEO by the head of the SHA.

c. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.

d. The requirement that the EEO program be a goal setting program with measurement

and evaluation factors similar to other major agency programs.

e. Equal opportunity in all employment practices, including (but not limited to) recruiting, hiring, transfers, promotions, training, compensation, benefits, recognition (awards), layoffs, and other terminations.

f. Responsibility for positive affirmative action in the discharge of EEO programs, including performance evaluations of managers and supervisors in such functions, will be expected of and shared by all management personnel.

g. Accountability for action or inaction in the area of EEO by management personnel.

2. *Publicize the affirmative action plan.* a. *Internally:* (1) Distribute written communications from the head of the SHA.

(2) Include the AAP and the EEO policy statement in agency operations manual.

(3) Hold individual meetings with managers and supervisors to discuss the program, their individual responsibilities and to review progress.

(4) Place Federal and State EEO posters on bulletin boards, near time clocks and in personnel offices.

(5) Publicize the AAP in the agency newsletters and other publications.

(6) Present and discuss the AAP as a part of employee orientation and all training programs.

(7) Invite employee organization representatives to cooperate and assist in developing and implementing the AAP.

b. *Externally:* Distribute the AAP to minority groups and women's organizations, community action groups, appropriate State agencies, professional organizations, etc.

3. *Develop and implement specific programs to eliminate discriminatory barriers and achieve goals.* a. *Job structuring and upward mobility:* The AAP should include specific provisions for:

(1) Periodic classification plan reviews to correct inaccurate position descriptions and to ensure that positions are allocated to the appropriate classification.

(2) Plans to ensure that all qualification requirements are closely job related.

(3) Efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas.

(4) Career counseling and guidance to employees.

(5) Creating career development plans for lower grade employees who are underutilized or who demonstrate potential for advancement.

(6) Widely publicizing upward mobility programs and opportunities within each work unit and within the total organizational structure.

b. *Recruitment and placement.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Active recruitment efforts to support and supplement those of the central personnel agency or department, reaching all appropriate sources to obtain qualified employees on a nondiscriminatory basis.

(2) Maintaining contracts with organizations representing minority groups, women, professional societies, and other sources of candidates for technical, professional and management level positions.

(3) Ensuring that recruitment literature is relevant to all employees, including minority groups and women.

(4) Reviewing and monitoring recruitment and placement procedures so as to assure that no discriminatory practices exist.

(5) Cooperating with management and the central personnel agency on the review and validation of written tests and other selection devices.

(6) Analyzing the flow of applicants through the selection and appointment process, including an analytical review of reasons for rejections.

(7) Monitoring the placement of employees to ensure the assignment of work and workplace on a nondiscriminatory basis.

c. *Promotions.* The AAP should include specific provisions for, but not necessarily limited to:

1. Establishing an agency-wide merit promotion program, including a merit promotion plan, to provide equal opportunity for all persons based on merit and without regard to race, color, religion, sex or national origin.

2. Monitoring the operation of the merit promotion program, including a review of promotion actions, to assure that requirements procedures and practices support EEO program objectives and do not have a discriminatory impact in actual operation.

3. Establishing skills banks to match employee skills with available job advancement opportunities.

4. Evaluating promotion criteria (supervisory evaluations, oral interviews, written tests, qualification standards, etc.) and their use by selecting officials to identify and eliminate factors which may lead to improper "selection out" of employees or applicants, particularly minorities and women, who traditionally have not had access to better jobs. It may be appropriate to require selecting officials to submit a written justification when well qualified persons are passed over for upgrading or promotion.

5. Assuring that all job vacancies are posted conspicuously and that all employees are encouraged to bid on all jobs for which they feel they are qualified.

6. Publicizing the agency merit promotion program by highlighting breakthrough promotions, *i.e.*, advancement of minorities and women to key jobs, new career heights, etc.

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d. *Training.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Requiring managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program and the administration of the policies and procedures incorporated therein, and on Federal, State and local laws relating to EEO.

(2) Training in proper interviewing techniques of employees who conduct employment selection interviews.

(3) Training and education programs designed to provide opportunities for employees to advance in relation to the present and projected manpower needs of the agency and the employees' career goals.

(4) The review of profiles of training course participants to ensure that training opportunities are being offered to all eligible employees on an equal basis and to correct any inequities discovered.

e. *Layoffs, recalls, discharges, demotions, and disciplinary actions.* The standards for deciding when a person shall be terminated, demoted, disciplined, laid off or recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

(1) When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.

(2) Any punitive action (*i.e.*, harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.

(3) The following records should be kept to monitor this area of the internal EEO program:

On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

Exit interviews should be conducted with employees who leave the employment of the SHA.

f. *Other personnel actions.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Assuring that information on EEO counseling and grievance procedures is easily available to all employees.

(2) A system for processing complaints alleging discrimination because of race, color, religion, sex or national origin to an impartial body.

(3) A system for processing grievances and appeals (*i.e.*, disciplinary actions, adverse actions, adverse action appeals, etc).

(4) Including in the performance appraisal system a factor to rate manager's and supervisors' performance in discharging the EEO program responsibilities assigned to them.

(5) Reviewing and monitoring the performance appraisal program periodically to determine its objectivity and effectiveness.

(6) Ensuring the equal availability of employee benefits to all employees.

4. *Program evaluation.* An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

a. Defining the major objectives of EEO program evaluation.

b. The evaluation should be directed toward results accomplished, not only at efforts made.

c. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.

d. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:

(1) Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.

(2) The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of any particular problems encountered and recommendations for corrective actions needed.

e. Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each job category.

III. *Employment statistical data.* A. As a minimum, furnish the most recent data on the following:

1. The total population in the State,

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2. The total labor market in State, with a breakdown by racial/ethnic identification and sex, and

3. An analysis of (1) and (2) above, in connection with the availability of personnel and jobs within SHA's.

B. State highway agencies shall use the EEO-4 Form in providing current work force data. This data shall reflect only State department of transportation/State highway department employment.

D. EMPLOYMENT DATA AS OF JUNE 30
(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL TIME EMPLOYEES (Temporary employees not included)

JOB CATEGORIES	ANNUAL SALARY In Thousands (\$K)	TOTAL (COLUMNS) \$K A	MALE					FEMALE				
			NON-HISPANIC ORIGIN		HISPANIC D	ASIAN OR PACIFIC ISLANDER E	AMERICAN INDIAN OR ALASKAN NATIVE F	NON-HISPANIC ORIGIN		HISPANIC I	ASIAN OR PACIFIC ISLANDER J	AMERICAN INDIAN OR ALASKAN NATIVE K
			WHITE B	BLACK C				WHITE G	BLACK H			
OFFICIALS/ ADMINISTRATORS	1 \$ 0.1-3.9											
	2 4.0-5.9											
	3 6.0-7.9											
	4 8.0-9.9											
	5 10.0-12.9											
	6 13.0-15.9											
	7 16.0-24.9											
	8 25.0 PLUS											
PROFESSIONALS	9 0.1-3.9											
	10 4.0-5.9											
	11 6.0-7.9											
	12 8.0-9.9											
	13 10.0-12.9											
	14 13.0-15.9											
	15 16.0-24.9											
	16 25.0 PLUS											
TECHNICIANS	17 0.1-3.9											
	18 4.0-5.9											
	19 6.0-7.9											
	20 8.0-9.9											
	21 10.0-12.9											
	22 13.0-15.9											
	23 16.0-24.9											
	24 25.0 PLUS											
PROTECTIVE SERVICE	25 0.1-3.9											
	26 4.0-5.9											
	27 6.0-7.9											
	28 8.0-9.9											
	29 10.0-12.9											
	30 13.0-15.9											
	31 16.0-24.9											
	32 25.0 PLUS											
PARA. PROFESSIONALS	33 0.1-3.9											
	34 4.0-5.9											
	35 6.0-7.9											
	36 8.0-9.9											
	37 10.0-12.9											
	38 13.0-15.9											
	39 16.0-24.9											
	40 25.0 PLUS											
OFFICE/ CLERICAL	41 0.1-3.9											
	42 4.0-5.9											
	43 6.0-7.9											
	44 8.0-9.9											
	45 10.0-12.9											
	46 13.0-15.9											
	47 16.0-24.9											
	48 \$ 25.0 PLUS											

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D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)												
(Do not include elected/appointed officials. Blanks will be counted as zero)												
1. FULL TIME EMPLOYEES (Temporary employees not included)												
JOB CATEGORIES	ANNUAL SALARY (in thousands 000)	TOTAL (COLUMNS B-K) A	MALE					FEMALE				
			NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
			WHITE	BLACK				WHITE	BLACK			
			B	C	D	E	F	G	H	I	J	K
SKILLED CRAFT	49 \$ 0.1-3.9											
	50 4.0-5.9											
	51 6.0-7.9											
	52 8.0-9.9											
	53 10.0-12.9											
	54 13.0-15.9											
	55 16.0-24.9											
	56 25.0 PLUS											
SERVICE/ MAINTENANCE	57 0.1-3.9											
	58 4.0-5.9											
	59 6.0-7.9											
	60 8.0-9.9											
	61 10.0-12.9											
	62 13.0-15.9											
	63 16.0-24.9											
	64 \$ 25.0 PLUS											
65. TOTAL FULL TIME												
(LINES 1-64)												
2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)												
66. OFFICIALS / ADMIN.												
67. PROFESSIONALS												
68. TECHNICIANS												
69. PROTECTIVE SERV.												
70. PARA-PROFESSIONAL												
71. OFFICE / CLERICAL												
72. SKILLED CRAFT												
73. SERV. / MAINT.												
74. TOTAL OTHER THAN FULL TIME												
(LINES 66-73)												
3. NEW HIRES DURING FISCAL YEAR Permanent full time only JULY 1 - JUNE 30												
75. OFFICIALS / ADMIN.												
76. PROFESSIONALS												
77. TECHNICIANS												
78. PROTECTIVE SERV.												
79. PARA-PROFESSIONAL												
80. OFFICE / CLERICAL												
81. SKILLED CRAFT												
82. SERV. / MAINT.												
83. TOTAL NEW HIRES												
(LINES 75-82)												

[41 FR 28270, July 9, 1976, as amended at 41 FR 46294, Oct. 20, 1976; 74 FR 28442, June 16, 2009]

**Subpart D—Construction Contract
Equal Opportunity Compliance
Procedures**

SOURCE: 41 FR 34239, Aug. 13, 1976, unless otherwise noted.

§ 230.401 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

§ 230.403 Applicability.

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

§ 230.405 Administrative responsibilities.

(a) *Federal Highway Administration (FHWA) responsibilities.* (1) The FHWA has the responsibility to ensure that contractors meet contractual equal opportunity requirements under E.O. 11246, as amended, and title 23 U.S.C., and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(3) Failure of the State highway agency (SHA) to discharge the responsibilities stated in §230.405(b)(1) may result in DOT's taking any or all of the following actions (see appendix A to 23

CFR part 630, subpart C "Federal-aid project agreement"):

(i) Cancel, terminate, or suspend the Federal-aid project agreement in whole or in part;

(ii) Refrain from extending any further assistance to the SHA under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the SHA; and

(iii) Refer the case to an appropriate Federal agency for legal proceedings.

(4) Action by the DOT, with respect to noncompliant contractors, shall not relieve a SHA of its responsibilities in connection with these same matters; nor is such action by DOT a substitute for corrective action utilized by a State under applicable State laws or regulations.

(b) *State responsibilities.* (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

(2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by non-compliance with equal opportunity contract requirements.

§ 230.407 Definitions.

For the purpose of this subpart, the following definitions shall apply, unless the context requires otherwise:

(a) *Actions*, identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);

(b) *Affirmative Action Plan* means a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate

and measure equal opportunity program progress and effectiveness. (The Special Provisions [23 CFR part 230 A, appendix A] and areawide plans are Affirmative Action Plans.);

(c) *Affirmative Actions* means the efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training;

(d) *Areawide Plan* means an Affirmative Action Plan approved by the Department of Labor to increase minority and female utilization in crafts of the construction industry in a specified geographical area pursuant to E.O. 11246, as amended, and taking the form of either a “Hometown” or an “Imposed” Plan.

(1) *Hometown Plan* means a voluntary areawide agreement usually developed by representatives of labor unions, minority organizations, and contractors, and approved by the OFCCP for the purpose of implementing the equal employment opportunity requirements pursuant to E.O. 11246, as amended;

(2) *Imposed Plan* means mandatory affirmative action requirements for a specified geographical area issued by OFCCP and, in some areas, by the courts;

(e) *Compliance Specialist* means a Federal or State employee regularly employed and experienced in civil rights policies, practices, procedures, and equal opportunity compliance review and evaluation functions;

(f) *Consolidated Compliance Review* means a review and evaluation of all significant construction employment in a specific geographical (target) area;

(g) *Construction* shall have the meanings set forth in 41 CFR 60–1.3(e) and 23 U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a SHA;

(h) *Corrective Action Plan* means a contractor’s unequivocal written and

signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.);

(i) *Contractor* means, any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier;

(j) *Days* shall mean calendar days;

(k) *Discrimination* means a distinction in treatment based on race, color, religion, sex, or national origin;

(l) *Equal Employment Opportunity* means the absence of partiality or distinction in employment treatment, so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained;

(m) *Equal Opportunity Compliance Review* means an evaluation and determination of a nonexempt direct Federal or Federal-aid contractor’s or subcontractor’s compliance with equal opportunity requirements based on:

(1) *Project work force*—employees at the physical location of the construction activity;

(2) *Area work force*—employees at all Federal-aid, Federal, and non-Federal projects in a specific geographical area as determined under § 230.409 (b)(9); or

(3) *Home office work force*—employees at the physical location of the corporate, company, or other ownership headquarters or regional managerial, offices, including “white collar” personnel (managers, professionals, technicians, and clericals) and any maintenance or service personnel connected thereto;

(n) *Equal Opportunity Requirements* is a general term used throughout this document to mean all contract provisions relative to equal employment opportunity (EEO), subcontracting, and training;

(o) *Good Faith Effort* means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan;

(p) *Show Cause Notice* means a written notification to a contractor based

on the determination of the reviewer (or in appropriate cases by higher level authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed;

(q) *State highway agency* (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency*. With regard to direct Federal contracts, references herein to SHA's shall be considered to refer to FHWA regional offices, as appropriate.

§ 230.409 Contract compliance review procedures.

(a) *General*. A compliance review consists of the following elements:

(1) Review Scheduling (Actions R-1 and R-2).

(2) Contractor Notification (Action R-3).

(3) Preliminary Analysis (Phase I) (Action R-4).

(4) Onsite Verification and Interviews (Phase II) (Action R-5).

(5) Exit Conference (Action R-6).

(6) Compliance Determination and Formal Notification (Actions R-8, R-9, R-10, R-11, R-12).

The compliance review procedure, as described herein and in appendix D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

(b) *Review scheduling*. (Actions R-1 and R-2). Because construction work forces are not constant, particular attention should be paid to the proper scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's work forces:

(1) Which hold the greatest potential for employment and promotion of mi-

norities and women (particularly in higher skilled crafts or occupations);

(2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;

(3) Working on projects that include special training provisions; and

(4) Where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391's (23 CFR part 230, subpart A, appendix C) Review Reports and Hometown Plan Reports).

In addition, the following considerations shall apply:

(5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;

(6) Compliance Reviews in geographical areas covered by areawide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in § 230.415.

(7) Reviews shall be conducted prior to or during peak employment periods.

(8) No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and

(9) For compliance reviews based on an area work force (outside of areawide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:

(i) Union geographical boundaries;

(ii) The geographical area from which the contractor recruits employees, *i.e.*, reasonable recruitment area;

(iii) Standard Metropolitan Statistical Area (SMSA) or census tracts; and

(iv) The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

(c) *Contractor notification* (Action R-3).

(1) The Compliance Specialist should usually provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required.

(2) The contractor shall be requested to provide a meeting place on the day

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of the visit either at the local office of the contractor or at the jobsite.

(3) The contractor shall be requested to supply all of the following information to the Compliance Specialist prior to the onsite verification and interviews.

(i) Current Form PR-1391 developed from the most recent payroll;

(ii) Copies of all current bargaining agreements;

(iii) Copies of purchase orders and subcontracts containing the EEO clause;

(iv) A list of recruitment sources available and utilized;

(v) A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees;

(vi) A list of promotions made during the past 6 months, to include race, national origin, and sex of employee, previous job held, job promoted into; and corresponding wage rates;

(vii) An annotated payroll to show job classification, race, national origin and sex;

(viii) A list of minority- or female-owned companies contacted as possible subcontractors, vendors, material suppliers, etc.; and

(ix) Any other necessary documents or statements requested by the Compliance Specialist for review prior to the actual onsite visit.

(4) For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractors are present at the meeting and have supplied the documentation listed in § 230.409(c)(3).

(d) *Preliminary analysis (Phase I) (Action R-4)*. Before the onsite verification and interviews, the Compliance Specialist shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

(1) The contractor's current work force;

(2) The contractor's relationship with referral sources, e.g., unions, employment agencies, community action

agencies, minority and female organizations, etc.;

(3) The minority and female representation of sources;

(4) The availability of minorities and females with requisite skills in a reasonable recruitment area;

(5) Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and

(6) The related projects (and/or contractor) files of FHWA regional or division and State Coordinator's offices to obtain current information relating to the status of the contractor's project(s), value, scheduled duration, written corrective action plans, PR-1391 or Manpower Utilization Reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

(e) *Onsite verification and interviews (Phase II) (Action R-5)*. (1) Phase II of the review consists of the construction or home office site visit(s). During the initial meeting with the contractor, the following topics shall be discussed:

(i) Objectives of the visit;

(ii) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and

(iii) Arrangements for the site tour(s) and employee interviews.

(2) The Compliance Specialist shall make a physical tour of the employment site(s) to determine that:

(i) EEO posters are displayed in conspicuous places in a legible fashion;

(ii) Facilities are provided on a non-segregated basis (e.g. work areas, wash-room, timeclocks, locker rooms, storage areas, parking lots, and drinking fountains);

(iii) Supervisory personnel have been oriented to the contractor's EEO commitments;

(iv) The employee referral source system is being implemented;

(v) Reported employment data is accurate;

(vi) Meetings have been held with employees to discuss EEO policy, particularly new employees; and

(vii) Employees are aware of their right to file complaints of discrimination.

(3) The Compliance Specialist should interview at least one minority, one nonminority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

(4) The Compliance Specialist shall, on a sample basis, determine the union membership status of union employees on the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C]).

(5) The Compliance Specialist shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(6) The Compliance Specialist shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures of an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

(f) *Exit conference (Action R-6)*. (1) During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(2) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the Compliance Specialist shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, and issue a 30-day show cause notice.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. (Action R-7) A voluntary corrective action plan should be accepted with the understanding that it only address those problems uncovered prior to the exit conference.

(g) *Compliance determinations (Action R-8)*. (1) The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

(2) Compliance determinations on contractors working in a Hometown Plan Area shall reflect the status of those crafts covered by part II of the plan bid conditions. Findings regarding part I crafts shall be transmitted through channels to the Washington Headquarters, Office of Civil Rights.

(3) The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

(i) The contractor's equal employment opportunity (EEO) policy;

(ii) Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;

(iii) The authority and responsibilities of the EEO officer;

(iv) The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;

(v) The extent of participation and minority and female utilization in FHWA training programs;

(vi) The contractor's review of personnel actions to ensure equal opportunities;

(vii) The contractor's participation in apprenticeship or other training;

(viii) The contractor's relationship (if any) with unions and minority and female union membership;

(ix) Effective measures to assure non-segregated facilities, as required by contract provisions;

(x) The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and

(xi) The adequacy of the contractor's records and reports.

(4) A contractor shall be considered to be in compliance (Action R-9) when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

(5) A contractor shall be considered to be in noncompliance (Action R-10) when:

(i) The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or

(ii) The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

(h) *Show cause procedures*—(1) *General*. Once the onsite verification and exit conference (Action R-5) have been completed and a compliance determination made, (Action R-8), the contractor shall be notified in writing of the compliance determination. (Action R-11 or R-12) This written notification shall be sent to the contractor within 15 days following the completion of the onsite

verification and exit conference. If a contractor is found in noncompliance (Action R-10), action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (Action R-12). The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

(2) *When a show cause notice is required*. A show cause notice shall be issued when a determination of non-compliance is made based upon:

(i) The findings of a compliance review;

(ii) The results of an investigation which verifies the existence of discrimination; or

(iii) Areawide plan reports that show an underutilization of minorities (based on criteria of U.S. Department of Labor's Optional Form 66 "Manpower Utilization Report") throughout the contractor's work force covered by part II of the plan bid conditions.

(3) *Responsibility for issuance*. (i) Show cause notices will normally be issued by SHA's to federally assisted contractors when the State has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice.

(ii) When circumstances warrant, the Regional Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

(iii) The Regional Federal Highway Administrators in Regions 8, 10, and the Regional Engineer in Region 15, shall issue show cause notices to direct Federal contractors found in non-compliance.

(4) *Content of show cause notice*. The show cause notice must: (See sample—appendix A of this subpart)

(i) Notify the contractor of the determination of noncompliance;

(ii) Provide the basis for the determination of noncompliance;

(iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;

(iv) Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;

(v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and

(vi) Advise the contractor of the availability and willingness of the Compliance Specialist to conciliate within the time limits of the show cause notice.

(5) *Preparing and processing the show cause notice.* (i) The State or FHWA official who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the head of the SHA or the Regional Federal Highway Administrator, as appropriate.

(ii) The recommendation, background data, and final draft notice shall be reviewed by appropriate State or FHWA legal counsel.

(iii) Show cause notices issued by the SHA shall be issued by the head of that agency or a designee.

(iv) The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.

(v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period. (Action R-13).

(vi) The 30-day show cause notice shall be issued directly to the non-compliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

(6) *Conciliation efforts during show cause period.* (i) The Compliance Specialist is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the State, FHWA division, or FHWA regional office's case files, as appropriate, indicating actions and reactions of the con-

tractor, a brief synopsis of any meetings with the contractor, notes on verbal communication and written correspondence, requests for assistance or interpretations, and other relevant matters.

(ii) In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be rescinded and the contractor formally notified (Action R-17). The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

(7) *Corrective action plans.* (i) When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted. (See Sample Corrective Action Plan—appendix B of this subpart)

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports. (Action R-15 and R-17).

(iii) When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels by the compliance specialist immediately upon expiration of the 30-day show cause period. (Action R-16, R-18, R-19)

(iv) When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstating a show cause notice.

(v) When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary

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changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (*i.e.*, plan entered into prior to the issuance of a show cause) must be issued a 30-day show cause notice in the situations referred to in paragraphs (h) (7) (iv) and (v) of this section, *i.e.*, failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(i) *Followup reviews.* (1) A followup review is an extension of the initial review process to verify the contractors performance of corrective action and to validate progress report information. Therefore, followup reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) *Hearing process.* (1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R-19). The Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

- (i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;
- (ii) Copies of any contractor or subcontractor certifications;
- (iii) Copy of show cause notice;

(iv) Copies of any corrective action plans; and

(v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) SHA's through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for the Department of Transportation.

(k) *Responsibility determinations.* (1) In instances where requests for formal hearings are pending OFCCP approval, the contractor may be declared a non-responsible contractor for inability to comply with the equal opportunity requirements.

(2) SHA's shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended, with a contractor who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to E.O. 11246, as amended.

§ 230.411 Guidance for conducting reviews.

(a) *Extensions of time.* Reasonable extensions of time limits set forth in these instructions may be authorized by the SHA's or the FHWA regional office, as appropriate. However, all extensions are subject to Washington Headquarters approval and should only be granted with this understanding. The Federal Highway Administrator shall be notified of all time extensions granted and the justification therefor. In sensitive or special interest cases, simultaneous transmittal of reports and other pertinent documents is authorized.

(b) *Contract completion.* Completion of a contract or seasonal shutdown shall not preclude completion of the administrative procedures outlined herein or the possible imposition of sanctions or debarment.

(c) *Home office reviews outside regions.* When contractor's home offices are located outside the FHWA region in which the particular contract is being performed, and it is determined that the contractors' home offices should be reviewed, requests for such reviews with accompanying justification shall be forwarded through appropriate

channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be in-

formed of the criteria outlined in §230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

§ 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(3) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information.¹ (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, *i.e.*, area work force, project work force, home office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

¹The Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D.

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(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

(xi) Concurrences at appropriate levels.

(5) Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

(6) Each review level is responsible for ensuring that required information is contained in the report.

(7) When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then areawide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington Headquarters, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

(i) The compliance review report required by § 230.413(a)(4).

(ii) Corrective action plans.

(iii) Show cause notices or compliance notifications.

(iv) Show cause rescissions.

While other data and information should be kept by regional offices (including progress reports, correspondence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, OCR.

(b) *Administrative requirements*—(1) *State conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the State Compliance Specialist will:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the contractor of the compliance determination, *i.e.*, send the contractor either notification of compliance or show cause notice; and

(D) Forward three copies of the compliance review report, and the compli-

ance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, the FHWA division EEO Specialist shall:

(A) Analyze the State's report, ensure that it is complete and accurate;

(B) Resolve nonconcurrency, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, the FHWA Regional Civil Rights Director shall:

(A) Analyze the report, ensure that it is complete and accurate;

(B) Resolve nonconcurrency, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) *FHWA division conducted reviews.*

(i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

(A) Prepare compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the State to send the contractor the compliance determination, *i.e.*, either notification of compliance or show cause notice; and

(D) Forward two copies of the compliance review report and the compliance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in § 230.413(b)(1)(iii).

(3) *FHWA region conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Inform the appropriate division to notify the State to send the contractor

the compliance determination *i.e.*, either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any non-concurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA's;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

§ 230.415 Consolidated compliance reviews.

(a) *General.* Consolidated compliance reviews shall be implemented to determine employment opportunities on an areawide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA, however, consolidated reviews shall at all times remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown an imposed plan areas, on an areawide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) *Methodology*—(1) *Selection of a target area.* In identifying the target area of a consolidated compliance review (e.g. SMSA, hometown or imposed plan area, a multicounty area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral

practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) *Determine the review period.* After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) *Obtain background information.* EEO-3's Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) *Identify contractors.* Every non-exempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish areawide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviewed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only reflect the status of crafts covered by part II of plan bid conditions. Employment data of crafts covered by part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by part I of the plan bid conditions.

(5) *Contractor notification.* Those contractors selected for onsite review shall be sent a notification letter as outlined in §230.409(c) along with a request for current workforce data² for completion

²The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 4 to volume 2, chapter 2,

Continued

and submission at the onsite review. Those contractors in the target area not selected for onsite review shall also be requested to supply current work-force data as of the onsite review period, and shall return the data within 15 days following the onsite review period.

(6) *Onsite reviews.* Compliance reviews shall then be conducted in accordance with the requirements set forth in § 230.409. Reviewers may use Form FHWA-86, Compliance Data Report, if appropriate. It is of particular importance during the onsite reviews that the review team provide for adequate coordination of activities at every stage of the review process.

(7) *Compliance determinations.* Upon completion of the consolidated reviews, compliance determinations shall be made on each review by the reviewer. Individual show cause notices or compliance notifications shall be sent (as appropriate) to each reviewed contractor.

The compliance determination shall be based on the contractor's target area work force (Federal, Federal-aid and non-Federal), except when the target area is coincidental with hometown plan area, compliance determinations must not be based on that part of a contractor's work force covered by part I of the plan bid conditions, as previously set forth in this regulation. For example: ABC Contracting, Inc. employs carpenters, operating engineers, and cement masons. Carpenters and operating engineers are covered by part II of the plan bid conditions, however, cement masons are covered by part I of the plan bid conditions. The compliance determination must be based only on the contractor's utilization of carpenters and operating engineers.

(d) *Reporting—(1) Composite report.* A final composite report shall be submitted as a complete package to the Washington Headquarters, OCR, within 45 days after the review period and shall consist of the following:

(i) Compliance review report, for each contractor and subcontractor

section 3 of the Federal-Aid Highway Program Manual, which is available at the offices listed in 49 CFR part 7, appendix D.

with accompanying show cause notice or compliance notification.

(ii) Work force data to show the aggregate employment of all contractors in the target area.

(iii) A narrative summary of findings and recommendations to include the following:

(A) A summary of highway construction employment in the target area by craft, race, and sex. This summary should explore possible patterns of discrimination or underutilization and possible causes, and should compare the utilization of minorities and females on contractor's work forces to the civilian labor force percent for minorities and females in the target area.

(B) If the target area is a plan area, a narrative summary of the plan's effectiveness with an identification of part I and part II crafts. This summary shall discuss possible differences in minority and female utilization between part I and part II crafts, documenting any inferences drawn from such comparisons.

(C) If applicable, discuss local labor unions' membership and/or referral practices that impact on the utilization of minorities and females in the target area. Complete and current copies of all collective bargaining agreements and copies of EEO-3, Local Union Reports, for all appropriate unions shall accompany the composite report.

(D) Any other appropriate data, analyses, or information deemed necessary for a complete picture of the areawide employment.

(E) Considering the information compiled from the summaries listed above, make concrete recommendations on possible avenues for correcting problems uncovered by the analyses.

(2) *Annual planning report.* The proper execution of consolidated compliance reviews necessitates scheduling, along with other fiscal program planning. The Washington Headquarters, OCR, shall be notified of all planned consolidated reviews by August 10 of each year and of any changes in the target area or review periods, as they become known. The annual consolidated planning report shall indicate:

(i) Selected target areas:

Federal Highway Administration, DOT

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- (ii) The basis for selection of each area; and
- (iii) The anticipated review period (dates) for each target area.

APPENDIX A TO SUBPART D OF PART 230—SAMPLE SHOW CAUSE NOTICE

Certified Mail, Return Receipt Requested
 Date _____
 Contractor's Name _____
 Address _____
 City, State, and Zip Code _____

DEAR CONTRACTOR: As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

- List of Deficiencies
1. _____
 2. _____
 3. _____

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semiskilled and skilled categories of employees.

The Department of Labor regulations (41 CFR 60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form PR-1273, Clause II). Section 60-1.20(b) of these regulations provides that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of non-compliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at _____ (Address) at _____ (Time) on _____ (Date) for you to

submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to (Name, Address, and Phone).

Sincerely yours,

[41 FR 34245, Aug. 13, 1976]

APPENDIX B TO SUBPART D OF PART 230—SAMPLE CORRECTIVE ACTION PLAN

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 20 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will

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submit an updated listing of recruitment sources and evidence of contact by _____ (Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by _____ (Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by _____ (Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority representation. This meeting will be held on _____ (Date) and we will summarize the discussions and current posture of each subcontractor for your review by _____ (Date). Additionally, as requested, we will submit a PR-1391 on

_____, (Date),
_____, (Date),
_____, (Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented all the provisions of these commitments by _____ (Date).

[41 FR 34245, Aug. 13, 1976]

APPENDIX C TO SUBPART D OF PART 230—SAMPLE SHOW CAUSE RESCISSION

Certified Mail, Return Receipt Requested
Date _____
Contractor _____
Address _____
City, State, and Zip Code _____

DEAR CONTRACTOR: On _____, (Date) you received a 30-day show cause notice from this office for failing to implement the required contract requirements pertaining to equal employment opportunity.

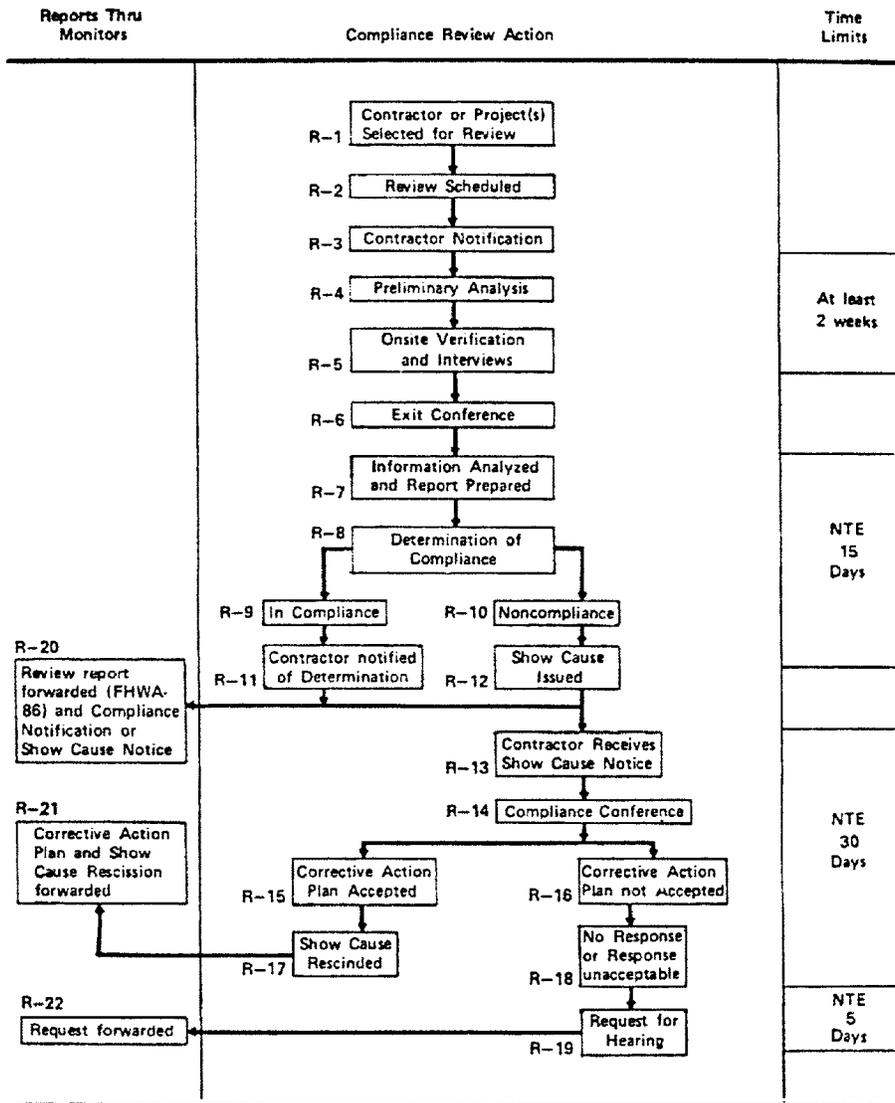
Your corrective action plan, discussed and submitted at the compliance conference held on _____ (Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered in compliance with Executive Order 11246, as amended. If it should later be determined that your corrective action plan is not sufficient to achieve compliance, this Rescission shall not preclude a subsequent finding of noncompliance.

In view of the above, this letter is to inform you that the 30-day show cause notice of _____ (Date) is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of your corrective action plan, formal sanction proceedings will be instituted immediately.

Sincerely,

APPENDIX D TO SUBPART D OF PART 230—EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART 46



[41 FR 34245, Aug. 13, 1976]

EXHIBIT

C

C3. 23 CFR 633

Subpart A

the public information and outreach strategies identified by the State. Public information should be provided through methods best suited for the project, and may include, but not be limited to, information on the project characteristics, expected impacts, closure details, and commuter alternatives.

(4) States should develop and implement the TMP in sustained consultation with stakeholders (e.g., other transportation agencies, railroad agencies/operators, transit providers, freight movers, utility suppliers, police, fire, emergency medical services, schools, business communities, and regional transportation management centers).

(c) The Plans, Specifications, and Estimates (PS&Es) shall include either a TMP or provisions for contractors to develop a TMP at the most appropriate project phase as applicable to the State's chosen contracting methodology for the project. A contractor developed TMP shall be subject to the approval of the State, and shall not be implemented before it is approved by the State.

(d) The PS&Es shall include appropriate pay item provisions for implementing the TMP, either through method or performance based specifications.

(1) For method-based specifications individual pay items, lump sum payment, or a combination thereof may be used.

(2) For performance based specifications, applicable performance criteria and standards may be used (e.g., safety performance criteria such as number of crashes within the work zone; mobility performance criteria such as travel time through the work zone, delay, queue length, traffic volume; incident response and clearance criteria; work duration criteria).

(e) *Responsible persons.* The State and the contractor shall each designate a trained person, as specified in §630.1008(d), at the project level who has the primary responsibility and sufficient authority for implementing the TMP and other safety and mobility aspects of the project.

§ 630.1014 Implementation.

Each State shall work in partnership with the FHWA in the implementation of its policies and procedures to improve work zone safety and mobility. At a minimum, this shall involve an FHWA review of conformance of the State's policies and procedures with this regulation and reassessment of the State's implementation of its procedures at appropriate intervals. Each State is encouraged to address implementation of this regulation in its stewardship agreement with the FHWA.

§ 630.1016 Compliance date.

States shall comply with all the provisions of this rule no later than October 12, 2007. For projects that are in the later stages of development at or about the compliance

date, and if it is determined that the delivery of those projects would be significantly impacted as a result of this rule's provisions, States may request variances for those projects from the FHWA, on a project-by-project basis.

PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.

- 633.101 Purpose.
- 633.102 Applicability.
- 633.103 Regulatory authority.
- 633.104 Availability.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

- 633.201 Purpose.
- 633.202 Definitions.
- 633.203 Applicability of existing laws, regulations, and directives.
- 633.204 Fiscal allocation and obligations.
- 633.205 Prefinancing.
- 633.206 Project agreements.
- 633.207 Construction labor and materials.
- 633.208 Maintenance.
- 633.209 Notices to prospective Federal-aid construction contractors.
- 633.210 Termination of contract.
- 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

APPENDIX A TO SUBPART B OF PART 633—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE

APPENDIX B TO SUBPART B OF PART 633—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS

APPENDIX C TO SUBPART B OF PART 633—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

APPENDIX D TO SUBPART B OF PART 633—FEDERAL-AID PROPOSAL NOTICES

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

AUTHORITY: 23 U.S.C. 114 and 315; 49 CFR 1.48.

SOURCE: 52 FR 36920, Oct. 2, 1987, unless otherwise noted.

§ 633.101

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§ 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, nonsegregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to-time be required by law and regulation as conditions of Federal assistance.

§ 633.102 Applicability.

(a) The required contract provisions and the required proposal notices apply to all Federal-aid construction contracts other than Appalachian construction contracts.

(b) Form FHWA-1273, “Required Contract Provisions, Federal-aid Construction Contracts,” contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA-1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see § 633.104 for availability of form).

(c) [Reserved]

(d) The required contract provisions contained in Form FHWA-1273 shall apply to all work performed on the contract by the contractor’s own organization and to all work performed on the contract by piecework, station work, or by subcontract.

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA-1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA-1273.

(f) The State highway agency (SHA) shall include the notices concerning certification of nonsegregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA-1273, the SHA may include Form FHWA-1273 in its entirety to meet this requirement.

[52 FR 36920, Oct. 2, 1987, as amended at 69 FR 7118, Feb. 13, 2004]

§ 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA-1273 are requirements of regulations promulgated by the FHWA or other Federal agencies. The authority for each provision will be cited in the text of Form FHWA-1273.

§ 633.104 Availability.

(a) Form FHWA-1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.

(b) Current copies of Form FHWA-1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

AUTHORITY: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

§ 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

§ 633.202 Definitions.

(a) The word *Commission* means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).

EXHIBIT

C

C4. 49 CFR 21

**PART 21—NONDISCRIMINATION IN
FEDERALLY-ASSISTED PROGRAMS
OF THE DEPARTMENT OF TRANS-
PORTATION—EFFECTUATION OF
TITLE VI OF THE CIVIL RIGHTS ACT
OF 1964**

Sec.

- 21.1 Purpose.
- 21.3 Application of this part.
- 21.5 Discrimination prohibited.
- 21.7 Assurances required.
- 21.9 Compliance information.
- 21.11 Conduct of investigations.
- 21.13 Procedure for effecting compliance.
- 21.15 Hearings.
- 21.17 Decisions and notices.
- 21.19 Judicial review.
- 21.21 Effect on other regulations, forms, and instructions.
- 21.23 Definitions.

APPENDIX A TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES

APPENDIX B TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

APPENDIX C TO PART 21—APPLICATION OF PART 21 TO CERTAIN FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF TRANSPORTATION

AUTHORITY: 42 U.S.C. 2000d-2000d-7.

SOURCE: 35 FR 10080, June 18, 1970, unless otherwise noted.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

§ 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application ap-

proved before that effective date. 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 before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 21.5(c).

The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(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 this part shall extend to any facility located wholly or in part in that space.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

§ 21.5 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

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(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person 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 a person 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 a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of 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 person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons 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 with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or appli-

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cant 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) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) 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.

(6) Examples demonstrating the application of the provisions of this section to certain types of Federal financial assistance administered by the Department of Transportation are contained in appendix C of this part.

(7) This part 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 participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds 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 part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the

grounds of race, color, or national origin.

(c) Employment practices:

(1) Where a primary objective of the Federal financial assistance to a program 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 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds 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 regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is 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 rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973; 68 FR 51389, Aug. 26, 2003]

§ 21.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which this part applies, except an application 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 award 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, 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. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other

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participants. 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 with 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 statute 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.

(b) *Continuing Federal financial assistance.* Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant

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to the application: (1) 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 part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

§21.9 Compliance information.

(a) *Cooperation and assistance.* The Secretary 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 timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in 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. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary 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 for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973; 68 FR 51389, Aug. 26, 2003]

§21.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary 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 persons 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 after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) *Investigations.* The Secretary 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 will 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 Secretary 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 §21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§21.13 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, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with §21.7.* If an applicant fails or refuses to furnish an assurance required under §21.7 or otherwise fails or refuses to comply with a

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requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to § 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to § 21.17(e); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

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(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 efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 21.15 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 21.13(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 Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 21.13(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 Secretary 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

the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

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

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence 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 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 Federal statutes, authorities, or other means by which

Federal financial assistance is extended and 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 or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with §21.17.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

§21.17 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* 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 Secretary 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 Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary 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 Secretary 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 Secretary.

(b) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or

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recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary 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 §21.15, a decision shall be made by the Secretary 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 or the Secretary 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 Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, 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, to which this regulation applies, 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 to which this regulation applies will thereafter be extended 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 Secretary that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely af-

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ected 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 applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary 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 (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who 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 or procedures issued by the Secretary. 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.

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

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

§21.19 Judicial review.

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

§21.21 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 Department which impose requirements designed to prohibit any discrimination against individuals on the grounds 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 a recipient of such assistance 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 may be considered 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): (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 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 Secretary 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 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 § 21.17), 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 ac-

tion had been taken by the Secretary of this Department.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

§ 21.23 Definitions.

Unless the context requires otherwise, as used in this part:

(a) *Applicant* means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) *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.

(c) *Federal financial assistance* includes:

- (1) Grants and loans of Federal funds;
- (2) The grant or donation of Federal property and interests in property;
- (3) The detail of Federal personnel;
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
- (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Primary recipient* means any recipient that is authorized or required to extend Federal financial assistance to another recipient.

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

(f) *Recipient* may mean any State, territory, possession, the District of Columbia, 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, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) *Secretary* means the Secretary of Transportation or, except in §21.17 (e), any person to whom he has delegated his authority in the matter concerned.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

APPENDIX A TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 *et seq.*).

2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*).

3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).

4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).

5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).

6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).

7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).

8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).

9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).

10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).

11. Use of U.S. land acquired for public airports under:

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 Oct. 1, 1949, 50 U.S.C. App. 1622b).

12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).

13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).

14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).

15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).

16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).

17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).

18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642).

APPENDIX B TO PART 21—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 *et seq.*).

APPENDIX C TO PART 21—APPLICATION OF PART 21 TO CERTAIN FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF TRANSPORTATION

NONDISCRIMINATION ON FEDERALLY ASSISTED PROJECTS

(a) *Examples.* The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

(1) *Federal Aviation Administration.* (i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

(2) *Federal Highway Administration.* (i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Urban Mass Transportation Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and

location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator—(1) Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

Subpart A—General

Sec.

- 23.1 What are the objectives of this part?
- 23.3 What do the terms used in this part mean?
- 23.5 To whom does this part apply?
- 23.7 How long do the provisions of this part remain in effect?
- 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?
- 23.11 What compliance and enforcement provisions are used under this part?

EXHIBIT

C

C5. 49 CFR 26

§ 25.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 25.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 25.500 through 25.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee’s sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 25.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency’s office that enforces Title IX.

§ 25.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[65 FR 52895, Aug. 30, 2000]

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—General

Sec.

- 26.1 What are the objectives of this part?
- 26.3 To whom does this part apply?
- 26.5 What do the terms used in this part mean?
- 26.7 What discriminatory actions are forbidden?
- 26.9 How does the Department issue guidance and interpretations under this part?
- 26.11 What records do recipients keep and report?
- 26.13 What assurances must recipients and contractors make?
- 26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- 26.21 Who must have a DBE program?
- 26.23 What is the requirement for a policy statement?
- 26.25 What is the requirement for a liaison officer?
- 26.27 What efforts must recipients make concerning DBE financial institutions?
- 26.29 What prompt payment mechanisms must recipients have?
- 26.31 What requirements pertain to the DBE directory?
- 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- 26.37 What are a recipient’s responsibilities for monitoring the performance of other program participants?

Subpart C—Goals, Good Faith Efforts, and Counting

- 26.41 What is the role of the statutory 10 percent goal in this program?
- 26.43 Can recipients use set-asides or quotas as part of this program?
- 26.45 How do recipients set overall goals?

- 26.47 Can recipients be penalized for failing to meet overall goals?
- 26.49 How are overall goals established for transit vehicle manufacturers?
- 26.51 What means do recipients use to meet overall goals?
- 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
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Subpart D—Certification Standards

- 26.61 How are burdens of proof allocated in the certification process?
- 26.63 What rules govern group membership determinations?
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- 26.81 What are the requirements for Unified Certification Programs?
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- 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?
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Subpart F—Compliance and Enforcement

- 26.101 What compliance procedures apply to recipients?
- 26.103 What enforcement actions apply in FHWA and FTA programs?
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- 26.107 What enforcement actions apply to firms participating in the DBE program?
- 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM

APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES

APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES

APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

AUTHORITY: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914,

§ 26.5

or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof

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of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or sub-contract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawai-

ians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

§ 26.7

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or

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Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

§ 26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of

a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

- (i) Firm name;
- (ii) Firm address;
- (iii) Firm's status as a DBE or non-DBE;
- (iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

§ 26.15

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rule-making that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public par-

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ticipation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation.

You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within

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30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and

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other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully

in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient’s responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part’s requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set

forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs’ opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

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§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau’s County Business Pattern (CBP) data base, determine the number of all ready, will-

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ing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration’s review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could

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be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in non-compliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base

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amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider

its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic

means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination,

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you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example to Paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to Paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet

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your overall goals unless and until you do not meet your overall goal for a year.

Example to Paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to Paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information re-

quired by paragraph (b)(2) of this section—

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals,

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as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of

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the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the

DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

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(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily al-

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lowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of

proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and

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control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

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(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E

of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

- (1) The owner's expertise must be—
 - (i) In a specialized field;
 - (ii) Of outstanding quality;
 - (iii) In areas critical to the firm's operations;
 - (iv) Indispensable to the firm's potential success;
 - (v) Specific to the type of work the firm performs; and
 - (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

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(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either

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spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by

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other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and con-

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tinues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(1) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually discontrols the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee

may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially

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and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

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Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is

eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

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(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The “home state” UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm’s application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient’s certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all

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firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

§ 26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of § 26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer

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oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

§ 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly,

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or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (*see* § 26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

[68 FR 35555, June 16, 2003]

§ 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (*e.g.*, the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining

to the DBE application process, filing locations, required documentation and status of applications.

[68 FR 35555, June 16, 2003]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to

be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.*

(1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

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(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit

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authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the de-certification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception.* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be

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deemed a failure to cooperate under § 26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions

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of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

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(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in ef-

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fect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false,

fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This

includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified,

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assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types

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of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or

associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organi-

zations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(H) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

--Please refer to the instructions sheet for directions on filling out this form--

1. Submitted to (check only one): FHWA FAA FTA--Vendor Number _____

2. AIP Numbers (FAA Recipients Only): _____

3. Federal fiscal year in which reporting period falls: FY _____ 4. Date This Report Submitted: _____

5. Reporting Period: Report due June 1 (for period Oct. 1-Mar. 31) Report due Dec. 1 (for period April 1-Sept. 30)

6. Name of Recipient: _____ FAA Annual Report

7. Annual DBE Goals: _____ % Race Conscious Goal _____ % Race Neutral Goal _____ % OVERALL Goal _____ %

	Race Conscious Goal			Race Neutral Goal			OVERALL Goal								
	A	B	C	D	E	F	G	H	I						
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs						
8. Prime contracts awarded this period															
9. Subcontracts awarded/committed this period															
TOTAL															
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD--BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F	G	H	I						
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e., not of any other group listed here)	TOTALS for this reporting period only	Year-End TOTALS						
10. Total Number of Contracts (Prime and Sub)															
11. Total Dollar Value															
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A			B			C			D			E		
	Number of Prime Contracts Completed			Total Dollar Value of Prime Contracts Completed			DBE Participation Needed to Meet Goal (Dollars)			Total DBE Participation (Dollars)			Percentage of Total DBE Participation		
12. Race Conscious															
13. Race Neutral															
14. Totals															
15. Submitted by (Print Name of Authorized Representative)														16. Signature of Authorized Representative	
17. Phone Number														18. Fax Number	

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE

program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
- (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as denial of equal access to hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to

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a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent

with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION**A. Prior/Other Certifications**

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION**A. Contact Information**

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices – not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

(4) State the date on which you and/or each other owner took ownership of the firm.

(5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

(6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

(7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

(8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

(9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

(10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

(2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm; and
- (d) Your firm has had any subsidiaries of its own.

(3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
- (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
- (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
- (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) Banking Information
- (a) State the name of your firm's bank.
- (b) State the main phone number of your firm's bank branch.
- (c) State the address of your firm's bank branch.
- (2) Bonding Information
- (a) State your firm's Binder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) State your agent's/broker's phone number.
- (d) State your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

- ① **Should I apply?**
- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
 - Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
 - Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
 - Is your firm organized as a for-profit business?
- ⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.
- ② **Is there an easier way to apply?**
- If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.
- NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**
- ③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**
- ④ **Where can I find more information?**
- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
 - SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of NAICS codes)
 - 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on ___ / ___ / ___ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?
 Yes, on ___ / ___ / ___ No
 If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:	
(3) Phone #:	(4) Other Phone #:	(5) Fax #:	
(6) E-mail:		(7) Website <i>(if have one)</i> :	
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State: Zip:
(9) Mailing address of firm <i>(if different)</i> :	City:	County/Parish:	State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID <i>(if any)</i> :
(3) This firm was established on ___ / ___ / ___	(4) I/We have owned this firm since: ___ / ___ / ___
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>	
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No	⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

(9) Number of employees:	Full-time	Part-time	Total
(10) Specify the gross receipts of the firm for the last 3 years:	Year _____	Year _____	Total receipts \$ _____
	Year _____	Year _____	Total receipts \$ _____
	Year _____	Year _____	Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
 Yes No

If Yes, identify: Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	Yes	No
	(b) consisted of a partnership in which one or more of the partners are other firms?	Yes	No
	(c) owned any percentage of any other firm?	Yes	No
	(d) had any subsidiaries?	Yes	No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(If more than one owner, attach separate sheets for each additional owner):*

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address <i>(street and number)</i> : City: State: Zip:		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership <i>(Check all that apply)</i> :	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American	
(8) Lawfully Admitted Permanent Resident:	<input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other <i>(specify)</i> _____	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:	Cash		\$
(4) Familial relationship to other owners:	Real Estate		\$
	Equipment		\$
	Other		\$
(5) Shares of Stock:	Number	Percentage	Class
			Date acquired
			Method Acquired
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function/Title:	
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm <i>(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function/Title:	
Nature of Business Relationship:			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)</i>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain <i>(attach additional sheets if needed)</i> :

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? Yes No
 If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
 Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial Information

(1) Banking Information:
 (a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST
 In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

- Female Black American Hispanic American
- Native American Asian- Pacific American
- Subcontinent Asian American
- Other (specify) _____

Office of the Secretary of Transportation

Pt. 26, App. F

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

EXHIBIT

C

C6. FHWA Order 4710.8



U.S. Department
of Transportation
**Federal Highway
Administration**

Order

Subject

CLARIFICATION OF FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND STATE RESPONSIBILITIES UNDER EXECUTIVE ORDER 11246 AND DEPARTMENT OF LABOR (DOL) REGULATIONS IN 41 CFR CHAPTER 60

Classification Code
4710.8

Date
February 1, 1999

Par. 1. Purpose

2. Background
3. Applicability
4. Authority and Responsibilities
5. Cancellation

1. **PURPOSE.** To define FHWA's authority and responsibility concerning [Executive Order \(EO\) 11246](#), as amended, and DOL regulations, set forth in 41 CFR Chapter 60.
2. **BACKGROUND.** Under EO 11246, "Equal Employment Opportunity," the FHWA is required to include certain nondiscrimination and equal employment opportunity provisions in direct Federal contracts and federally assisted construction contracts. The provisions have been established by the DOL, Office of Federal Contract Compliance Programs (OFCCP) and are set forth in 41 CFR Part 60-1, "Obligations of Contractors and Subcontractors," and 41 CFR Part 60-4, "Construction Contractors Affirmative Action Requirements."
3. **APPLICABILITY.** This Order applies to all direct Federal contracts and federally assisted construction contracts and subcontracts.
4. **AUTHORITY AND RESPONSIBILITIES**
 - a. **Department of Labor:** Under Section 303 of EO 11246, only the DOL has the authority to determine compliance with EO 11246 and its implementing regulations. The FHWA and the State highway agency do not have independent authority to determine compliance with EO 11246, 41 CFR Chapter 60, or the minority and female participation goals established by OFCCP, pursuant to 41 CFR Chapter 60.
 - b. **State highway agencies and FHWA:**
 - (1) The State highway agency and FHWA have responsibility to ensure that recipients of Federal-aid funds include the required contractual language relating to equal employment opportunity, as set forth in 41 CFR Parts 60-1 and 60-4, either explicitly or by reference.
 - (2) The State highway agency and the FHWA have the authority and the responsibility to ensure compliance with 23 USC Section 140 and Title VI of the Civil Rights Act of 1964, as amended, and related regulations, including 49 CFR Parts 21 and 23, and 23 CFR Parts 200, 230, and 633. Pursuant to this authority, the State highway agency and the FHWA may conduct compliance reviews of contractors on federally funded highway projects to determine compliance with these laws and related regulations. State highway agencies shall prepare complete, written reports of findings of the compliance reviews. These reports, and the evidence on which they are based, shall be available for FHWA analysis.

(3) If the State highway agency or the FHWA becomes aware of any possible violations of EO 11246 or 41 CFR Chapter 60, each has the authority and the responsibility to notify the OFCCP.

(4) The FHWA and the State highway agency shall not make any determinations regarding compliance with EO 11246 or 41 CFR Chapter 60.

5. **CANCELLATION**. The FHWA Form 86, Compliance Data Report, is hereby canceled.

Original signed by:
Kenneth R. Wykle
Federal Highway Administrator

Related Sites:

[Leadership Conference on Civil Rights - The Executive Order on Affirmative Action \(E.O. 11246\): One of Our Nation's Most Successful Civil Rights Programs](#)

[FHWA Home](#) | [Directives](#) | [Orders](#) | [Feedback](#)



United States Department of Transportation - **Federal Highway Administration**

EXHIBIT

C

C7. Delaware Code Sections

Delaware Code Title 17, Chapter 8

§ 801. Definitions.

As used in this chapter:

(1) "Contractor" includes, but is not limited to, an architect, engineer, nursery worker, landscaper, subcontractor or any other person who enters into any contract with the Department of Transportation, its agents or authorized employees for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor.

(2) "Moneys or funds" includes, but is not limited to, the entire amount of all moneys or funds received by a contractor, as defined in this section, in connection with a contract with the Department of Transportation for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor, and moneys or funds by way of a loan or advance for the purpose of such erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor. (17 Del. C. 1953, § 801; 57 Del. Laws, c. 688; 60 Del. Laws, c. 503, § 18; 70 Del. Laws, c. 186, § 1.)

§ 802. Payments to contractor impressed with trust.

All moneys or funds received by a contractor in connection with the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor shall be trust funds in the hands of the contractor. (17 Del. C. 1953, § 802; 57 Del. Laws, c. 688.)

§ 803. Use or application of money received by contractor.

(a) No contractor, or agent of a contractor, shall pay out, use or appropriate any money or funds described in § 802 of this title until they have first been applied to the payment of the full amount of all moneys due and owing by the contractor to all persons furnishing labor or material for the erection, construction, completion, authorization or repair of any

highway, right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, by such contractor, whether or not the labor or material entered into or became a component part of any such highway right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, and whether or not the same were furnished on the credit of such highway right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, or on the credit of such contractor.

(b) All general contractors or agents of any general contractor receiving funds impressed with a trust under this chapter shall, within 30 days of receipt of any payment, file a statement in a form to be determined by the Division of Highways, with the contracting state agency that the contractor or the contractor's agent has paid all subcontractors furnishing labor or material the full sum due them at that stage of the contract, except any funds withheld under the terms of the contract.

(c) In any instance where the contract stipulates that the general contractor will receive a series of prorated payments the general contractor or the general contractor's agents shall, upon the receipt of each payment, pay all subcontractors furnishing labor or materials, who have properly completed all work required of them at that stage of the contract, according to the same prorated formula which governs payments to the general contractor, i.e., if the general contractor receives 10% initially, persons furnishing labor and materials will receive 10% initially, and so through the course of the contract. (17 Del. C. 1953, § 803; 57 Del. Laws, c. 688; 59 Del. Laws, c. 174, § 1; 70 Del. Laws, c. 186, § 1.)

804. Contractor's failure to use or apply money in accordance with § 803 of this title.

(a) Failure of a contractor, or an agent of a contractor, to pay or cause to be paid, in full or pro rata, the lawful claims of all persons, firms, associations of persons or corporations furnishing labor or material as required by § 803 of this title within 30 days after the receipt of any moneys or funds for the purposes of § 802 of this title shall be prima facie evidence of the payment, use or appropriation of such trust moneys or funds by the contractor in violation of this chapter.

(b) Prior to any payment made to any subcontractors for materials, workmanship and all other supplies furnished by such person, persons or corporations an inspection shall be made by the Department of Transportation of all supplies and work furnished by the subcontractors and their approval of the work shall be required before payment is made. (17 Del. C. 1953, § 804; 57 Del. Laws, c. 688; 60 Del. Laws, c. 503, § 18.)

EXHIBIT

D

Criteria	Analysis	Valuation
Whether the Contractor has any current/recent contracts with DelDOT	Contractor has/had no contracts in the designated preliminary period being analyzed (FY'05, FY'06)	0
	Contractor has 1-4 current/recent contracts in the designated preliminary period being analyzed	1
	Contractor has more than 5-8 current/recent contracts in the designated preliminary period being analyzed	2
	Contractor has more than 8 current/recent contracts in the designated preliminary period being analyzed	3
Value of Contractor contracts with DelDOT	Total value of the Contractors' contracts constituted less than 5% of total contract dollars spent in the designated preliminary period being analyzed	1
	Total value of the Contractors' contracts constituted 6% to 10% of total contract dollars spent in the designated preliminary period being analyzed	2
	Total value of the Contractors' contracts constituted 11% to 20% of total contract dollars spent in the designated preliminary period being analyzed	3
	Total value of the Contractors' contracts constituted greater than 20% of total contract dollars spent in the designated preliminary period being analyzed	4
Nature of Contractor contracts with DelDOT	Contractors' contracts were exclusively state funded contracts	1
	Contractors' contracts were mixed with less than 50% federally funded	2
	Contractors' contracts were mixed with greater than 50% federally funded up to exclusively federally funded	3
Location of the Contractors' contracted work with respect to minority & female populations	Contractors contract work on any project in the designated preliminary period being analyzed located in a geographic area with 12% or less minority population	1
	Contractors contract work on any project in the designated preliminary period being analyzed located in a geographic area with between 13% to 28% minority population	2
	Contractors contract work on any project in the designated preliminary period being analyzed located in a geographic area with between 29% to 48% minority population	3
	Contractors contract work on any project in the designated preliminary period being analyzed located in a geographic area with greater than 49% minority population	4

Criteria	Analysis	Valuation
Review DBE practices – DBE Utilization	During the designated preliminary period being analyzed Contractor secured contracts with DBE goals and exceeded such goals via DBE utilization or secured contracts without DBE goals with DBE participation	1
	During the designated preliminary period being analyzed Contractor secured contracts with DBE goals and met those goals (deemed to have met goal if the variance between DBE goal and DBE participation is less than one (1) full percentage point.)	2
	During the designated preliminary period being analyzed Contractor secured contracts without DBE goals and did not utilize DBE participation	3
	During the designated preliminary period being analyzed Contractor secured contracts with DBE goals and did not meet those goals	4
Review DBE practices – prompt DBE payment (CN91) For later implementation due to documentation limitations	During the designated preliminary period being analyzed Contractor received/completed contracts with documented timely payment to participating DBEs	4
	During the designated preliminary period being analyzed Contractor received/completed contracts with 1-5 documented instances of untimely payment to participating DBEs	3
	During the designated preliminary period being analyzed Contractor received/completed contracts with greater than 5 documented instances of untimely payment to participating DBEs	2
	During the designated preliminary period being analyzed Contractor received/completed contracts with any documented instances of untimely payment to participating subcontractors	1
Civil Rights Complaint History	During the designated preliminary period being analyzed DeIDOT did not receive any complaints and contractor self identified (based on response to direct information solicitation) not having received complaints of potential discrimination filed against the Contractor	1
	During the designated preliminary period being analyzed DeIDOT received or contractor self identified (based on response to direct information solicitation) having received complaints of potential discrimination filed against the Contractor	2
	During the designated preliminary period being analyzed DeIDOT did not receive nor did contractor respond to direct information solicitation regarding any complaints of potential discrimination having been filed against the Contractor	3

EXHIBIT

E

Sample Contractor Compliance Review Correspondence

EXHIBIT

E1

Sample Contractor Compliance Review Scheduling Notice



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

Date

Name of Contractor
Address
City, St, ZIP

This letter serves as notice that (name of Contractor) must provide the following documents as part of the contractor compliance review process, as outlined in the DeIDOT Contractor Compliance Manual:

- a. Identifying information regarding the contractor/company EEO Officer and documentation of required meetings, etc.;
- b. The most recent certified payroll, broken down by race, gender, national origin, job classifications of all employees;
- c. Copies of any current collective bargaining agreements;
- d. Copies of executed purchase orders and subcontracts;
- e. Information on any complaints of discrimination filed against the company/contractor within one year (1) of the review.
- f. A list of new hires, rehires, promotions or firings/terminations during the six month period immediately preceding the notice of compliance review;
- g. A list of all recruitment sources utilized;
- h. A list of all firms including minority and women-owned firms contacted as possible subcontractors and material suppliers, and those firms selected, with contact information for all listed.

Please provide the aforementioned documents to the Civil Rights Office on or before (DATE) to the following address:

Civil Rights Office
Delaware Dept of Transportation
800 Bay Road
Dover, DE 19901

In the instance of a project-specific compliance review, the Contractor/ Company will be provided sufficient time to secure the requested documentation from all subcontractors on the project as well. It is the responsibility of the Contractor/Company to secure such documentation from the subcontractors or to provide sufficient evidence of a *good faith effort* to do so.

Compliance Review Letter

Date

Page Two

If you have any questions, please contact me at (302)760-2555.

Sincerely,

Carla E. Elliott
Civil Rights Administrator

CE:cee

EXHIBIT

E2

Sample Contractor Voluntary Compliance Plan Notice



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

Date

Name of Contractor
Address
City, State, Zip

Dear Name of Contractor:

As a result of our Compliance Review conducted on (DATE), DelDOT has identified the following deficiencies:

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office, which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 20 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will submit an updated listing of recruitment sources and evidence of contact by (Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by (Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by (Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all subcontractors currently working on our

VCAP Notice

Date

Page Two

contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority representation. This meeting will be held on (Date) and we will summarize the discussions and current posture of each subcontractor for your review by (Date). Additionally, as requested, we will submit a PR-1391 on (Date), (Date), (Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented all the provisions of these commitments by (Date).

If you have any questions regarding this matter, please contact me at (302) 760-2555.

Sincerely,

Carla E. Elliott
Civil Rights Administrator

CEE:ce

cc:

EXHIBIT

E3

**Sample Show Cause
Notice**



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

Date

Contractor's Name
Address
City, State, and Zip Code.

DEAR CONTRACTOR:

As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

List of Deficiencies

- 1.
- 2.
- 3.

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semiskilled and skilled Categories of employees.

The Department of Labor regulations (41 CFR 60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (*See Required Contract Provisions, Form PR-1273, Clause II*). Section 60-1.20(b) of these regulations provides that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees. You are specifically advised that making the commitment discussed above will not preclude a further determination of noncompliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at (Address) at (Time) on (Date) for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the

Show Cause Notice

Date

Page Two

effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended. 4 — E — 128 If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately. In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. If you have any questions regarding this matter, please contact me at (302) 760-2555.

Sincerely,

Carla E. Elliott
Civil Rights Administrator

CE:cee

EXHIBIT

F

Contractor Compliance Report Forms

EXHIBIT

F1

**Contractor
Compliance Report
Cover Sheet**



CONTRACTOR EEO COMPLIANCE REPORT

1. Date of Review _____ Reviewer _____

2. Name of Contractor/Company and
Full address (do not use project filed office address) _____

3. Type of Review (Project, Area-wide, Comprehensive Follow-up, Home Office) _____

4. Contractor Type Prime Sub DBE Supplier

5. Federal-Aid Projects: (included in this review)

Project Number	Contract Value	Location of work

6. Name & Title of Company EEO Officer: _____

7. Does the Company have an EEO Policy? Yes No

8. For a Project Review, is there a DBE Goal? Yes No DBE Goal _____

9. Required Postings Obviously Displayed? Yes No

10. Does the Company have a separate Affirmative Action Plan? Yes No

11. Recruiting Sources Used especially Minority of Female Oriented:

Name of Source	Address	Phone Number

EXHIBIT

F2

Contractor Compliance Report List of Contracts

EXHIBIT

F3

Contractor Compliance Report Employment Action Summary

EMPLOYMENT ACTION SUMMARY

Date: _____

Review Period _____



Name of Contractor/Company _____

_____ Project

_____ Area-wide

_____ Comprehensive

_____ Home Office

_____ Follow-up

Employment Actions (during review period indicated)	Total Workforce		Total Minorities		African American		Hispanic		Asian / Pacific Islander		White	
	M	F	M	F	M	F	M	F	M	F	M	F
Applicants												
New hires (in review period or last 6 months)												
Recalls												
Promotions												
Terminations												
Layoffs												
Trainees												
Apprentices												
Total												

EXHIBIT

F4

**Contractor
Compliance Report
Workforce Data Form**

WORKFORCE DATA

Date: _____

Review Period _____



Name of Contractor/Company _____

Employment Data: _____

- _____ Project
- _____ Area-wide
- _____ Comprehensive
- _____ Home Office
- _____ Follow-up

Job Category	Total Workforce		Total Minorities		African American		Hispanic		Asian / Pacific Islander		White	
	M	F	M	F	M	F	M	F	M	F	M	F
Officials												
Supervisors												
Foreperson												
Administrative												
Equipment Operator												
Mechanics/Oilers												
Truck Drivers												
Ironworkers												
Carpenters/Pile Drivers												
Cement Mason/Contract Finisher												
Electricians												
Plumbers/Pipefitters												
Painters												
Laborers *semiskilled *unskilled												
Total												
CLF or PMSA												
Work Hours												

EXHIBIT

F5

Contractor Compliance Report Training Data Form

TRAINING DATA

Date: _____

Review Period _____



Name of Contractor/Company _____

Employment Data: _____

- _____ Project
- _____ Area-wide
- _____ Comprehensive
- _____ Home Office
- _____ Follow-up

Trainee Category	Total Number of Trainees		Total Minority Trainees		African American		Hispanic		Asian / Pacific Islander		White	
	M	F	M	F	M	F	M	F	M	F	M	F
Officials												
Supervisors												
Foreperson												
Administrative												
Equipment Operator												
Mechanics/Oilers												
Truck Drivers												
Ironworkers												
Carpenters/Pile Drivers												
Cement Mason/ Contract Finisher												
Electricians												
Plumbers/Pipefitters												
Painters												
Laborers *semiskilled *unskilled												
Total												
CLF or PMSA												
Work Hours												

EXHIBIT

F6

Contractor Compliance Report Subcontractors Data Form

SUBCONTRACTORS

Date: _____

Name of Contractor/Company _____



Project _____
 Area-wide _____
 Comprehensive _____
 Home Office _____
 Follow-up _____

List all active contracts and subcontracts your company has/had in the last 12 months.

Subcontractor Name & Address	Status	Classification	Employment Data		
			Vendor or Supplier	DBE, non-DBE	Total Employee

EXHIBIT

F7

Contractor Compliance Report Action Plan Form

ACTION PLAN

Date:

Review Period



Name of Contractor/Company

- _____ Project
- _____ Area-wide
- _____ Comprehensive
- _____ Home Office
- _____ Follow-up

		Yes	No	N/A
A.	Have required written notices been sent to unions?			
B.	Do recruiting publications identify tha the company is "An Equal Opportunity Employer"			
C.	Are such publications circulated in minority-oriented communities?			
D.	Has certification re: Use of Non-segregates facilities been made? When: _____			
E.	Are such facilities in effect provided on a non-segregated basis?			
F.	Have other reports required by regulations or statutes been submitted?			
G.	Have compliance or other reviews made by other agencies resulted in a determination of compliance?			
H.	Are prescribed EEO clauses included in all applicable agreements, subcontracts and purchase orders?			
I.	Are applications for employment accepted, and are selections made without regard to race, color, religion, national origin or sex?			
J.	Have EEO Meetings been held with supervisory personnel before the start of work and not less than once every 6 months for the purpose of explaining and reviewing the Company's EEO Program?			
	Date of intial meeting _____			
	Dae of latest meeting _____			
	Copy of sign-in sheet submitted?			
	Copy of EO/AA related information submitted?			
K.	Are the Company's EEO Policy and the implementation procedure brought to the attention of employees by means of meeting, an employee handbook etc?			
	If by Meeting, give date of latest meeting _____			
	Copy of sign-in sheet submitted?			
	Copy of EO/AA related information submitted?			

EXHIBIT

G

Additional Reporting Forms

EXHIBIT

G1

**Contractor EEO
Compliance
Certification**

EXHIBIT

G2

Quarterly EEO Report Construction



Quarterly EEO Workforce Report

Return form to:
 Civil Rights Section
 800 Bay Road
 P.O.Box 778
 Dover, DE 19903

DelDOT
Project xx-xxx-xx

1. CHECK APPROPRIATE BLOCK <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	2. NAME AND ADDRESS OF FIRM	3. REPORT PERIOD (mm/dd/yy to mm/dd/yy)	4. TYPE OF PROJECT
---	-----------------------------	---	--------------------

5. WORKFORCE DATA

JOB CATEGORIES	BLACK <i>Not of Hispanic Origin</i>		New Hires	HISPANIC		New Hires	AMERICAN INDIAN OR ALSKAN NATIVE		New Hires	AISAN OR PACIFIC ISLANDER		New Hires	WHITE <i>Not of Hispanic Origin</i>		New Hires
	M	F		M	F		M	F		M	F		M	F	
OFFICIALS (<i>Managers</i>)															
SUPERVISORS															
FOREMEN/WOMEN															
CLERICAL															
EQUIPMENT OPERATORS															
MECHANICS															
TRUCK DRIVERS															
IRONWORKERS															
CARPENTERS															
CEMENT MASONS															
ELECTRICIANS															
PIPEFITTERS															
PAINTERS															
LABORERS, SEMI-SKILLED															
LABORERS, UNSKILLED															
TOTAL															

6. PREPARED BY: (<i>Signature and Title</i>)	DATE
--	------

EXHIBIT

G3

**Quarterly EEO Report
Consultant**



Quarterly EEO Workforce Report

Return form to:
 Civil Rights Section
 800 Bay Road
 P.O.Box 778
 Dover, DE 19903

DelDOT
Project xx-xxx-xx

1. CHECK APPROPRIATE BLOCK <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	2. NAME AND ADDRESS OF FIRM	3. REPORT PERIOD (mm/dd/yy to mm/dd/yy)	4. TYPE OF PROJECT
---	-----------------------------	---	--------------------

5. WORKFORCE DATA

JOB CATEGORIES	BLACK <i>Not of Hispanic Origin</i>		New Hires	HISPANIC		New Hires	AMERICAN INDIAN OR ALSKAN NATIVE		New Hires	AISAN OR PACIFIC ISLANDER		New Hires	WHITE <i>Not of Hispanic Origin</i>		New Hires
	M	F		M	F		M	F		M	F		M	F	
OFFICIALS (<i>Managers</i>)															
SUPERVISORS															
PROJECT ENGINEERS															
ENGINEERS															
SURVEYORS															
INSPECTORS															
PLANNERS															
TECHNICIANS															
PROJECT MANAGEMENT															
IT PROFESSIONALS															
ADMINISTRATIVE ASSIST															
CLERICAL															
SEMI-SKILLED STAFF															
UNSKILLED STAFF															
TOTAL															

6. PREPARED BY: (<i>Signature and Title</i>)	DATE
--	------

EXHIBIT

H

DelDOT External Equal Opportunity Complaint Procedure



State of Delaware
Department of Transportation
External Equal Opportunity Complaint Procedure

1.0 Purpose

To specify a process to be employed by the Delaware Department of Transportation (DelDOT) to address, investigate and respond to complaints of discrimination on grounds of race, color, religion, sex, age, or national origin, with respect to the programs comprising DelDOT's External EEO Programs.

2.0 Coverage

This procedure covers complaints filed by individuals, organizations or business entities which believe that they have been subjected to discrimination in violation of applicable non-discrimination statutes acting pursuant to a Federal-aid contract with the Department. A complaint may also be filed by a representative for the aggrieved person or party with the aggrieved party's consent.

3.0 Definitions

Discrimination involves any act or inaction, whether intentional or unintentional in any program or activity of a Federal-aid recipient, sub-recipient, or contractor, which results in disparate (unfavorable) treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, sex, national origin, age, disability or in the case of disability, failing to make a reasonable accommodation. An action (or inaction) whether intentional or unintentional, through which a person, based on race, color, sex, age, national origin or disability, has been subjected to unequal treatment or denied benefits under any program or activity receiving financial assistance from the FHWA under Title 23 U.S.C.

Investigator means an individual or entity assigned to conduct an investigation of a complaint. This may be DelDOT personnel or consultant(s) acting on DelDOT's behalf.

Investigative report means a written record which contains various documents and information acquired during the investigation under this procedure, including affidavits of the complainant, the alleged discriminating official, and the witnesses, and copies of, or extracts from, records, policy statements, or regulations of the agency, organized to show their relevance to the complaint or the general environment out of which the complaint arose. This document will be provided to the Federal Highway Administration, as required, and will otherwise be maintained confidentially, except where a lawsuit on the same subject has been filed.



Respondent means a person, party, business entity or agency whose action or inaction is complained of by an aggrieved party as being discriminatory or non-compliant with applicable statutes, regulations and policies.

4.0 Timely Filing and Withdrawal of Complaint

4.1 Complaints must be filed in writing and submitted to DelDOT. Complaints shall be signed by the complaining party or their representative and shall include the complainant's name, address, and telephone number. Complaints must clearly state specifically those facts and circumstances surrounding the claimed discrimination covered by this procedure and the applicable regulations. Complainants may receive assistance from DelDOT personnel to reduce to writing the facts and circumstances of the alleged discrimination with specificity to provide for full investigation.

4.2 Allegations received by fax containing such information and signature will be processed. Allegations received by e-mail or by telephone will be reduced to writing or printed and provided to the complainant for confirmation or revision for accuracy and signature before processing.

4.3 Complaints must be filed no later than 180 days after the following:

- 4.3.1 The date of the alleged act of discrimination; or
- 4.3.2 The date when the person(s) became aware of the alleged discrimination; or
- 4.3.3 Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

4.4 Complainants may withdraw their complaint at any time. This action closes the case without prejudice.

4.5 A complaint may be dismissed for any one of the following reasons:

- 4.5.1 The complaint is not filed in a timely manner, according to the requirement in Section 4.3 above.
- 4.5.2 The complainant does not allege a basis covered by the statutes providing authority for this complaint procedure.
- 4.5.3 The complaint does not allege any harm with regard to covered programs or statutes.
- 4.5.4 The complainant fails to respond to repeated requests for additional information needed to process the complaint.
- 4.5.5 The complainant cannot be located after reasonable attempts.
- 4.5.6 The complainant has filed a legal action in Federal District Court with the same basis(es) and issue(s) involved in the complaint.
- 4.5.7 The same complaint allegations have been filed with another Federal, State, or local agency.



5.0 Persons Authorized to Receive Complaints

5.1 The Department's Civil Rights Complaint Procedure is designed to provide for progressively more formal steps that give opportunity for adjustment at several key points.

5.1.1 Civil Rights Administrator - DelDOT

5.1.2 Contract Services Administrator - DelDOT

5.1.3 Representative of the Federal Highway Administration (FHWA)

5.2 Complaints received alleging discrimination and/or discriminatory acts or treatment will be retained by or forwarded to DelDOT's Civil Rights Administrator for processing. Copies of complaints received alleging discrimination and/or discriminatory acts or treatment by DelDOT or its personnel will also be forwarded to FHWA.

6.0 Complaint Processing

6.1 All complaints will be logged in, upon receipt, by the Civil Rights Administrator. Complainants will be advised in writing of the receipt of their complaint and of the process for handling the complaint. Acknowledgement letters will be sent to the complainant and to the respondent containing this information and information about forwarding of a complaint to the FHWA, when appropriate.

6.2 The Civil Rights Administrator will provide for the prompt formal investigation of the complaint. In instances of alleged Title VI violations, the investigation will include securing necessary information from sub-recipients regarding the project referenced in the complaint. The investigation will include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of similarly-situated individuals or entities, and all other relevant data and information, which will be recorded in the investigative file.

6.3 In the event any person (individually or as an agency), organization representative, or business entity (not including the complainant) fails or refuses to furnish information to an investigator, such failure may result in a finding of non-compliance. The investigator will indicate in the investigative report that the individual or contractor refused to provide pertinent information and outline efforts made to obtain the information.

6.4 The investigation will be completed within 60 days of receipt by the Civil Rights Administrator. Where circumstances exist justifying additional investigative time, the deadline for completion of the investigation may be extended as is deemed necessary. Upon completion of the investigation, an investigative report will be generated outlining the investigative steps taken, information and evidence gathered, analysis of evidence and information, persons contacted and conclusion. The complainant will be given a written summary of the results of the investigation.



6.5 Findings of non-compliance

6.5.1 DelDOT's Civil Rights Administrator will review the results of any investigation and determine whether any violation or non-compliance exists. The Civil Rights Administrator will render a finding of non-compliance or violation based on the allegations and investigation.

6.5.2 The Civil Rights Administrator will engage in affirmative efforts to conciliate and resolve satisfactorily all violations of applicable statutes or failure to comply with applicable regulations. A corrective action plan will be generated for any respondent, including any sub-recipient of Federal funds, found to be non-compliant. Additionally, DelDOT's Civil Rights Administrator will establish and monitor a timetable for remedial action for completion.

6.6 Findings of Compliance

6.6.1 DelDOT's Civil Rights Administrator will review the results of any investigation and determine whether any violation or non-compliance exists. The Civil Rights Administrator will render a finding of compliance or no violation in those instances where, based on the allegations and investigation, it is determined that the responding party acted in conformity with laws/regulations and/or there was no violation.

6.6.2 Should the complainant disagree the complainant may appeal the determination.

6.7 Notification

6.7.1 Where a finding of non-compliance or violation has been rendered, the complainant will receive written notification of any efforts to conciliate, any corrective action plan established, the timetable for completing the corrective actions, and information regarding all available avenues of appeal.

6.7.2 Where a finding of compliance or no violation has been rendered the complainant will receive written notification of the determination and information regarding all available avenues of appeal.

6.7.3 Respondent will receive written notification upon closure of the investigation and when appropriate notice of all available avenues of appeal.

7.0 Resolution of Complaint and Appeal Process

7.1 It is in the best interest of all parties involved that issues raised in a complaint of discrimination be resolved informally. Every effort will be made to pursue resolution of the complaint, even while the investigation is underway.



7.2 Based on the investigation and the analysis of information and evidence gathered, specific recommendations or a formal corrective action plan may be generated. The respondent has the right to request review of the complaint and the investigation as an appeal where specific recommendations or a formal corrective action plan have been generated.

7.3 In those instances where the complainant continues to be aggrieved, the complainant has the right to request review of the investigation as an appeal.

7.4 Appeals

7.4.1 Appeals will be reviewed by the Director, Technology and Support Services. Any decision reached on appeal will be final.

7.4.2 All appeals must be in writing, outlining the appealing party's issues, concerns, or basis for the appeal.

7.4.3 After review of the investigative file and any additional information submitted, a final determination will be made. Complainants and respondents will be informed in writing of the final decision within ten business days. Complainants dissatisfied with the results of the Complaint Process will be advised of their right to file their grievances with other governmental agencies (such as the Delaware Human Relations Commission) or appropriate Federal agencies.

EXHIBIT

I

Complaint List

EXHIBIT

J

OJT Documentation

EXHIBIT

J1

OJT Annual Goal Setting Methodology

Figure 4.

Report Viewer - Eng Estimate Summary - No Letting - Windows Internet Ex...

http://dotocognos01/crm/cgi-bin/cognosisapi.dll

Report Viewer - Eng Estimate Summary - No Letting

Transport Report User

State of Delaware
Department of Transportation
Engineer's Estimate Summary
Proposal No: 28-074-01.01
Control Group: A

Item	Description	UOM	QTY	Est. Unit Price	EAmt
202000	EXCAVATION AND EMBANKMENT	CY	3.00	\$50.00	\$150.00
209001	BORROW, TYPE A	CY	135.00	\$60.00	\$8,100.00
209003	BORROW, TYPE C	CY	40.00	\$25.00	\$1,000.00
251501	SILT FENCE	LF	450.00	\$3.00	\$1,350.00
302500	DELAWARE NO. 3 STONE	TON	340.00	\$40.00	\$13,600.00
401665	SUPERPAVE, TYPE C HOT-MIX, 160 GYRATIONS, PG 64-22, PATCHING	TON	6.00	\$180.00	\$1,080.00
406507	CRACK SEALING	LF	3,148.00	\$18.00	\$56,664.00
503501	CRACK AND JOINT SEALING LESS THAN 3/4"	LF	553.00	\$15.00	\$8,295.00

Done

Local intranet 100%

1:12 PM

For those projects anticipated to cost more than \$1,000,000, follow along the header to the upper right of the screen where there are a number of boxes. Select the third box from the right margin which shows “View in Excel 2002 format” when highlighted. Once you click, wait while the file is converted and opens as an Excel spreadsheet. Name the spreadsheet with the project number. Then save the spreadsheet in the Annual Goal workbook, after the summary sheet.

Step 3. Completing the Annual Goal Summary of Projects Sheet

For those projects with Engineers’ Estimates available, record the project number and dollar value of the anticipated project. Projects valued at over \$1,000,000, which are federally funded in any part, should be annotated with a * in the third column.

Detailed consultation should be conducted with Contract Administration on all projects. The purpose of this consultation is to secure the following information:

- Potential for federal funding in the review year (include for goal consideration projects meeting other criteria for which inclusion of federal funds is deemed possible).
- Anticipated expected costs of projects without engineer’s estimates.
- Anticipated length and size of projects.
- Nature of the work to be performed, including the existence of specialized work for which trainees would not be suitable.

Annotate the summary spread sheet with comments reflecting any of the information shown above for all projects reviewed.

Step 4. Comparing potential OJT projects with actual OJT assignments in the current year

A review of OJT slot assignments made in the current year should be done. Where there is a significant increase or decrease as compared to the current year’s goal analysis should be completed to ascertain whether the up-coming year’s goal should be adjusted upward or

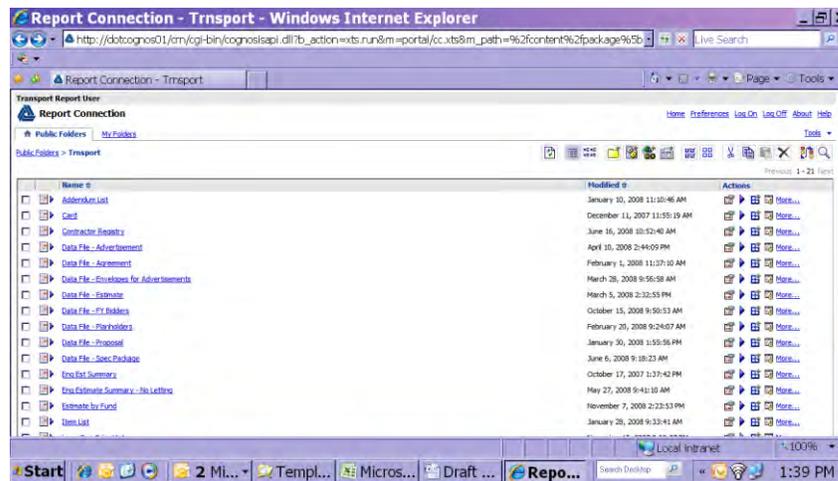


Figure 2

Select Eng. Estimate – No Letting. This selection will give you a dialog box within which you can scroll up or down select and highlight the project number desired. The actual project numbers are listed on the Executive Project Status Report.

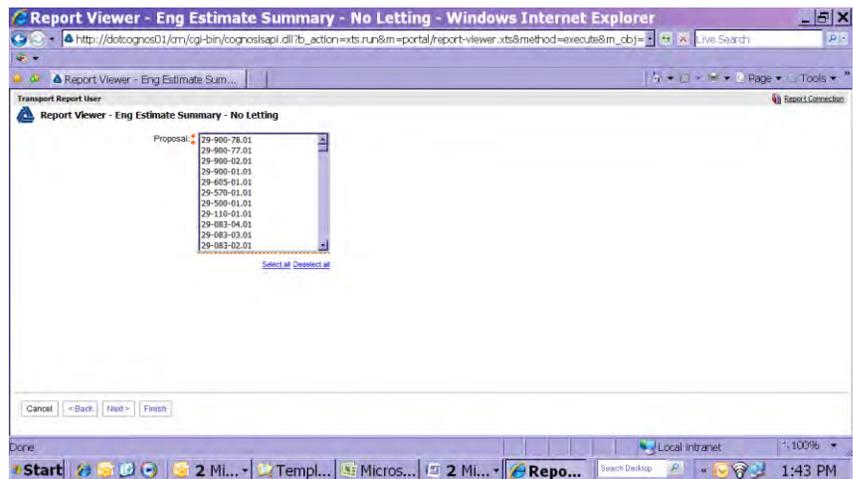


Figure 3.

After selecting the project number click the Finish button at the bottom of the screen. Then you will see the Engineer's Estimate in an Adobe format. For each project review the Engineer's Estimate to ascertain the anticipated amount of money to be spent on the project.



ANNUAL OJT GOAL-SETTING METHODOLOGY

Step 1. Create a Workbook

Open an Excel workbook, formatting the first spreadsheet in the workbook as shown below to summarize all potential projects being reviewed as part of the annual goal setting process. Utilize this spreadsheet to capture the project numbers, dollar values (from Engineer's Estimates if available) and comments regarding the potential for appropriately assigning an OJT trainee to the individual projects reviewed. Name the workbook as YYYY Annual OJT Goal Setting

Project #	Project \$ Value	Comments
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

Figure 1.

Step 2. Identify potential projects eligible for OJT assignment

During December, conduct a detailed review of potentially up-coming projects utilizing the PS-07 Executive Project Status Report. Each project listed with an anticipated date within the year of the goal being set should be checked. For those projects where an engineer's estimate has been prepared, review the engineer's estimate via Cognos.

Open Cognos, using the hyperlink below:

http://dotcognos01/crn/cgi-bin/cognosisapi.dll?b_action=xts.run&m=portal/cc.xts&m_path=%2fcontent%2fpackage%5b%40name%3d%27Transport%27%5d

downward accordingly. Fiscal restraints, design difficulties and other circumstances affecting the advertising and awarding of contracts should be considered. Any adjustments in the potential OJT slot number should be documented on the summary sheet.

Step 5. Submission to FHWA

Once a firm goal number has been determined, a letter outlining this process and the annual goal for the year should be prepared and sent to FHWA by January 15 of the goal year.

EXHIBIT

J2

OJT Assignment Methodology & Tool

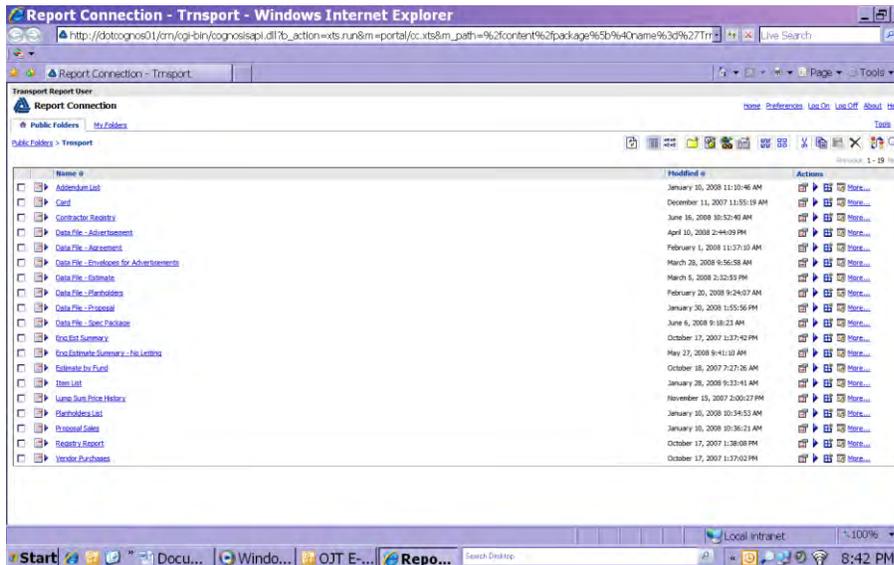
On-the-Job Trainee Assignment Methodology

Step 1: Secure basic project data

- 1.) Contract Administration will provide planned/anticipated information about project duration. Review of any proposed contract provisions may be helpful.
- 2.) Project description identifies location
- 3.) Utilize COGNOS, specifically Eng. Estimate Summary – no Letting (see link below)

http://dotcognos01/crn/cgi-bin/cognosisapi.dll?b_action=xts.run&m=portal/cc.xts&m_path=%2fcontent%2fpackage%5b%40name%3d%27Trnsport%27%5d

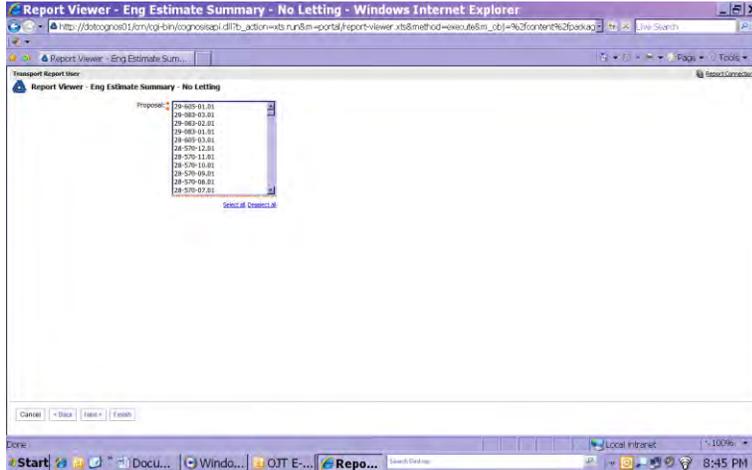
Once in the screen shown in figure 1, select Eng. Estimate-No Letting
Figure 1



Select Eng. Estimate – no Letting

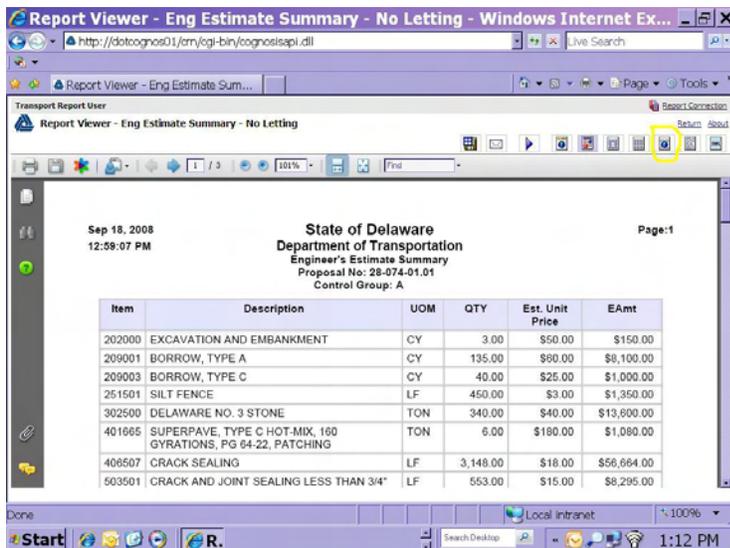
This will reveal a box within which you may scroll down to the project number that you wish to select. Then select the project number desires and go to the bottom of the page and click finish.

Figure 2



Scroll down to highlight the desired project number. Once the project number is selected, click finish.

Then you will see the Engineer's Estimate in an Adobe format. Along the header to the upper right of the screen are a number of boxes. Select the third box from the right margin which shows "View in Excel 2002 format" when highlighted. Once you click, wait while the file is converted and opens as an Excel spreadsheet.



Step 2. Create an OJT Calculation Workbook

Once you have an Excel spreadsheet, save the file titled Proj. xx-xxx-xx OJT calculation in the appropriate project file. Then add a column titled Potential Trainee tasks. Copy into the workbook as the first sheet the OJT Information sheet from the Exhibit OJT Calculation saved in the OJT folder under Civil Rights [Exhibit OJT Calculation.xls](#)

Criteria	Project Details	Rating	Score
Provide rating of proximity to eligible population: Leave blank if it is more than 20 miles			
Within 20 miles of population = 1			
Within 10 miles of population = 2			
Within 5 miles of population = 3			
Project Location: Nearest minority pop. in miles.			0
Provide rating of contract estimate: Leave blank if it is less than 1 million.			
1 million to 5 million = 1			
5 million to 15million = 2			
15 million to 30 million = 3			
30 million to 40 million = 4			
40 million to 50 million = 5			
51 million to 100 million = 6			
101 million to 150 million = 7			
Contract Estimate			0
Provide rating of project duration: Leave blank if it is less than 364 days.			
More than 364 days = 1			
More than 455 days = 2			
More than 546 days = 3			
More than 730 days = 4			
More than 910 days = 5			
More than 1090 days = 6			
Project Duration (in days)			0
Provide rating of trainee tasks: Leave blank if it is less than 4 tasks.			
More than 4 items = 1			
More than 6 items = 2			
More than 8 items = 3			
More than 10 items = 4			
More than 12 items = 5			
More than 14 items = 6			
Number of Identified Trainee Tasks		0	0
		Total Score	0
		Trainee Requirement	0

This part of the workbook contains formulas and values which calculate once you have selected the appropriate choices from the entries under criteria and assigned the rating value reflected.

Step 3: Identify Potential OJT Tasks

Carefully review the line items contained in the Engineer's Estimate. Note line items which correspond to certain types of work which are part of any of the FHWA approved Training Programs in DelDOT's OJT Program Guidelines. Specifically identify any such line items where the total contract amount of any line item is sufficiently large to indicate enough work to support potential trainee performance.

Interaction with Contract Administration Staff and project management personnel to clarify the actual type of construction work and project activity is needed to correctly identify possible trainee work items.

Examples:

- 1.) In bridge work is there more repair of existing structures or building and replacement of structures?
- 2.) Is the masonry work noted simple masonry versus structural iron work?
- 3.) Is the concrete work more placement of pre-cast concrete structures versus fabrication of the structures as part of the project activity, allowing for significant concrete finishing or carpentry work?

For every line item identified as affording sufficient trainee potential, based on the dollar value and/or quantity of the line item, a '1' should be placed in the column added to the Engineer's Estimate sheet, totaling at the bottom.

Additionally, those training programs best fitting the identified potential OJT tasks should be included in the workbook on a separate spreadsheet. This will serve as a resource for any prime contractor attempting to identify how they might best fulfill an OJT assignment contained in a project.

Step 4: Valuation of Criteria Utilized in OJT Assignment Calculation

Location:

In accordance with 23 CFR 230.11 (c) (1) and (6) consideration needs to be given to the geographic location and proximity of any project under review to significant minority populations and large concentrations of populations (for female candidate recruitment). Such proximity would facilitate solicitation, identification, and selection of suitable minority and female trainee candidates. To accomplish this, a weight factor of 1 or 2 is used to value the proximity of a project within 10 and 20 miles respectively of significant populations.

Project Value:

Pursuant to FHWA regulations, specifically 23 CFR 230.11 (c) (4), project dollar values must be reviewed. Larger dollar value projects tend to be of longer duration and include larger segments of various types of construction work which more readily lend themselves to supporting training programs. Therefore, an increasing value factor, ranging from 1 to 5, is assigned based on project dollar values within identified ranges.

Duration of Project:

The duration of any project is critical to the ability to successfully complete FHWA approved training programs. In conformity with 23 CFR 230.111 (c) (3), greater weight is given to those projects of longer duration. Therefore an increasing value factor ranging from 1 to 5 is assigned based on the length of projects lasting a year or more. Information about the planned duration of any project approaching the advertisement stage of planning can be secured by contacting the Constructability Review Engineer, who set the anticipated duration for projects. The timeframe provided should be captured in the assignment calculations. Additionally, information may be provided when projects are discussed at regularly scheduled project status meetings.

Potential Trainee Tasks:

The line items contained in the Engineer's Estimate are reviewed to ascertain the applicability of certain approved training programs to the work needed to complete the project. The dollar value of the line items should be considered because higher dollar value line items can be anticipated to require greater work hours to complete and thereby afford greater opportunities for training. This review also allows for consideration of need for additional journeymen in particular crafts in the labor force and the applicable ratio to be anticipated between journeymen and trainees on the project being reviewed. The number one will be placed in the "Potential Trainee Tasks" column for each line item determined to present such an opportunity. These items are totaled and based on the numerical range within which the total falls; a value from 1 to 5 is assigned that is used in the calculations.

Step 5: Calculation of the OJT Assignment

The values assigned to each of the criteria should be transferred to the cover spreadsheet of the work book. The total is averaged resulting in the number of assigned trainees for the project.

Upon completion of the OJT Assignment Procedure, a memo to designated project management personnel should be completed reflecting the assigned number of trainees.

EXHIBIT

J3

**OJT Program
Guidelines**

***The On-The-Job Training
Program Guidelines***



The Delaware Department of Transportation

March, 2002

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Introduction and Background

The Federal Aid Highway Act of 1968 was passed by the 91st Congress. It included a special section devoted to promoting and insuring Equal Employment Opportunity (hereinafter referred to as EEO) in the field of Federal-Aid highway construction. The Act outlined how the incorporation of equal opportunity legislation and regulations would be accomplished and reiterated that inclusion of these provisions reflected the congressional commitment to the development of an effective equal employment opportunity program.

Under the Federal Aid Highway Act of 1968, the inclusion of an approved affirmative action plan became an important element in the pre-qualification of contractors for federal aid projects. The On-The-Job (OJT) Program was identified as one specific area of Equal Employment Opportunity.

This On-The-Job Training Guidelines Manual will provide contractors who are involved in the Delaware Department of Transportation (hereinafter referred to as DelDOT) federally-assisted highway construction projects and charged with the implementing and monitoring of the On-The-Job Training Program with a user friendly guidebook. The On-the Job Training Program is a tool to ensure non-discrimination in hiring, employment and training and training practices and to meet the goals of training and retaining women, minorities, and disadvantaged persons in the highway construction industry.

The training programs and procedures contained herein have been developed for use by firms doing business with DelDOT. Firms wishing to adopt the program may do so at no cost or firms may develop their own programs and submit them to DelDOT for approval. All On-the-Job Training Programs approved for use will embody the objectives of fairness and equity as required by the Code of Federal Regulations 23 CFR Chapter 1, Subpart C, Section 230.307 which states:

"Every employee and representative of State Highway Agencies shall perform all official equal employment actions in an affirmative manner, and in accord with the applicable statutes, executive orders regulations, and policies enunciated there under, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own workforce and in the workforces of contractors, subcontractors and material suppliers engaged in the performance of federal-aid highway construction contracts."

The On-the-Job Training Program

The primary objective of DelDOT's On-the-Job Training Program is to provide training opportunities for women, minorities, and disadvantaged persons which will increase their participation in every job classification in the highway construction industry. Established by the U. S. Congress as a special section of the Federal Aid Highway Act of 1968 after congressional hearing documented the absence of women, minorities, and disadvantaged persons in the highway industry, the training goals were set by the Federal Highway Administration for states and are translated as specific training positions on construction projects. DelDOT makes the assignment of training positions on federal-aid projects. *This training requirement is a binding contract specification and contractors are obligated to meet trainee assignment(s). It is expected that the contractor will graduate the number of trainees specified in the bid proposal and subsequent contract with the Delaware Department of Transportation.* These assignments are based upon the following considerations:

1. Location of the project.
2. Duration of the project.
3. Total workforce expected to be used.
4. Area's availability of targeted workers.
5. Dollar anticipation.
6. Types of available work during life of project.

Three types of on-the-job training are generally recognized apprenticeship, the DelDOT On-the-Job Training Program, or a self-administered, alternative on-the-job training program. The Delaware Department of Labor administers apprenticeship programs in compliance with federal regulations that have been issued by the U. S. Department of Labor. Apprenticeship programs usually require at least some classroom instruction time and are one, four or five years in duration. Training and supervision is provided by the contractor for an employee who is duly enrolled in an approved training program for a given job classification and position.

The Delaware Department of Transportation On-the-job Training Program assignments will be reviewed and approved on a project by project basis. All On-the-Job Training programs must include a list of job classifications covered, a training hours format for each job classification, a sample enrollment form, and sample exit documents (graduation certificate and/or termination report).

Whether it is an On-the-Job Training Program or an apprenticeship, DelDOT obtains concurrence from the local division office for the Federal Highway Administration (hereinafter referred to as FHWA). Employee compensation during training is governed by the Davis/Bacon Act and the project special provisions of the contract.

Contractor's Responsibilities

- A. Before beginning any federal aid project, the Contractor must have his or her EEO Policy and Affirmative Action Plan in place. This plan should also include who monitors project On-the-Job Training Programs and who has responsibilities within the business for maintaining the company's Equal Employment Opportunity status, orienting employees on EEO concerns and organizing and /or administering the company's On-the-Job Training Program.
- B. Prior to, or no later than the pre-construction meeting the Contractor will complete the DelDOT Trainee Training Schedule and submit it to the District Engineer and the On-the Job Training Program Manager for review and approval.
- C. On-the-Job trainees are listed on an approved enrollment forms which are submitted to the District Engineer and the On-the-Job Training Manager for approval. Enrollment forms should not be submitted to the On-the-Job Training Manager and the District Engineer until the trainee [s] is ready to begin training. No training hours will be credited until the enrollment has been approved by the On-the-Job Training Manager and the District Engineer.
- D. The Contractor orients the training foreman, superintendent and the On-the-Job Training trainee [s] to their individual responsibilities in the program and provides copies of the training guidelines for the training job classification being used.
- E. The Contractor annotates the certified payroll and is required to show training hours distinct from regular hours for each On-Job-Training trainee and submits weekly to the District Engineer and the On-the-Job Training Program Manager.
- F. The Contractor monitors all trainees for progress in the program, problems, and Training issues.
- G. The Contractor should verbally notify the District Engineer and the On-the-Job Training Manager five (5) working days before a trainee termination and submit company's termination form within ten (10) working days after the termination. The District Engineer and the On-the-Job Training Manager will make a determination as to whether this training position needs to be replaced.
- H. Contractors who assign training position[s] to subcontractors must be sure the subcontractor has an approved On-the-Job Training Program. The Prime Contractor shall retain the responsibility for full compliance with the On-the-Job Training trainee requirements of the project.

Recruitment

The recruitment of workers who are members of the targeted population groups for On-the-Job Training trainees is a vital element in the Contractor's successful completion of his contract requirement. Because hiring workers in the "usual" or standard ways did not bring

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a sufficient number of women, minorities, and disadvantaged persons into the highway construction industry, the Contractor has the responsibility to expand the scope of his recruitment activities to increase participation by women, minorities, and disadvantaged persons.

Contractors often find this requirement to be baffling. It need not be. Expanding the recruitment activities to attract qualified candidates for On-the-Job Training positions often enhances the company's recruitment efforts for their entire workforce. Contractors who have not met their employment goals for women, minorities, and disadvantaged persons must demonstrate they have made a good faith effort to do so. Such affirmative action must be designed to overcome past practices, which have, historically, perpetuated a pattern of non-employment of women, minorities, and disadvantaged persons in the highway construction industry. Only until a Contractor meets his employment goals or demonstrates good faith in applying an affirmative action program, will DelDOT consider that Contractor an "Equal Opportunity Employer." Skillful use of the On-the-Job Training program can be an integral and necessary part of a contractor's affirmative action plan.

The recruitment effort should address the following barriers for hiring minorities, women, and disadvantaged in the construction industry:

- Outreach: Women, minorities, and disadvantaged persons lack awareness of employment opportunities in the construction industry
- Education: Women, minorities, and disadvantaged persons lack familiarity with construction site hiring practices
- Outreach / Education / Information: Women, minorities, and disadvantaged persons may view employment in the construction industry as a "temporary" job
- Education / Information: Apprehension about the construction site environment (fear of being unwanted on the job site)
- Outreach: Seek women, minority, and disadvantaged person candidates that have knowledge, skills, ability and experiences that may not be directly comparable qualifying experiences for training in construction job classifications (transferable knowledge, skills and abilities).
- Structural Title VII discrimination practices by hiring personnel

Pro-active Recruitment Approaches

- A. The first element in a successful recruitment effort is to make a job description specific, concise, and complete. A clear job description helps to address and overcome several of the barriers noted above. The job description serves to tell people about the highway construction industry, it "demystifies" the skills and aptitude needed, encourages the applicant, and instructs them on how to apply. Since these are training positions, companies should stress transferable skills or aptitudes in comparable qualifying experiences or craft

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areas that are needed or "desirable" in applicants rather than merely indicating the kinds of work to be done or equipment to be used.

- B. The second element to a successful recruitment effort is the widespread distribution of any vacancy announcement and a general / targeted outreach effort into the women, minority, and disadvantaged person community. Following are recommended recruiting approaches:
- Place job advertisement announcements in newspapers, newsletter and in other publications that serve the women, minority, and disadvantaged person community.
 - Mail job announcements to organizations that serve the women, minority, and disadvantaged person community, such as the State Chapter NAACP, The Wilmington Chapter of the NAACP, Dover Chapter of the NAACP and the Milford Chapter of the NAACP; the Metropolitan Wilmington Urban League; the YWCA of New Castle County; the League of Women Voters; Women in Business; the Latin American Community Center; La Esperanza and La Casa, and to publications that serve the Hispanic community, such as Unidad Latina and Hoy En Delaware.
 - Establish a working rapport with community based agencies that serve the women, minority, and disadvantaged person community. Conduct educational and informational workshops on the construction industry at the site of the community based agency.
 - Advertise job announcements on radio and television with high women, minority, and disadvantaged person ratings, and utilize government access television channels and leased access cable television programs that reach the women, minority, and disadvantaged person communities.
 - Visit high schools, community colleges, colleges, university, and other institution and attend career fairs where there is a significant women, minority, and disadvantaged person population.

Through the implementation of a recruitment approach that is pro-active the DelDOT and Contractors will increase their chances of successfully achieving their women, minority, and disadvantaged person recruitment goal for federal aid projects.

Trainee Training Schedule

In completing DelDOT's Trainee Training Schedule DelDOT has taken the view that granting the contractor the flexibility in selecting trainees for skilled job categories gives contractors a greater degree of ownership in the administration of the On-the-Job Training Program. The Federal Highway Administration; Equal Employment Opportunity Commission; and the Office of Federal Contract Compliance Programs does require that this "self-selection" process result in demonstrable improvements in the number of women, minorities, and disadvantaged persons in all approved skilled job classifications.

If sufficient progress is not made, DelDOT may require different methods for accomplishing the

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state's Equal Employment Opportunity / On-the-Job Training goals such as targeting skilled job categories for training or specific projects rather than just the number of trainee positions for a given project. With this in mind, Contractors should evaluate every training position as to how it will impact on the company's EEO requirements the goal of increasing participation of women, minorities, and disadvantaged persons in the skilled occupations of the highway construction industry.

The selection of skilled job classifications to be used on a project is also an important part of the On-the-Job Training program. Each job classification selected should be one, which adds to the overall strength and value of the company's workforce. Although certain "entry level" positions are typically chosen for On-the Job Training positions, Contractors should not overlook the full range of potential job classifications. While DelDOT continues to allow contractor's to designate their choice of training categories, EEO reviews in other states have resulted in the mandating of job classifications by the U. S. Department of Transportation to the contractor in order to overcome continued low participation rates of Women, minorities, and disadvantaged persons in all skill areas in the highway industry. It therefore becomes increasingly important that companies provide training in a number of skill categories in order to retain this ability to designate a trainee classification. It has also been shown that training employees in the more advanced skill classifications with the least number of training hours are preferable because they insure quicker compliance. A pro-active training program looks to the future of the company and examines every project to determine where a meaningful training opportunity exists. Training job classifications which require substantial hours may mean that an On-the-Job Training trainee would not complete the entire training program on that particular project, shall be given the opportunity to complete the program on other federal aid projects and work locations. In approving training schedules, the On-the Job Training Program Manager and District Engineers are guided by DelDOT's emphasis of training workers in skilled job classifications above entry level.

Selecting the Trainer

The selection of the correct trainee and job classification should be matched by the equally thoughtful selection of the trainer, for this position. The supervisor or journeyman selected to train the On-the Job Training trainee is critical to the success of the On-the Job Training effort. The best "on-the-job" trainer may not be the person with the most formal education or the highest supervisory position. It may not even be the person who is the "best" at the selected skill. The best trainer will be someone who can communicate his or her knowledge of the skill area in an effective manner and does not feel threatened by the trainee. It is imperative that trainers understand the importance of the On-the-Job Training positions and be able and willing to help the trainee complete the training program. For these reasons, an orientation given to the trainer is as important as any orientation given to the trainee. It is recommend as an approach to establish a good training program the contractor should elicit the input of the trainer when developing a training program.

On-the-Job Training Programs

DelDOT approves on-the-Job Training Programs on a project by project basis. Contractors who seek approval to manage their own training programs are classified as "self-administered" programs. Other organizations have programs, which they offer for purchase to contractors for use in the On-the-Job Training Program. Self-administered On-the-Job Training Programs and purchased On-the-

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Job Training Programs must be approved by DelDOT and must include these essential items:

- A. *Company Equal Employment Opportunity policy;***
- B. *Training programs for each job skill category, broken down in hourly training formats, for which the company wants approval; and***
- C. *A copy of the enrollment/graduation/termination forms to be used.***

Contractors are required to have approved training programs in place by the time of pre-construction conferences for those contracts require training. Subcontractors who are assigned trainee positions can not utilize the prime contractor's program and may request the services of the Delaware Department of Transportation's On-the-Job Training Program Manager to assist in developing their own program. As an alternative, any Contractor / Subcontractor may purchase a training program or adopt the Delaware Department of Transportation's On-the Job Training Program or develop an alternative OJT Program that satisfies federal requirements.

Termination

Termination results if a trainee fails to finish the training program. Termination is defined as: the trainee quitting voluntarily, is fired "for cause," or is retained by the contractor but taken out of the training program. In the event of a termination, DelDOT will determine if the training provided before the termination is sufficient to meet the requirement of the contract or whether the contractor will be required to enroll a replacement trainee.

Additional Trainees

Contractors may make a written request to the On-the Job Training Program Manager for additional trainees on federally assisted projects. DelDOT *may require a contractor to enroll additional trainees if a determination is made that the contractor has failed to meet its Equal Employment Opportunity obligation on the same project or in company-wide operations.*

Interviews

A good job vacancy announcement can produce a pool of qualified applications. Those in charge of making hiring decisions need to be aware of the concepts and issues involved in non-discriminatory hiring. To insure a non-discriminatory hiring process, employment interviews must be conducted in accordance with legal and common sense procedures.

Appropriate questions asked on job application forms during interviews, or even during "pre-employment inquires" can furnish companies much of the information needed to make good hiring decisions. Interview questions must relate to job performance and must not be designed to "screen out" women, minorities, and disadvantaged persons. Should you be charged with discrimination in employment some of the questions used during the interview process may be cited as evidence that the application and/or minority or women candidate was rejected on a basis other than suitability for the position.

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The Equal Employment Opportunity Commission recommends that in designing application forms or in conducting interviews employers examine their questions for potential bias and require them to pass a two prong test:

1. *Will the answer to this question, if used in making a choice among applicants, tend to disqualify women, minority, and disadvantaged person applicants at a much higher rate than applicants in other groups?*
2. *Is this information really needed to judge an applicant's qualifications or competence to do the job?*

The answers to these two questions will help you decide whether you are looking for relevant information to help you select good applicants or whether you are using a standard which will adversely impact upon one group of people.

To justify a hiring policy or selection procedure that does exclude a disproportionate number of members of any group protected by Equal Employment Opportunity laws, a "business necessity" must exist. The business necessity must be greater than the avoidance of inconvenience or expenses. You can not, for example, turn down women because they might not "fit in" with men, turn down a disabled person because you would have to make a few simple changes in a work area or turn down older applicants because of higher insurance costs. Rather, a business necessity must directly relate to job performance or be essential for the safe and efficient operation of the business. A business necessity would allow rejecting applicants with back problems for jobs requiring heavy lifting or an applicant with poor eyesight for a pilot's job.

In some jobs there may exist, on the basis of gender, religion or national origin, a "bona fide occupational qualification" (BFOQ) that is necessary to the normal operation of the business. There are jobs when gender can be considered a BFOQ for example a job like clothing models or acting. Religion is a BFOQ only for a job with a religious organization where membership in a certain religion is reasonably necessary to job performance.

To clarify Equal Employment Opportunity laws and help employers eliminate biased hiring criteria, the EEOC has published lists and charts of the types of pre-employment inquiries that have a high potential for bias. While there may be no absolute "do's" and "don'ts" the following examples of questions to avoid and suggested alternatives should illuminate the standard of "objectivity" expected.

AGE: Avoid asking, "How old are you? What is your date of birth? How old are your children, if any?" On the other hand, you may request that the applicant attach a copy of his or her birth certificate.

It is illegal to discriminate in hiring based on age; questions about age are viewed as having the potential to discriminate against older applicants. You can ask about age only if it is a bona fide job qualification, such as an actor for a youthful role. An alternative is simply, "Are you at least 18 years old?" Employers are entitled to know if an applicant is a minor.

ARREST RECORD: Avoid asking, "Have you ever been arrested?" This is considered

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discriminatory because members of some minority groups are arrested much more often than whites in proportion to their numbers in the population. The mere request for such information tends to discourage minority applicants.

BANKRUPTCY: Avoid asking, "Have you ever filed for bankruptcy or been declared as bankrupt?" Federal bankruptcy laws make it illegal to discriminate in hiring based on bankruptcy.

CHILDREN AND CHILDCARE: Avoid asking, "Do you have any children? How old are your children? Have you made provisions for childcare? Do you plan to have children?"

Like questions about marital status, questions about children and childcare arrangements are often directed only to women and may be used to discriminate against them. Do not imply that women will have more tardiness or absentee problems.

CITIZENSHIP: Avoid asking, "Of what country are you a citizen? Are you a naturalized or native-born citizen?" Alternatively, request that the applicant "Attach a copy of his or her naturalization papers." These questions might be used to discriminate based on national origin. All employers need to know is whether an applicant is legally entitled to work so questions must be limited to "Are you a U. S. citizen, and if not, do you have the legal right to remain permanently in the U.S. and to work in the U. S.?"

CONVICTION RECORD: Applicants may be asked, "Have you ever been convicted of a felony or a misdemeanor?" If asked, it should be made clear that a "yes" answer isn't automatic grounds for rejection, and that applicants will be considered on the basis of the types, number and recentness of convictions and the applicant's suitability for the particular job. For instance, it is clear conviction for drunk driving is relevant to the job of truck driving, but may not be to jobs such as a carpenter.

EDUCATION: Avoid asking, "Do you have a high school diploma?" This question is permissible if it's directly related to successful job performance or is a business necessity. If not, this question tends to disqualify minority applicants at higher rate than white applicants.

FINANCIAL STATUS: Avoid asking, "What is your financial status? Do you own a home, car, etc.? Have you ever had a wage garnished? Do you have good credit?" These questions tend to have a disproportionate impact on minority applicants and should you be asked only when there's a business need for the information.

As a rule, when conducting recruitment or screening interviews, only job related questions should be asked. Employers and supervisors should avoid a line of questioning and discussion that involves personal issues. These same guidelines should be considered in subsequent employment decisions after applicants are hired so that any decisions on recommendations for advancement, inclusive of training programs or other decisions are made on objective and work related criteria, and not the subjective criteria cited above.

While many companies do an excellent job of complying with Equal Employment Opportunity guidelines in the initial phases of job recruitment, it is expected that every company employee with the authority to make a personnel decision knows and understands and practices these standards as well.

Retention

The ultimate goal of DelDOT's On-the-Job Training Program is to increase the number of Women, minorities, and disadvantaged persons in every skill category in the highway construction industry. For this reason, the retention of trainees upon their completion of the training program and graduation is a primary goal for DelDOT's On-the-Job Training Program. Termination of Women, minorities, and disadvantaged persons by a contractor immediately after completion of training is an issue of concern for DelDOT. Although the highway construction industry requires a very fluid or mobile workforce, the goal of the On-the-Job Training Program is to place Women, minorities, and disadvantaged persons with companies on a permanent basis. Every effort should be made by contractors to encourage the graduation of On-the-Job Training trainees and to place and retain them permanently in the highway construction industry.

JOB CLASSIFICATIONS

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AIR COMPRESSOR OPERATOR: Tends air compressor units to generate and supply compressed air for operation of pneumatic tools, hoists, and air lances. Starts power unit to build up specified pressure in compressor. Adjusts controls to maintain continuous air supply to pneumatic tools or equipment. May oil, grease, service and make normal operating adjustment to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS or 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	10 Hrs.
B.	Observe machine in operation	15 Hrs.
C.	Starting, stopping and regulating valves	15 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	10 Hrs.
B.	Routine fueling, lubrication and servicing	30 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safety procedures	10 Hrs.
B.	Connecting pipes from compressor to equipment	45 Hrs.
C.	On-the-job operation	360 Hrs.
D.	Special applications	25 Hrs.
	Total	520 Hrs.

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ASPHALT PAVING MACHINE/SCREED OPERATOR: Manipulates hand or foot levers to control movement of paving machine which spreads and levels asphaltic concrete; regulates height and width of screed. Observes distribution of paving material along screed and controls direction of screed to eliminate voids at curbs and joints. Regulates temperature of asphalt; sets and maintains electronic controls for longitudinal and transverse grades. Regulates system to allow fully automatic paving; familiar with various manufactures' paving equipment. Performs routine fueling, lubrication and adjustment as needed. Performs other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	10 Hrs.
	B. Observe machine in operation and become familiar with various manufacturers' equipment	30 Hrs.
	C. Starting and manipulating levers and electronic Controls for moving equipment and attachments	30 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	10 Hrs.
	B. Routine fueling, lubrication and servicing	145 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safety procedures	10 Hrs.
	B. Screed regulation indoctrination and operation	120 Hrs.
	C. On-the-job operation	685 Hrs.
	Total	1040 Hrs.

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BACKHOE OPERATOR: Operates backhoe, such as is on the rear of a utility tractor and on other equipment, for the purpose of digging and excavating. May oil, grease, and make normal operating adjustment to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEK or 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation of machine and operations	20 Hrs.
	C. Starting, manipulating levers for moving equipment and attachments	20 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety Procedures	5 Hrs.
	B. Routine fueling, lubricating, and servicing	70 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safe operating procedures	5 Hrs.
	B. Trenching operations	275 Hrs.
	C. Excavation for footing, structures, etc.	280 Hrs.
	D. Special Applications and functions	40 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

BULLDOZER (utility): Operates rubber tired or crawler type bulldozer performing work not requiring skill of regular bulldozer operator. Performs work including, but not limited to, moving material in stockpile, rough work grade, pusher for loading scrapers and earthmovers, etc. Operates tractor with other attachments including, but not limited to, clearing rake, ripper, stumper, push block, etc. May oil grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEK or 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operations	35 Hrs.
C.	Starting, manipulating levers for moving equipment and attachments	30 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety Procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Movement and stockpiling of material	150 Hrs.
C.	Pushing and rough grading	125 Hrs.
D.	Clearing and grubbing	125 Hrs.
E.	Finish grading	175 Hrs.
F.	Special Applications and function	30 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

BULLDOZER: Operates tractor equipped with bulldozer blade, operated either hydraulically or by cable. Capable of carrying grade and line. May oil, Grease, Service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS OR 720 HOURS

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation (as a passenger) of machine in operation	35 Hrs.
	C. Starting and manipulating levers for moving equipment and attachments	30 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	5 Hrs.
	B. Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safe operating procedures	5 Hrs.
	B. Movement and stockpiling of material	150 Hrs.
	C. Pushing and rough grading	125 Hrs.
	D. Clearing and grubbing	125 Hrs.
	E. Finish grading	175 Hrs.
	F. Special application	30 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

CARPENTER: Lays out work plans or sketch. Builds wooden structures; such as concrete form, falsework, pouring, chute, scaffold, etc. Builds in place to line and grade or prefabricates in units to be erected later, forms for bridge, drainage structure, wall, etc. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS

I.	ORIENTATION AND SAFE USE OF TOOLS OF THE TRADE	
A.	Power and hand tools	20 Hrs.
B.	Materials selection	20 Hrs.
II.	APPLIED TECHNIQUES OR HIGHWAY CONSTRUCTION CARPENTRY	
A.	Safety procedures	5 Hrs.
B.	Pier, pile and cap formwork	145 Hrs.
C.	Decking formwork	150 Hrs.
D.	Parapet and hand railing formwork	150 Hrs.
E.	Endwall formwork	150 Hrs.
F.	Box culverts, inlets and headwall formwork	150 Hrs.
III.	BLUEPRINT OR CONSTRUCTION PLANS READING AND APPLICATIONS	50 Hrs.
IV.	BASIC FORMS DESIGN FAMILIARITY	95 Hrs.
A.	Safety procedures	5 Hrs.
V.	STRIPPING AND SALVAGE OF FORMS FOR RE-USE	95 Hrs.
A.	Safety procedures	5 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

CONCRETE FINISHER: Finishes wet concrete surfaces to grade with hand tools, float, trowel, screed, template and straight edge on all types of concrete work requiring a fine finish. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEK or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedure	5 Hrs.
B.	Observation of use of straight edges, floats and steel trowels	25 Hrs.
C.	Observation of forming a finishing of edges and joints	25 Hrs.
D.	Observation of use of concrete finishing machine	15 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety Procedures	5 Hrs.
B.	Routine cleaning work area and materials holding materials, tools and handling canvas belting or burlap strips	195 Hrs.
C.	Routine fueling, lubricating, and servicing	50 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	10 Hrs.
B.	Basic operation of tools	200 Hrs.
C.	Forming and finishing edges, joints, curbs, gutters, paving, and structures	310 Hrs.
D.	Operation of trowels, straight edges, floats or finishing machine	200 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

CONCRETE PAVING MACHINE OPERATOR: Operates a self-propelled machine which levels fresh concrete to exact grade contour. Starts and operates machine, engages clutch and shifts gears to control machine's movement. Moves levers and adjusts paver to raise or lower attachment that spreads concrete. Observes surface of concrete to point out low spots for workers to add concrete. Operates machine with attachment to successively vibrate, screed, strike-off (remove excess), float surface of concrete, to spray curing compound and cut expansion joints. When cutting expansion joints, places strips of expansion-joint material on machine that automatically inserts material into joints. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties. When operating machine to screed and float surface, is designated CONCRETE FINISHING MACHINE OPERATOR. May be designated according to specific function of machine attachment as CURING MACHINE OPERATOR, PAVING SAW OPERATOR, LONGITUDINAL FLOAT OPERATOR, SCREED OPERATOR, SPREADER OPERATOR STRIKE-OFF MACHINE OPERATOR, and other applicable attachments.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	20 Hrs.
B.	Observe machine in operation	35 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	35 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	20 Hrs.
B.	Routine fueling, lubrication and servicing	170 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safety procedures	20 Hrs.
B.	On-the-job operation	700 Hrs.
C.	Daily cleaning and preventive maintenance	40 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

CRANE DRAGLINE AND SHOVEL (1 yard and under): Operates crane, dragline and shovel. Grades to line and grades from reference points. Operates crane to hoist and move materials, raise and lower heavy weights, charge cold feed bins, etc. Uses dragline, clamshell, gradall, orange peel, and other related attachments. May oil grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEK or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operations	50 Hrs.
C.	Starting, manipulating levers for moving equipment and attachments	45 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety Procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	295 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Trenching operations (for pipelaying, etc.)	300 Hrs.
C.	Excavation	300 Hrs.
D.	Special Applications and function	35 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

CRANE DRAGLINE AND SHOVEL (Over 1 yard): Operates crane, dragline and shovel. Grades to line and grades from reference points. Operates crane to hoist and move materials, raise and lower heavy weights, charge cold feed binds, etc. Uses dragline, clamshell, gradall, orange peel, and other related attachments. May oil grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 52 WEEK or 2080 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	10 Hrs.
B.	Observation (as a passenger) of machine in operations	50 Hrs.
C.	Starting, manipulating levers for moving equipment and attachments	50 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety Procedures	10 Hrs.
B.	Routine fueling, lubricating, and servicing	300 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	10 Hrs.
B.	Excavation of footings and removal of unsuitable material	300 Hrs.
C.	Loading and unloading materials	350 Hrs.
D.	Trenching operations (for pipelaying, etc.)	250 Hrs.
E.	Hoisting Materials	400 Hrs.
F.	Placement of beams, pipe, girders, piles, etc.	300 Hrs.
G.	Charge hoppers with materials on asphalt and concrete plants	50 Hrs.
	Total	2080 Hrs.

DelDOT OJT Program Guidelines

DRILL OPERATOR/AIR-TRACK DRILL OPERATOR: Operates drilling machine, such as wagon drill, air track, well driller, etc., for the purpose of drilling rock, shale, or other material according to specifications. Starts, stops and services portable air compressor. Places block of stone on machine bed and secures it in position for drilling, using electric hoist, wedges and wooden blocks. Measures and installs specified bit in drill. Pulls levers and turns wheels to regulate speed of machine, flow of water (coolant) and drilling speed. May drill bits using grindstone. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	10 Hrs.
	B. Observe machine in operation	45 Hrs.
	C. Starting and manipulating levers for moving equipment and attachments	45 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	10 Hrs.
	B. Routine fueling, lubrication and servicing	290 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safety procedures	10 Hrs.
	B. Purpose of various types of drills	5 Hrs.
	C. Fasten drill, adjust drill angle and lock into Position, adjust speed of drill	490 Hrs.
	D. Adjustments to equipment	100 Hrs.
	E. Special applications	35 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

ELECTRICAL WORKER: Assists in a combination of duties, including: wiring, grounding, cutting wires to scale from blueprints or oral directions, installation of fixtures, switches and devices, installation of controls, conductors, heating, and air conditioning. Performs related tasks such as testing circuits. Performs other related duties.

Completion of this program does not qualify the trainee as an electrician.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	10 Hrs.
B.	Tools of the trade	10 Hrs.
C.	Materials used and material selection	30 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	10 Hrs.
B.	Routine care and servicing of tools	15 Hrs.
III.	ACTUAL ELECTRICAL OPERATIONS	
A.	Safety procedures	10 Hrs.
B.	Basic Wiring	100 Hrs.
C.	Basic grounding	100 Hrs.
D.	Installation of controls, fixtures, and switches	455 Hrs.
E.	Installation of heat and air conditioners	150 Hrs.
F.	Control wiring	75 Hrs.
G.	Cable splicing	75 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

FOREMAN, HIGHWAY CONSTRUCTION: Supervises and coordinates the activities of workers under him/her engaged in one or more occupations. Studies production schedules and estimates man hour requirements for the completion of the job.

TRAINING OUTLINE

Approximate Training Time: 50 WEEK or 2000 HOURS.

I.	ADMINISTRATION Interpreting company policy to workers, enforcing safety regulations, maintaining time and production records, coordinating work schedules with other foreman recruiting, and inspection of materials.	200 Hrs.
II.	PRODUCTION Receives instruction and specifications from superintendents and transmits them to other members of the crew. Interprets blueprints, specifications and job orders. Assists workers in solving jobsite problems. Operates power equipment and other machinery as needed. Regularly performs all tasks of workers in the crew.	1500 Hrs.
III.	PERSONNEL Supervises crew in absence of superintendent, recommends personnel actions, such as promotions, transfers, discharges, and disciplinary action. Trains/orients new employees and/or trainees.	300 Hrs.
	Total	2000 Hrs.

SUGGESTED RELATED TRAINING: Red Cross First Aid Certification, Industry Safety Publications, Blueprint Reading, Industrial Relations, Personnel Management, Contracting Laws, EEO, etc.

The trainee shall be given instruction and training in all branches of the occupation listed in the Training Outline and necessary to become skilled in the occupation. The work experience need not be in the precise order as listed, nor do the scheduled hours of any operation production schedule.

DelDOT OJT Program Guidelines

FRONT-END LOADER OPERATOR: Operates a rubber-tired or other crawler type tractor with an attached scoop-type bucket on the front end. Starts engines, shifts gears, presser pedals and steers loader. Machine is used to load and unload materials, perform excavation, charge batch plants, and load trucks. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS or 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	10 Hrs.
	B. Observe machine in operation	25 Hrs.
	C. Starting and manipulating levers for moving equipment and attachments	20 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	10 Hrs.
	B. Routine fueling, lubrication and servicing	40 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safety procedures	10 Hrs.
	B. Loading and unloading materials	195 Hrs.
	C. Excavation	150 Hrs.
	D. Grading	30 Hrs.
	E. Miscellaneous application	30 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

GREASER/OILER: Operates fuel, grease and oil truck. Lubricates moving parts and wearing surfaces of equipment assigned. Operates pressure greasing equipment. Cleans equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEK or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of truck in operations	10 Hrs.
C.	Starting and manipulating vehicle	15 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety Procedures	10 Hrs.
B.	Lubrication of moving parts and wearing surfaces of equipment	100 Hrs.
C.	Cleans equipment	100 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	100 Hrs.
B.	Operates pressure greasing equipment	400 Hrs.
C.	Operations of vehicle	300 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

GUARD RAIL ERECTOR: Digs hole for post, drives post, attaches guard rail, pours incidental concrete, paints guard rail. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS or 720 HOURS

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation of procedures and equipment in operation	35 Hrs.
	C. Starting machinery and manipulating equipment and controls	40 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety Procedures	10 Hrs.
	B. Routine fueling, lubricating and servicing	100 Hrs.
III.	ACTUAL FUNCTIONS OF GUARD RAIL ERECTION	
	A. Safety procedures	10 Hrs.
	B. Incidental concrete pouring and post setting	100 Hrs.
	C. Post hole digging and post driving equipment driving equipment operation	350 Hrs.
	D. Guard rail attachment, painting and finishing	120 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

IRONWORKER, REINFORCING: Positions and secures steel bars to placement of reinforced concrete. Determines number, sizes, shapes and locations of reinforcing rods from plans, specifications, sketches and/or oral instructions. Places and ties reinforcing steel using wire and pliers. Sets rods in place, spaces and secures reinforcing rods. May bead steel rods with hand tools or rodbending machine. May reinforce concrete with wire mesh. May weld reinforcing bars together. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS or 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	20 Hrs.
B.	Observation of operation	15 Hrs.
C.	Care and repair of specially-coated bars	10 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	20 Hrs.
B.	Care and maintenance of tools and equipment	30 Hrs.
III.	ACTUAL OPERATION OF REINFORCING	
A.	Construction plan reading and application	30 Hrs.
B.	Identification and selection of materials	30 Hrs.
C.	Places reinforcing steel and support devices	465 Hrs.
D.	Spaces and secures reinforcing materials	100 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

IRONWORKER STRUCTURAL: Performs any combination of the following duties to raise, place and unite girders, columns and other structural steel members to form completed structures or structure frameworks, working as a member of a crew. Sets up hoisting equipment for raising and placing structural steel members. Fastens steel members to cable of hoist using chain, cable or rope. Signals worker operating hoisting equipment to lift and place steel members. Guides member using tab line (rope) or rides on member to guide it into position. Reads plans; rigs, assembles and erects structural members requiring riveting or welding. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	20 Hrs.
B.	Observe operation	35 Hrs.
C.	Plan reading	35 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	20 Hrs.
B.	Care and maintenance of tools and equipment	70 Hrs.
III.	ACTUAL OPERATION	
A.	Safety procedures	20 Hrs.
B.	Rigging structural members requiring riveting or welding	140 Hrs.
C.	Assembling structural members requiring riveting or welding	300 Hrs.
D.	Erection of structural members requiring riveting or welding	400 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

LOADER OPERATOR: Operates rubber tired or crawler type tractor with attached scoop type bucket on front end. Excavates and loads excavated material, load material from stockpiles, charges batch plants, and load trucks. May oil grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS or 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operations	20 Hrs.
C.	Starting, manipulating levers for moving equipment and attachments	15 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety Procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Loading materials	250 Hrs.
C.	Excavation	150 Hrs.
D.	Special Applications and function	35 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

MASON STRUCTURAL: Lays out work from plans. Sets up templates and guidelines . Shapes stone or brick preparatory to setting, using chisels, hammers, and other shaping tools. Spreads mortar over stone and foundation with trowel and sets stone in place by hand or with the aid of a crane. Sets stone, brick, concrete, tile or other materials in the construction of manholes, catch basins, drop inlets, sidewalks, retaining walls, and hand finishes same. Hand finishes Portland Cement Concrete structures such as slabs. Decks, piers, abutments, etc. Molds expansion joints and edges using tools, jointers and straight edges. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	15 Hrs.
B.	Setting up templates ;and guidelines	10 Hrs.
C.	Use of hand trowels, straight edges, and hand levels	60 Hrs.
D.	Use of materials (including Portland Cement Concrete, brick, tile and concrete block)	40 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	10 Hrs.
B.	Excavation	40 Hrs.
C.	Manholes, catch basins, drop inlets	360 Hrs.
D.	Sidewalks, retaining walls, etc.	180 Hrs.
E.	Miscellaneous structures	180 Hrs.
III.	CHECKING AND INSPECTION	
A.	Safety procedures	5 Hrs.
B.	Blueprint or construction plans reading	40 Hrs.
C.	Conformity with plans and specifications	100 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

MECHANIC: Assembles, sets up, adjust, maintains, repairs, welds equipment. Operates any equipment unit on a temporary basis for operating adjustments. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 52 WEEKS or 2080 HOURS.

I.	LUBRICATION Oil, air, and fuel filtration, grease points, and capacities, inspection techniques to detect abnormal conditions	40 Hrs.
II.	PAINT AND BODY Body work and painting procedures	40 Hrs.
III.	MACHINE SHOP FAMILIARIZATION Welding and burning equipment and operations of lathes, saws, shapers, girder, and presses	160 Hrs.
IV.	INJECTOR-GOVERNOR The operation and service of fuel injector pumps and nozzles, and engine governors	200 Hrs.
V.	WATER COOLED ENGINE REBUILD Assist in the complete overhaul and testing of gas and diesel engines	120 Hrs.
VI.	TRANSMISSION AND REAR ENDS Assist in the complete overhaul of the various mechanisms used to transfer engine horsepower to tractive effort.	240 Hrs.
VII.	AIR COOLED ENGINES Assist in the complete overhaul of the various air cooled engines and their applications	200 Hrs.
VIII.	HEAVY EQUIPMENT PARTS AND FAMILIARIZATION The Parts Catalogs, procurement, handling, storage, and cost of heavy equipment parts	80 Hrs.
IX.	STARTERS, GENERATORS, AND VOLTAGE REGULATORS Assist in the complete overhaul of the	160 Hrs.

DelDOT OJT Program Guidelines

various starters, generators, and voltage regulators

X.	HEAVY EQUIPMENT SHOP Assist in the repair and overhaul of the various heavy equipment which includes, but is not limited to, crawler and wheel tractors, crawler and portable cranes, booms, front end loaders, rollers, subgrade mixers, motor graders, compactors, pumps, and air compressors - their power plants, transmissions, controls and accessories	600 Hrs.
XI.	HEAVY EQUIPMENT FIELD the role of the field mechanic is to make the repairs necessary in the field and perform preventive maintenance practices necessary to increase service life of the equipment.	240 Hrs.
	Total	2080 Hrs.

DelDOT OJT Program Guidelines

MOTOR GRADER OPERATOR (Fine Grade): Operates self-propelled motor grader and, from stakes and lines, cuts subgrade and performs other fine grade operations, requiring considerable experience and a high degree of skill. May oil, grease, service and make normal operating adjustment to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 39 WEEKS OR 1560 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operation	100 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	95 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Scraping and leveling dirt on roadway	180 Hrs.
C.	Spreading and mixing materials on roadway	170 Hrs.
D.	Shaping and blading subgrades	150 Hrs.
E.	Balancing and rough shaping base course materials	375 Hrs.
F.	Fine grading and dressing of shoulders and slopes	440 Hrs.
	Total	1560 Hrs.

DelDOT OJT Program Guidelines

MOTOR GRADER OPERATOR (Rough Grade): Operates self-propelled motor grader on rough grade work, such as, finishing rough grade on highway, including highway shoulders, slopes and ditches. May oil, grease, service and make normal operating adjustment to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS OR 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation (as a passenger) of machine in operation	100 Hrs.
	C. Starting and manipulating levers for moving equipment and attachments	95 Hrs.
	CARE AND MAINTENANCE	
II.	A. Safety procedures	5 Hrs.
	B. Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safe operating procedures	5 Hrs.
	B. Scraping and leveling dirt on roadway	180 Hrs.
	C. Spreading and mixing materials on roadway	170 Hrs.
	D. Shaping and blading subgrades	150 Hrs.
	E. Balancing and rough shaping base course materials	150 Hrs.
	F. Grading and dressing of shoulders and slopes	145 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

OILER/GREASER/FIRER: A service worker who lubricates the moving parts of wearing surfaces of mechanical equipment, changes oil, greases and filters and refuels equipment. Uses grease gun to force grease into bearings. Packs grease cups by hand. Makes minor adjustments on miscellaneous drive chains and clutches. Keeps machines and equipment clean. Often drives a truck which carries the various fuels, oils and greases.

Hand stokes or fires by gas or oil, a portable or semi-portable steam boiler such as is used on steam shovels, pile drivers, cranes, dredges, hoisting equipment and asphalt plants. May be responsible for safe operation of an oil-fired steam boiler aboard a floating whirley; may be called upon to operate stationary and skid-mounted boilers on land. ;Must be familiar with operating pressures and adjustments of pipe, valves and fittings. Responsible for minor adjustments, routine maintenance and proper lubrication of equipment. Performs other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS or 720 HOURS.

I.	ORIENTATION AND SAFE USE OF TOOLS OF THE TRADE	
A.	Lubrication requirements of mechanical equipment	20 Hrs.
B.	Materials selection	20 Hrs.
II.	APPLIED TECHNIQUES OF THE OILER/GREASER/ FIRER	
A.	Safety procedures	10 Hrs.
B.	Equipment characteristics/lubrication points	140 Hrs.
C.	Oil changes, filter changes, greases guns, hard Packing of grease, greasing bearings	230 Hrs.
D.	Minor adjustments to drive chains and clutches	150 Hrs.
E.	Shop and field practices	50 Hrs.
III.	ACTUAL OPERATION	
A.	Equipment operation and operation of oil, grease And fuel truck	85 Hrs.
B.	Safety procedures	15 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

PILE HAMMER OPERATOR: Operates Pile-driving machine or Pile Hammer, with crane or skid-mounted, with leads or jets for driving pile as foundations for piers, bridges etc. Moves levers to control hoisting equipment used to position leads. Assists other workers in setting up pile hammer leads. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	40 Hrs.
B.	Observe machine in operation	145 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	145 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	20 Hrs.
B.	Routine fueling, lubrication and servicing	40 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safety procedures	20 Hrs.
B.	Basic operation of crane or pile-driving rig in hoisting and moving	225 Hrs.
C.	Preparation of pile for driving	100 Hrs.
D.	Seating of pile hammer on pile in preparation for driving	140 Hrs.
E.	Driving of pile	165 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

PILEDRIVER LEADSPERSON: Set pile in leads. Sets pile in correct position. Guides sheet steel pile into grooves of adjacent pile. Places cap; signals piledriver operator to start or stop hammer and adjusts direction and angle of leads. May perform other related duties

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS OR 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operation	50 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	45 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	345 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	10 Hrs.
B.	Basic operation of crane or pile driving rig in hoisting and moving	200 Hrs.
C.	Placement of pile in preparation for driving	140 Hrs.
D.	Seating of pile hammer on pile in preparation for driving	140 Hrs.
E.	Driving of pile	100 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

PIPELAYER: (Sanitary/Storm/Water) Lays glazed or unglazed clay, concrete, steel or cast-iron pipe to form water lines, gas lines, sanitary or storm sewers and drains; lays underground telephone and electrical duct. May smooth bottom of trench to proper elevation by scooping with a shovel; received pipe lowered from top of trench; inserts spigot end of pipe into bell end of last laid pipe. Adjusts pipe to line and grade, caulks joints with oakum or yarn and seals joints with cement or other sealing compound; may connect threaded or flanged joint pipe, may assemble and place corrugated metal pipe. Must be able to physically set elevations with laser or other engineering equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS or 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures MOSHA & OSHA regulations	40 Hrs.
B.	Observe spade operation and laying of pipe	15 Hrs.
C.	Study of various forms of pipe and related materials	5 Hrs.
D.	Familiarity with local codes & testing procedures	70 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	10 Hrs.
B.	Ditch preparation, handles materials and tools	15 Hrs.
III.	ACTUAL HANDLING OF PIPE AND SPADE	
A.	Ditch grading with compressed air driven or hand spade	50 Hrs.
B.	Handle materials, assist in lowering pipe	50 Hrs.
C.	Work with pipelayer in laying all types of pipe And duct, adjust pipe to elevation, insert spigot End of pipe into bell end of last laid pipe	365 Hrs.
D.	Performing testing procedures	100 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

POWER TOOL OPERATOR: Operates jack hammer, vibrator, tamper, paving breaker, chain saw, etc., employing air, fuel or current for power. Starts, stops, and services portable air compressor or portable fuel machine. May oil, grease, services and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS OR 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation of jack hammer, vibrator, tamper, Paving breaker, torque, wrench, chain saw	35 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	50 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Jack hammer	100 Hrs.
B.	Vibrator	100 Hrs.
C.	Tamper	100 Hrs.
D.	Paving breaker	100 Hrs.
E.	Torque wrench	100 Hrs.
F.	Chain saw	50 Hrs.
G.	Other	75 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

ROLLER OPERATOR: Operates self-propelled steel wheeled, rubber tired, sheepfoot, vibratory, segmented or other type roller to compact earth, subgrade, subbase, shoulder materials, or stone cover on surface treatment. May also operate rubber tired roller on asphalt concrete. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS OR 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation (as a passenger) of machine in Operation	35 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	5 Hrs.
	B. Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safe operating procedures	5 Hrs.
	B. Rolls base course to desired compaction	455 Hrs.
	C. Rolls asphalt surfaces to desired compaction and Smoothness and assures proper sealing of joints	500 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

ROLLER OPERATOR (Finish): Operates tandem or three-wheel steel roller for finishing of bases and asphalt surfaces. May also operate rubber tired roller on bases and asphalt surfaces, including final rolling in asphalt concrete. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS OR 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation (as a passenger) of machine in operation	35 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	5 Hrs.
	B. Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safe operating procedures	5 Hrs.
	B. Rolls base course to desired compaction	455 Hrs.
	C. Rolls asphalt surfaces to desired compaction and smoothness and assures proper sealing of joints	500 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

ROLLER OPERATOR A: (Asphalt, Bituminous Materials) Operates self-propelled steel-wheeled, rubber-tired, sheepsfoot, vibrator, segmented, or other type roller to compact binder course, base course, surface course, should materials, or stone cover on surface treatment. May also operate rubber tired roller on base and asphalt surfaces, including final rolling on asphalt concrete. Drives machine in successive overlapping passes over surfaces to ge compacted. Determines speed and direction of machine based on knowledge of compressibility of material under changing temperatures, so that ridges are not formed by excessive pressure. May oil, grease or otherwise service and make necessary adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	10 Hrs.
	B. Observe machine in operation	30 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	10 Hrs.
	B. Routine fueling, lubrication and servicing	30 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safety procedures	10 Hrs.
	B. Starting and manipulating levers for moving equipment	30 Hrs.
	C. Rolls asphalt base course to desired compaction	450 Hrs.
	D. Rolls asphalt surfaces to desired compaction and smoothness and assures proper sealing of joints	470 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

ROLLER OPERATOR B: (Earthwork, Up to Subgrade) Operates self-propelled steel-wheeled, rubber-tired, sheepsfoot, vibrator, segmented, or other type roller to compact earth, subgrade, sub-base, shoulder materials, or stone cover on surface treatment. May also operate rubber-tired roller on base and asphalt surfaces including final rolling on asphalt concrete. Drives machine in successive overlapping passes over surfaces to be compacted. Determines speed and direction of machine based on knowledge of compressibility of material under changing temperatures, so that ridges are not formed by excessive pressure. May oil, grease or otherwise service and make necessary adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	10 Hrs.
	B. Observe machine in operation	30 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	30 Hrs.
	B. Routine fueling, lubrication and servicing	10 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safety procedures	10 Hrs.
	B. Starting and manipulating levers for moving equipment and attachments, including blades	30 Hrs.
	C. Rolls embankments to desired compaction	450 Hrs.
	D. Rolls subgrade to desired compaction and smoothness	470 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

SCRAPER: Operates self-propelled rubber tired or tractor drawn unit know as scraper, pan, etc., to excavate, transport and deposit materials moved in normal grading operations. May oil, Grease, Service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS OR 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operation	20 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	15 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Loading	150 Hrs.
C.	Spreading material	150 Hrs.
D.	Rough roadway grading	70 Hrs.
E.	Compaction of embankment	65 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

SIGNERECTOR: Erects reassembled signs according to plans, sketches and blueprints. Measures location for sign and marks points where holes for expansion shields are to be drilled. Drills holes, using star drill. Makes layout for erection of signs, cuts ties and sets reinforcing steel. Sets forms for concrete, pours concrete, sets anchor bolts, erects wooden or metal structures, places clamps, brackets or other required hardware on structures. May use welding equipment for installation. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND SAFE USE OF TOOLS OF THE TRADE	
A.	Power and hand tools	20 Hrs.
B.	Special fittings and hardware	10 Hrs.
C.	Specifications or design for concrete mixer	20 Hrs.
II.	APPLIED TECHNIQUES OF SIGN ERECTION	
A.	Preparation of layout for signs	30 Hrs.
B.	Cuts, ties, and sets reinforcing steel for footings	25 Hrs.
C.	Sets forms, places concrete, set anchor bolts	300 Hrs.
D.	Erects wooden or metal structures	250 Hrs.
E.	Places clamps, brackets or other required Hardware on structures	240 Hrs.
F.	Safety procedures	10 Hrs.
III.	BLUEPRINT OR CONSTRUCTION PLAN READING AND FAMILIARITY WITH MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES	50 Hrs.
IV.	BASIC DESIGN FAMILIARITY	
A.	Safety procedures	10 Hrs.
V.	STRIPPING & SALVAGING OF FORMS FOR RE-USE	65 Hrs.
A.	Safety procedures	10 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

STEEL PAINTER: Performs any of the following duties to assist setting up scaffolding, setting up containment, cleaning and maintaining painting equipment, stripping of old paint from steel, prepare steel surface for painting, and painting bridge steel. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS or 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	20 Hrs.
B.	Observation of operation	15 Hrs.
C.	Use of ladders, scaffolding and rigging	25 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	20 Hrs.
B.	Care and maintenance of tools and equipment	30 Hrs.
III.	ACTUAL OPERATION	
A.	Construction plan reading and application	30 Hrs.
B.	Identification and selection of materials	30 Hrs.
C.	Places scaffolding and support devices, places containment where required; stripping old paint; cleaning steel for painting; painting	550 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

STONE SPREADER: Operates any self-propelled equipment on wheels or tracks which spreads stone or other granular materials. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS OR 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation (as a passenger) of machine in operation	25 Hrs.
	C. Starting, stopping and manipulating levers for moving equipment and attachments	20 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	5 Hrs.
	B. Routine fueling, lubricating, and servicing	30 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Selection and loading of material	40 Hrs.
	B. Spreading of stone or other granular materials on spreadway sub-base or base	395 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

TRACTOR OPERATOR (Crawler): Operates crawler type tractor to furnish motive power to other equipment units, such as, but not limited to, earth rollers, harrows, rippers, planers, plows, mixers, pans, etc. Operates attached winch. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS OR 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operation	30 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	25 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Pushing other equipment to aid in loading and unloading operations	150 Hrs.
C.	Pulling compaction and mixing implements	150 Hrs.
D.	Ground clearing assistance	115 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

TRACTOR OPERATOR (Utility): Operates rubber tired tractor or other special types with attachments for digging post holes, driving posts or pins. Excavating, backfilling, hoist or crane for erection of signs, sweeping, etc. Pulls harrows, planers, plows, mixers, rollers, rooms, etc. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS OR 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	5 Hrs.
B.	Observation (as a passenger) of machine in operation	30 Hrs.
C.	Starting and manipulating levers for moving equipment and attachments	25 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	5 Hrs.
B.	Routine fueling, lubricating, and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safe operating procedures	5 Hrs.
B.	Pushing other equipment to aid in loading or unloading operations	150 Hrs.
C.	Pulling compaction and mixing implements	150 Hrs.
D.	Ground clearing assistance	115 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

TRENCH TRIMMER, FINE: Operates wheel-type trenching machine, roughly equivalent in size and horsepower to an industrial farm tractor, for installation of water pipes, electrical conduit and appurtenances. Sets wheel and digs trench to grade. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 18 WEEKS or 720 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	15 Hrs.
B.	Observe machine in operation	35 Hrs.
C.	Starting and manipulating levers and electronic Controls for moving equipment and attachments	40 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	15 Hrs.
B.	Routine fueling, lubrication and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safety procedures	15 Hrs.
B.	Excavation for footings and removal of unsuitable materials	190 Hrs.
C.	Loading and unloading materials	125 Hrs.
D.	Trenching for pipe, etc.	100 Hrs.
E.	Hoisting materials	50 Hrs.
F.	Placement of pipe, conduit, etc.	100 Hrs.
	Total	720 Hrs.

DelDOT OJT Program Guidelines

TRUCK DRIVER (HEAVY OVER 7 CY): Drivers multi-rear-axle truck transporting construction materials. May have various kinds of beds attached such as dump, flatbed, water tank, etc. May pull semi-trailer or trailer. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 19 WEEKS or 760 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	15 Hrs.
B.	Observe vehicle in operation and become familiar with various equipment	45 Hrs.
C.	Starting and operating vehicle	160 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	15 Hrs.
B.	Routine fueling, lubrication and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safety procedures	15 Hrs.
B.	Loading and unloading materials and operation of vehicle	435 Hrs.
IV.	COMMERCIAL DRIVER'S LICENSE (CDL) MANUAL REVIEW	
A.	Section 1	5 Hrs.
B.	Section 2	5 Hrs.
C.	Section 3	5 Hrs.
D.	Section 5	5 Hrs.
E.	Section 6	5 Hrs.
V.	PRACTICE TESTING CDL CERTIFICATION	
A.	General knowledge	5 Hrs.
B.	Airbrakes	5 Hrs.
C.	Vehicle operation	5 Hrs.
	Total	760 Hrs.

*CDL training hours must be acquired during the final 50 hours of the training program.

**The trainee will be recognized as a journey person after obtaining a CDL.

DelDOT OJT Program Guidelines

TRUCK DRIVER (LIGHT 7 CY OR LESS): Drives multi-rear-axle truck for transporting construction materials. May have various kinds of beds attached such as dump, flatbed, water tank, etc., may include pickup, water wagon, service truck, or hoist truck. May pull semi-trailer or trailer. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 14 WEEKS or 560 HOURS.

I.	ORIENTATION AND OBSERVATION	
A.	Safety procedures	10 Hrs.
B.	Observe vehicle in operation and become familiar with various equipment	15 Hrs.
C.	Starting and operating vehicle	15 Hrs.
II.	CARE AND MAINTENANCE	
A.	Safety procedures	10 Hrs.
B.	Routine fueling, lubrication and servicing	30 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
A.	Safety procedures	10 Hrs.
B.	Loading and unloading materials and operation of vehicle	430 Hrs.
IV.	COMMERCIAL DRIVER'S LICENSE (CDL) MANUAL REVIEW	
A.	Section 1	5 Hrs.
B.	Section 2	5 Hrs.
C.	Section 3	5 Hrs.
D.	Section 5	5 Hrs.
E.	Section 6	5 Hrs.
V.	PRACTICE TESTING CDL CERTIFICATION	
A.	General knowledge	5 Hrs.
B.	Airbrakes	5 Hrs.
C.	Vehicle operation	5 Hrs.
	Total	560 Hrs.

*CDL training hours must be acquired during the final 50 hours of the training program.

**The trainee will be recognized as a journey person after obtaining a CDL.

DelDOT OJT Program Guidelines

TRUCK DRIVER (Single-Rear Axle): Drives single-rear-axle truck for transporting construction materials. May have various kinds of beds attached such as dump, flatbed, water tank, etc., includes pickup, water wagon, service truck, hoist truck, etc. May pull semi-trailer or trailer. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 13 WEEKS or 520 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	5 Hrs.
	B. Observation (as a passenger) of vehicle in operation	20 Hrs.
	C. Starting and manipulating vehicle	15 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	5 Hrs.
	B. Routine fueling, lubrication and servicing	35 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safety procedures	5 Hrs.
	B. Loading and unloading materials and operation of vehicle	435 Hrs.
	Total	520 Hrs.

DelDOT OJT Program Guidelines

TRUCK DRIVER (Multi-Rear Axle): Drivers multi-rear-axle truck for transporting construction materials. May have various kinds of beds attached, such as: dump, flatbed, water tank, etc., includes water wagon, service truck, hoist trucks, etc. May pull semi-trailer or trailer. May oil, grease, service and make normal operating adjustments to equipment. May perform other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HOURS.

I.	ORIENTATION AND OBSERVATION	
	A. Safety procedures	10 Hrs.
	B. Observe vehicle (as a passenger) vehicle in operation	50 Hrs.
	C. Starting and manipulating vehicle	40 Hrs.
II.	CARE AND MAINTENANCE	
	A. Safety procedures	10 Hrs.
	B. Routine fueling, lubrication and servicing	340 Hrs.
III.	ACTUAL OPERATION OF EQUIPMENT	
	A. Safe operating procedures	10 Hrs.
	B. Loading and unloading materials and operation of vehicle	580 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

WELDER: Is capable of operating one or both electric welding apparatus and acetylene welding apparatus. Fuses metal parts together, using either arc welding process or oxyacetylene method. Cuts, lays out, fits, and welds, sheet metal, cast iron, and other metal or alloyed metal parts to fabricate or repair equipment. Welds together the joints between lengths of pipe for oil, gas, or other types of pipelines. Performs other related duties.

TRAINING OUTLINE

Approximate Training Time: 26 WEEKS or 1040 HRS.

I.	ORIENTATION AND SAFE USE OF TOOLS OF THE TRADE	
A.	Safety procedures	5 Hrs.
B.	Welding equipment	20 Hrs.
C.	Materials selection	20 Hrs.
D.	Observation of welder	20 Hrs.
II.	APPLIED TECHNIQUES OF WELDING	
A.	Safety procedures	5 Hrs.
B.	Acetylene-cutting, brazing and welding	300 Hrs.
C.	Electric-cutting and welding	300 Hrs.
III.	ACTUAL WELDING OPERATIONS	
A.	Safety procedures	5 Hrs.
B.	Cut, lay out, fit, and weld sheet metal cast iron and other metal parts	185 Hrs.
C.	Fabricate and repair equipment	180 Hrs.
	Total	1040 Hrs.

DelDOT OJT Program Guidelines

FORMS



ALTERNATE ON-THE-JOB TRAINING PROGRAM AGREEMENT

WHEREAS the Delaware Department of Transportation (DelDOT) has the responsibility to oversee and administer an On-The-Job Training Program for projects let to contract by DelDOT and funded in whole or part with Federal Funds; and

WHEREAS DelDOT and the undersigned Contractor (Contractor) desire to administer training in an efficient manner for all parties involved, including the individual trainee; and

WHEREAS the Contractor acknowledges his obligation to establish an equal opportunity affirmative action program, as provided by 23 USC 140(a); and

WHEREAS DelDOT and the Contractor agree to waive individual project training requirements for projects let to contract during calendar year 20____.

BE IT THEREFORE AGREED the Contractor shall provide on-the-job training aimed at developing full journey workers in the type of trade or classification involved. Preference shall be given to providing training in the following skilled work classifications:

Equipment Operators	Office Engineers
Truck Drivers	Estimators
Carpenters	Iron / Reinforcing Steel Workers
Concrete Finishers	Mechanics
Pipe Layers	Welders

Within 60 days of the date of this agreement, the Contractor shall submit to the DelDOT OJT Program Manager his Trainee Utilization Plan for the calendar year covered by this agreement. Should revision in the plan be required, the DelDOT OJT Program Manager shall be notified. The initial and revised utilization plans shall be submitted on forms provided by DelDOT and shall be approved by DelDOT prior to implementation.

The number of trainees specified in this agreement shall be distributed among the skilled work classifications on the basis of the Contractor's needs and the availability of journey workers in the various classifications within a reasonable area of recruitment. The Contractor shall submit to DelDOT the training status of each trainee. The submission shall be made monthly on forms provided by DelDOT. The Contractor will be credited for each trainee employed by him who is currently enrolled or becomes enrolled in an approved program and who receives training for not less than 100% of the specific program requirement.

Training and upgrading of women, minorities, and disadvantaged persons toward journey worker status is a primary objective of this program and agreement. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private resources likely to yield women, minority, and disadvantaged person trainees) to the extent that such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps he has taken in the pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this agreement. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.



DELAWARE DEPARTMENT OF TRANSPORTATION
ON-THE-JOB TRAINING PROGRAM
TRAINEE SCHEDULE FORM

PLEASE PRINT OR TYPE

Project No. _____ Federal Aid No. _____

County _____ No. Of Trainee(s) Assigned _____

Contractor _____ Telephone () _____

Address _____

City _____ State _____ Zip _____

APPROVED TRAINING PROGRAM TO BE USED:

Company Program DelDOT Other (Please Explain)

Contract Calendar Days _____

NUMBER OF TRAINEES	CLASSIFICATIONS	ESTIMATED STARTING DATE (M/Y)	REQUIRED HOURS

Contractor Representative Signature: _____

Title: _____ Date: _____

Approved By District Engineer: _____ Date: _____

RETAIN ORIGINAL AND MAIL COPY TO:
Delaware Department of Transportation
On-The-Job Training Program
800 Bay Road, P. O. Box 778
Dover, DE 19903



DELAWARE DEPARTMENT OF TRANSPORTATION
ON-THE-JOB TRAINING PROGRAM
TRAINEE TERMINATION FORM

PLEASE PRINT OR TYPE

Contractor: _____

EEO Contact: _____ Telephone No: () _____

Trainee Name: _____
Last First Middle

Address: _____
Street/PO

City State Zip Code

Telephone No: () _____ Social Security No : _____

Race: Black American Indian Hispanic White Asian

Sex: Male Female Classification _____

Check One: OJT Project No. _____ Alternate OJT Program

REASON FOR TERMINATION

- Construction phase completed
- Death
- Fired (Please explain below)
- Illness/health problems
- Lack of transportation and/or travel distance
- Military duty
- Other (Please explain below)
- Personal
- Quit to work for another company
- Relocated

COMMENTS: _____

Contractor Representative Signature: _____

Title: _____ Date: _____

RETAIN ORIGINAL AND MAIL COPY TO:
Delaware Department of Transportation
On-The-Job Training Program
800 Bay Road, P. O. Box 778
Dover, DE 19903

EXHIBIT

J4

OJT Program Forms



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

CAROLANN WICKS, P.E.
SECRETARY

**ON-THE-JOB TRAINING PROGRAM
TRAINEE ASSESSMENT**

Approved Trainee: _____ Date: _____ Interviewer: _____

CURRENT STATUS

Has your supervisor informed you that you are enrolled in an on-the-job training program?
YES NO

If so:

- Have you received a copy of the program? YES NO
- Were you made aware of the wage rate progression that you are scheduled to receive during this program? YES NO
- Are you aware of the process to check your training progression status? YES NO

Have you ever participated in an On-the-Job Training Program? YES NO

If so:

- In what area did you receive training?
- Who were you employed with during your training?
- Did you receive a certificate of completion? YES NO

BACKGROUND INFORMATION

How did you learn about the OJT program?

What jobs (training classifications) are you specifically interested in and why?

Do you have any related experience from previous jobs and/or careers? YES NO

Why do you think you can make a successful career in the trades?

As an employee, what working style or work ethics do you have to offer an employer/contractor?

Have you ever been a minority in a group of workers (a crew, division or team of employees)?

YES NO

What kind of physical work or activities have you done recently or do you do on a daily basis?

How much heavy work are you willing and able to do? Approximately how much weight can you lift?

How do you feel about traveling to a work site(s)? What is the maximum distance/time you are willing to commute to a job site?

Why are you interested in highway construction work?

Have you ever been let go or fired? If so, why?

If called, what will your past employers say about you as an employee?

EDUCATION/TRAINING

What is the highest grade level you completed in school? If not 12th, do you have a GED?

Have you taken any math/vocational classes? YES NO

Have you taken any college classes? YES NO

CONSIDERATIONS

Transportation:

Do you have a current driver's license? YES NO

Do you have a reliable vehicle? YES NO

Do you have children or other dependents? YES NO

Are you a single parent? YES NO

Do you have a conviction record? YES NO

If so, explain.

If so, do you have any mandatory programming scheduled during daytime working hours? YES NO

Once working, what are your most difficult challenges or obstacles?

How do you plan to address these?

HEALTH

Do you have any physical disabilities or work limitations? YES NO

Do you have any injuries or allergies, etc.? YES NO

Do you currently take any medications? YES NO

If yes, list:

Are you willing to take drug test/physical? YES NO

TRAINING INTERESTS

Are you interested in receiving additional On-The-Job Training? YES NO

Are you interested in receiving training to receive a CDL? YES NO

Are you interested in Heavy Equipment Training? YES NO

Are you interested in Women's Strength & Fitness Training? YES NO

Please list other training that you are interested in or have completed:

WORKING OUTSIDE

Do you have problems working in the elements? Does the weather, heat, cold, noise, dust prevents you from working? YES NO

Do you have problems working from heights? YES NO

Do you have a problem working in water? YES NO

Do you have problems working in other environments? If so, what are they?

GOALS

SHORT-TERM GOALS (Please briefly outline your short-term goals.)

LONG-TERM GOALS (Please briefly outline your long-term goals.)

Contractor: _____

Contact Person: _____

Contract Number: _____ - _____

Description: _____

Training Program: _____



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
 800 BAY ROAD
 P.O. Box 778
 DOVER, DELAWARE 19903

**OJT MONTHLY
 PROGRESS
 REPORT**

Trainee Name: _____

Enrollment Date: _____ / _____ / _____

Starting Wage Rate: \$ _____

Percent Complete: _____ %

Current Wage Rate: \$ _____

Training Phase	Safety	Productivity	Quality	Understanding	Attitude	Attendance	Total Hours this Period	Total Hours to Date
N = Needs Improvement A = Acceptable E = Excellent								

Current Status: Progressing Disciplined (provide documents) Dismissed Quit Laid Off Completed Program

Observations and/or comments: _____

Supervisor Signature: _____ Trainee Signature: _____ Date: _____

RETAIN ORIGINAL AND MAIL COPY TO: Delaware Department of Transportation, Office of Civil Rights
 800 Bay Road, P. O. Box 778
 Dover, DE 19903

EXHIBIT

J5

OJT Program Monitoring Tool

OJT Project Assignments

Contract/Project	Contractor	District/Staff	Trainee Type	Last Name	First Name	Start Date	Initial Interview	Interviewer	Race	Gender		
21-045-01	David A. Bramble Inc	N. Barnhardt J. Ledger	Scrapper/Pan trainee- Power Tool Operator	Graves	Abner	3/26/2007			black	male	training program terminated 9/17/08 with the end of project No certificate issued	
22-074-11	JD Eckman		Alt Power Tool Operator trainee	Blough	Melanie	2/22/2006			white	female	cert 3/28/07	
22-120-01	Greggo & Ferrara	N. Barnhardt J. Ledger	Excavating/Grading Operator	Esquivel	Antonio		10/22/2007	C. Elliott	hispanic	male		
	Greggo & Ferrara	N. Barnhardt J. Ledger										
22-125-01 Training Programs completed	A-Del	G. Savage	Multi-Axle Truck Driver	Cooper	David	Moved to Project # 24-011-03				male		
	A-Del	G. Savage	Multi-Axle Truck Driver	Pendergast	Stacey					female		
	A-Del	G. Savage	Multi-Axle Truck Driver	Gravenor	Dana	9/4/2007	10/22/2007	C. Elliott	white	female	cert 3/27/08	
23-119-05	Mumford & Miller	C. Costello	Front-End Loader/ Bulldozer Operator	Jackson	Pablo	6/4/2007						
24-011-03	A-Del		Multi-Axle Truck Driver	Cooper	David	Deemed OJT requirement met. Trainee terminated after 822 hours						
24-106-04	Greggo & Ferrara	C. Costello	Excavating/Grading Operator	Cortez	Patricio		11/13/2007	C. Elliott	hispanic	male		
	Greggo & Ferrara	C. Costello	Power Tool Operator	Copeland	Conrad		8/29/2008	C. Elliott	black	male		
24-106-05 - closing	Greggo & Ferrara	L. Vernon	Roller Operator trainee	Crews	Donnell		5/11/2007	E. Olivere	black	male		
24-106-06	Pierson (closed)											
25-090-01	Pierson	V. Ruff	Carpenter trainee	Casco	Carlos	8/20/2007	8/16/2007	E. Olivere./ C. Elliott	hispanic	male	cert. 2/29/08	
25-090-01	Pierson	V. Ruff	Ironworker- Reinforcing trainee	Garcia	Hilario	8/20/2007	8/16/2007	E. Olivere./ C. Elliott	hispanic	male		
25-090-01	Pierson	V. Ruff	Air Compressor Operator	Alvarez	Melvin		12/6/2007	E. Olivere./ C. Elliott	hispanic	male	cert. 2/29/08	
25-090-01	Pierson	V. Ruff	Concrete finisher	Bamaca	Aristeo		12/6/2007	E. Olivere./ C. Elliott	hispanic	male		
25-090-01	Pierson	V. Ruff	Roller Operator	Morales	Porfidio	4/14/2008	4/25/2008	C. Elliott	hispanic	male		
25-090-01	Pierson	V. Ruff	Pipe layer	Salazar	Julio		12/6/2007	E. Olivere./ C. Elliott	hispanic	male	cert 4/11/08	

OJT Project Assignments

Contract/Project	Contractor	District/Staff	Trainee Type	Last Name	First Name	Start Date	Initial Interview	Interviewer	Race	Gender		
20-045-02	Daisy Construction Co. Inc.	J. Satterfield	Pipelayer	McIntyre	Hiawatha	5/8/2008	5/29/2008	C. Elliott	black	male	terminated 9/12/08 to return to school	
				Jarrett	Tyrhon	9/16/2008	9/10/2008	C. Elliott	black	male		
21-074-01												
24-122-04	R. E. Pierson		Power Tool Operator	Torres	Reynaldo							
25-071-01												
26-073-03			Carpenter									
26-073-03			Carpenter									
26-073-03			Concrete finisher									
27-037-01	A-Del Construction	D. Bernardo	Truck Driver	Donato	Thersa E.	Changed her mind						
27-037-01				Miller	Bobbie Jo		8/26/2008	C. Elliott	White	Female		
28-074-01												

OJT Monitoring Contact Schedule

Project Number & Name	Type of Contact	Contact Date	Scheduled Recontact or Follow-up	Type of Contact	Contact Date	Scheduled Recontact or Follow-up
21-045-01 - Harrington Truck Route	letter to prime	8/31/2007	response rec'd 9/17/07	letter to prime	9/24/2007	response rec'd 10/9/07
	letter to prime	10/9/2007	respnse rec'd 10/17/07	letter to prime	10/17/2007	response rec'd 11/7/07
	meeting with DelDOT mgmt & prime	11/15/2007	n/a	letter to prime	11/19/2007	12/10/2007
	on site visist/rvk	12/5/2007	n/a	e-mail to project mgmt.	1/4/2008	1/18/2008 no response rec'd
	e-mail to prime & proj. mgmt.	1/22/2008	1/31/2008	letter to prime	2/1/2008	documentation rec'd 2/8/2008
	letter to prime	3/27/2008	info rec'd 3/27/2008	letter from prime		documenation rec'd 5/22/08
	documentation from prime		rec'd 6/9/08	e-mail to project mgmt failing to complete program		8/5/2008
	OJT documentation from prime		9/19/2008			
22-120-01 - SR15 Choptank Rd.	letter to prime	8/24/2007	9/14/2007	telephone call to prime	9/7/2007	meeting set for 9/17/07
	meeting with DelDOT mgmt & prime	10/17/2007		letter to prime - initial interview	10/22/2007	awaiting report/payroll
	e-mail to prime & DelDOT mgmt	11/19/2007	11/30/2007	e-mail to prime & DelDOT mgmt	12/11/2007	response rec'd 12/20/07
	letter to prime & proj. mgmt.	2/4/2008	2/25/2008	telephone contact and fax from prime		2/27/2008
	meeting with prime & proj. mgmt.	3/10/2008	rec'd documentation	project site visit	3/31/2008	
	fax documentation from prime		5/20/2008	fax documentation from prime		rec'd 7/2/08
	e-mail to prime & proj. mgmt.	9/5/2008	faxed resp. rec'd 9/8/08	e-mail to prime & proj. mgmt	9/23/2008	10/10/2008

OJT Monitoring Contact Schedule

Project Number & Name	Type of Contact	Contact Date	Scheduled Recontact or Follow-up	Type of Contact	Contact Date	Scheduled Recontact or Follow-up
22-125-01 - SR1 & SR9 @ Five Points	letter to prime	8/6/2007	response rec'd	letter to prime	8/22/2007	9/12/2007 not rec'd
	e-mail to proj. mgmt	9/5/2007	response rec'd 9/6/07	letter to prime	9/13/2007	not rec'd
	e-mail to prime (rhr) follow-up should include reports	9/13/2007	rec'd report 10/5/07	letter to prime - initial interview	10/22/2007	awaiting report/payroll
	letter to prime	11/8/2007	11/30/2007	letter to prime, e-mail to proj. mgmt.	12/5/2007	12/6/2007
	telephone call from prime	12/12/2007	faxed resp. rec'd 12/17/07 hard copy rec'd 12/19/07	e-mailed request for meeting to prime	1/2/2008	we met 1/11/08 with c. Fairer
	e-mail to prime	1/15/2008	2/1/2008	e-mail to prime and proj. mgmt.	2/6/2008	documentation rec'd 2/12/08
	e-mail to prime and proj. mgmt.	3/17/2008	3/24/2008	e-mail to prime and proj. mgmt.	3/25/2008	response rec'd 3/25/2008
	e-mail to prime and proj. mgmt.	4/15/2008	4/25/2008			
23-119-05 - School Bell Rd	e-mail to proj. mgmt	8/24/2007	response rec'd 8/29/07	e-mail to prime	9/24/2007	response rec'd 10/5/07
	e-mail to prime	11/9/2007	11/20/2007	e-mail to prime	12/5/2007	response rec'd 12/7/07
	e-mailed documentation from prime		1/7/2008	e-mailed duplicate documentation from prime	2/1/2008	
	e-mail to prime for updated documentation	2/1/2008	response rec'd 2/1/08	e-mailed documentation from prime		rec'd 2/28/08
	e-mailed documentation from prime		rec'd 4/2/08	e-mailed documentation from prime		5/8/2008
	e-mailed documentation from prime		rec'd 6/27/08			

OJT Monitoring Contact Schedule

Project Number & Name	Type of Contact	Contact Date	Scheduled Recontact or Follow-up	Type of Contact	Contact Date	Scheduled Recontact or Follow-up
24-011-03 - Market St. Renovation Project, Phase III	letter to prime/e-mail to proj. mgmt	8/22/2007	response rec'd 9/4/07	follow-up letter to prime	9/4/2007	response rec'd 9/17/07
	letter to prime	10/22/2007	no response needed	CLOSED		
24-106-04 - SR 141 Kirkwood to Faulkland	e-mail to proj. mgmt	8/24/2007		Pre-Construction mtg.	8/29/2007	9/12/2007
	meeting with DelDOT mgmt & prime	10/17/2007		e-mail to project mgmt.	11/8/2007	response rec'd 11/9/07
	e-mail to prime & proj, mgmt	12/14/2007, 12/21/07	phone contact from prime 1/4/2008	letter to prime & proj. mgmt.	2/4/2008	2/25/2008
	telephone contact and fax from prime		2/27/2008	meeting with prime & proj. mgmt.	3/10/2008	rec'd documentation
	faxed documentation rec'd from prime		4/22/2008	telephone contact with prime		4/24/2008
	telephone contact with prime & e-mail to proj mgmt		5/2/2008	e-mail to prime and proj. mgmt.	5/12/2008	rec'd documentation by fax 5/15/08
	faxed documentation rec'd from prime		5/21/2008	faxed documentation from prime		rec'd 7/02/08
	correspondence from prime rec'd		7/17/2008	faxed documentation from prime		rec'd 9/11/08
	e-mail correspondence with prime and proj. mgmt.	9/23/2008	rec'd faxed documentation 9/23/08	duplicate documentation rec'd by mail		10/15/2008
	e-mail correspondence with prime and proj. mgmt.	10/16/2008	fax and telephone contact in response 10/16/08	faxed documentation from prime		10/23/2008

OJT Monitoring Contact Schedule

Project Number & Name	Type of Contact	Contact Date	Scheduled Recontact or Follow-up	Type of Contact	Contact Date	Scheduled Recontact or Follow-up
24-106-05 - SR 141/US 202	letter to prime	8/22/2007	9/13/2007	e-mail to prime	9/26/2007	10/11/2007
	meeting with DelDOT mgmt & prime	10/7/2007		e-maile to prime & proj, mgmt	12/20/2007, 12/21/07	
	PROJECT CLOSED					
25-090-01 - I95 Mainline Expansion	approval letter to prime/proj. mgmt	9/6/2007		e-mail to prime	9/26/2007	meeting held 10/15/07
	e-mail to prime	10/26/2007	no response rec'd	e-mail to prime	11/8/2007	faxed response rec'd 11/9/07
	e-mail documentation from prime		1/4/2008	e-mail documentation from prime		2/5/2008
	e-mail documentation from prime		3/6/2008	e-mail documentation from prime		4/4/2008
	e-mail documentation from prime		5/5/2008	telephone contact with prime		5/6/2008
	e-mail documentation from prime		10/10/2008			
	e-mail documentation from prime		9/5/2008			

OJT Monitoring Contact Schedule

Project Number & Name	Type of Contact	Contact Date	Scheduled Recontact or Follow-up	Type of Contact	Contact Date	Scheduled Recontact or Follow-up
20-045-02 Governors Ave Webbs Ln to Water St	blanket notice to bidders sold with bid package	12/31/2007	no response req'd	10-day notice to low bidder	2/19/2008	2/29/2008 rec'd Trainig Program proposal
	letter to prime	3/10/2008	response rec'd 3/13/08	letter from prime		4/25/2008
	e-mail to prime	4/28/2008	5/2/2008	e-mail wage progression info to prime		5/21/2008
	e-mail/letter to prime & proj. mgmt. (approval letter)	6/16/2008		e-mail to prime & proj. mgmt	8/26/2008	8/27/2008
	telephone call from prime		8/29/2008	e-mail to prime referring trainee candidate	9/2/2008	response rec'd 9/8/08
	initial trainee interview		9/10/2008	e-mail/letter to prime & proj. mgmt. (approval letter)	9/16/2008	
	OJT documentation from prime		rec'd 9/17/08	Trainee term. Form rec'd from prime		9/18/2008
	e-mail to prime and proj. mgmt.	10/14/2008	e-mail response rec'd 10/24/08			
21-074-01						

OJT Monitoring Contact Schedule

Project Number & Name	Type of Contact	Contact Date	Scheduled Recontact or Follow-up	Type of Contact	Contact Date	Scheduled Recontact or Follow-up
24-122-04 SR1, SR9 Grade Separated Intersection	e-mail/letter to prime & proj. mgmt. (approval letter)	9/16/2008	9/23/08 rec'd trainee enrollment form			
27-037-01 Glenville Wetlands Mitigation	10-day notice to low bidder	2/7/2008	2/17/2008	telephone contact with prime	3/19/2008	3/25/2008
	telephone message left with prime	3/25/2008	rec'd submission 3/27/08	letter from prime		4/28/2008
	e-mail to prime	4/28/2008	5/2/2008	fax rec'd from prime		8/19/2008
	E-mail to prime	8/25/2008		Innitial interview conducted		8/26/2008
	E-mail to & from prime & proj. mgmt	8/26/2008	8/26/2008	letter from prime		8/29/2008
	e-mail to prime and proj. mgmt.	10/20/2008	faxed OJT documentation rec'd 10/21/08			

Daisy Const. - Prime

Project 20-045-02
OJT Documentation

Last Name	First Name	Project #	Classification	Start Date/ End Date	Monthly Report date	Progress	Hours in Report period
McIntyre	Hiawatha	20-045-02	Pipelayar	06/09/08	7/27/08	EX	250.5
		720			8/31/08	Ex	219.5
					9/14/08	EX	69.5
Trainee terminated - returned to school 9/12/08						74.93	539.5
Jarrett	Tyrhon	20-045-02	Pipelayar	09/16/08	9/28/08	Ex	71
		720				43	
						0.98611111	71

Last Name	First Name	Project # & hours in training	Classification	Start Date/ End Date	Monthly Report date	Progress/ % complete	Hours in Report
Graves	Abner	21-045-01	Scapper/Pan trainee	03/26/07	3/31/07	n/a	38.5
					4/30/07	n/a	10.00
This training program has been replaced with the Power Tool Operator Training Program due to lack of need for this piece of equipment and shortening of the project,					5/1/07		6
					7/1/07		14.5
					8/1/07		15.5
					9/30/07		4.00
					Total		52.50
Graves	Abner	21-045-01	Power Tool Operator	11/19/07	12/31/07	Acc	75.5
		720			3/21/08	Acc	74.5
					3/30/08	Acc	40
					5/16/08	Acc	158
					6/5/08	Acc	50.5
					6/15/08	Acc	48
					7/6/08	Acc	37.5
					8/3/08	Acc	47
					8/31/08	Acc	79
						84.72	610

Greggo Ferrara - Prime

Project 22-120-01
OJT Documentation

Last Name	First Name	Project # & hours in training	Classification	Start Date/ End Date	Monthly Report date	Progress/ % complete	Hours in Report period
Esquivel	Antonio	22-120-01	Excavating/Grading Operator		11/03/07	Acc/Ex	48
		1550			12/01/07	Acc/Ex	79
					12/29/07		108.5
					01/26/08		112.5
				laid off till 3/24/08	02/23/08	Acc/Ex	44
				ret'd to work 3/17/08	04/05/08	Acc/Ex	64
					05/03/08	Acc/Ex	104
					06/25/08	Acc/Ex	22
					07/15/08	Acc/Ex	21
					08/02/08	Acc/Ex	41.5
					08/30/08	Acc/Ex	19
					9/10/08	Acc/Ex	19
						44.03	682.5

Project 22-125-01
OJT Documentation

Last Name	First Name	Project # & hours in training	Classification	Start Date/ End Date	Monthly Report date	Progress/ % complete	Hours in Report period
Pendergast	Stacey	22-125-01	Multi-Axle Truck Driver	01/29/07	Feb-07	good	
					Mar-07	good	
					Apr-07	needs improv	
					May-07	good	
					Jun-07	needs improv	
Prendergast	Stacey			terminated 7/16/07 rehired 7/23/07	Jul-07	needs improv	
					Aug-07	good	
Cooper	David	22-125-01 24-011-03	Multi-Axle Truck Driver	01/15/07	Feb-07	good	
					3/1/07	good	
					4/1/07	good	
					5/1/07	needs improv	
					6/1/07	needs improv	
				laid-off 7/23/04	7/1/07	needs improv	
Gravenor	Dana	22-125-01 1040	Multi-Axle Truck Driver	09/04/07	9/28/07	acc/excel.	120.75
					11/3/07	excel	205.25
					12/9/07	excel	214.25
					1/6/08	Acc	122.25
					2/8/08	excel	166
					3/16/08	acc/excel.	227.75
Program completed. Certificate signed 3/27/08. Cee						101.56	1056.25

Last Name	First Name	Project # & hours in	Classification	Start Date/ End Date	Monthly Report date	Progress/ % complete	Hours in Report
Jackson	Pablo	23-119-05	Front-end Loader	06/04/07			
		520			8/29/07 payroll report		210
					9/7/07	Ex/Acc/NI	82
					11/3/07	Ex/Acc/NI	91
					12/1/07		47.5
					1/3/08	Ex/Acc	31.5
					2/1/08	Acc	22.5
					3/29/08		21
						97.21	505.5
Jackson	Pablo	23-119-05	Bulldozer				
		720			10/1/07		4
					11/15/07		14.5
					12/1/07		6
					1/3/08	Ex/Acc	21
					2/1/08	Acc	19
							13
					3/29/08		10
					4/26/08	Acc	35
					5/24/08	Acc/Ex	58.5
					6/21/08	Acc/NI	48
					7/26/08		84
					see comment	43.47	313

A-Del Const.- Prime

Project 22-125-01
OJT Documentation

Last Name	First Name	Project #	Classification	Start Date/ End Date	Monthly Report date	Progress	Hours in Report period
Cooper	David	22-125-01 011-03	24-Multi-Axle Truck Driver	01/15/07	Feb-07	good	
					Mar-07	good	
					Apr-07	good	
					May-07	needs improv	
					Jun-07	needs improv	
deemed completed. Cee				laid-off 7/23/07	Jul-07	needs improv	

Greggo Ferrara - Prime

Project 24-106-05
OJT Documentation

Last Name	First Name	Project # & hours in training	Classification	Start Date/ End Date	Monthly Report date	Progress/ % complete	Hours in Report period
Cortez	Patricio	24-106-05	Power Tool Operator Trainee				
moved to another project							
Crews	Donnell	24-160-05	Roller Operator Trainee				
no hours worked in 4/07		1040			Mar-07		97
					May-07		45.5
					Jun-07		139.5
					Jul-07		88.5
					Aug-07		18.5
					Sep-07		48
						42.02	437

A-Del Const.- Prime

Project 22-125-01
OJT Documentation

Last Name	First Name	Project #	Classification	Start Date/ End Date	Monthly Report date	Progress	Hours in Report period
Torres	Reynaldo	24-122-04	Power Tool Operator				

Last Name	First Name	Project # & hours in training	Classification	Start Date/ End Date	Monthly Report date	Progress/ % complete	Hours in Report period
Casco	Carlos	25-090-01	Carpenter trainee	08/20/07	08/31/07		88
		1040			09/30/07		172
					10/31/07		193
					11/30/07	A	154
					12/31/07	A	144.5
					01/31/08	A	178.5
					02/29/08	A	156
Program completed certificate awarded 2/29/08. cee						104.42	1086
Garcia	Hilario	25-090-01	Ironworker- Reinforcing	08/20/07	08/31/07		12
		1040			09/30/07		144.5
					10/31/07		104
					11/30/07	A	65
					12/31/07	A	41
					01/31/08	A	52
					02/29/08	A	8
					03/31/08	A	164
					04/30/08	A	106
					05/28/08	A	60
					06/28/08	A	102
					07/31/08	A	41
					08/31/08	A	81
					09/26/08	A	
						94.28	980.5

Salazar	Julio	25-090-01	Pipe layer	11/14/07				
		720			11/30/07	A	88	
					12/31/07	A	151.5	
					1/31/08	A	221.5	
					2/29/08	A	177	
					3/31/08	A	212	
Program completed. Certificate signed 4/11/08. cee							118.06	850
Alvarez	Melvin	25-090-01	Air compressor Operator	11/14/07				
		520			11/30/07	A	88	
					12/29/07	A	142	
					1/31/08	A	213	
					2/29/08	A	126.5	
Program completed. Certificate signed 2/29/08 and will be given soon. cee							109.52	569.5
Bamaca	Aristeo	25-090-01	Concrete finisher	11/14/07				
		1040			11/30/07	A	95	
					12/31/07	A	140	
					1/31/08	A	171	
					2/29/08	A	151	
					3/31/08	A	210.5	
					4/30/08	A	134.5	
					5/17/08	A	100	
							96.35	1002

R.E. Pierson- Prime

Project 25-090-01
OJT Documentation

Morales	Porfidio	25-090-01	Roller Operator	04/14/08			
		1040			4/30/08	A	158
					5/31/08	A	184.5
					6/28/08	A	30
					7/31/08	A	96.5
					8/31/08	A	167.5
					9/26/08	A	177.5
						78.27	814

A-Del Const.- Prime

Project 27-037-01
OJT Documentation

Last Name	First Name	Project #	Classification	Start Date/ End Date	Monthly Report date	Progress	Hours in Report period
Donato	Theresa	27-037-01	Heavy Truck Driver	changed her mind			
Miller	Bobbi Jo	27-037-01	Heavy Truck Driver				
		1040			6/22/08	A/N	109.75
					7/27/08	A/N	204.25
					10/12/08	A/E	313
						60.29	627

EXHIBIT

K

DelDOT's Contractor Compliance Manual



Delaware Department
of Transportation

Contractor Compliance Manual

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CHAPTER 1

GENERAL INFORMATION

I. OVERVIEW

A. Background

The Delaware Department of Transportation, hereinafter DelDOT, is a recipient of federal funding for various projects and is required to insure EEO contract compliance on all federally funded projects. Contractors and consultants who participate on DelDOT contracts are required to comply with certain Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), On-the-Job Training (OJT), Equal Opportunity (EO), and Wage and Labor Compliance provisions. As a state agency recipient of federal funds, DelDOT is responsible for assuring that contractors, consultants, and subcontractors do not discriminate in their employment and contracting practices based on race, color, religion, sex, national origin, age, or disability. On the advice and with the assistance of the Federal Highway Administration (FHWA), this Contractor Compliance Program has been reviewed and revamped to improve efficiency and effectiveness and provide clear guidance to all stakeholders. This manual is designed to inform and assist contractors in complying with the federal EEO contract compliance requirements.

B. Goals

1. To insure non-discrimination in the selection and retention of subcontractors, subconsultants, material suppliers, and vendors.
2. To secure adequate representation and utilization of minorities and women by craft and/or trade in the contractors' workforce.
3. To insure good faith efforts (GFE) are undertaken on meeting Disadvantaged Business Enterprise program requirements, the on-the-job training (OJT) and training special provisions (TSP) and provisions contained in FHWA 1273.

C. Authority

1. Several authorities are applied to insure non-discrimination and equal employment opportunity (EEO) on Federal-aid projects. These authorities include the following laws, regulations and policies:
2. Laws:
 - a. Title VI and VII of the Civil Rights Act of 1964
 - b. Federal-Aid Highway Act of 1968 and 1973 (23 USC 140, 234)
 - c. Rehabilitation Act of 1973
 - d. Age Discrimination Act of 1975
 - e. Civil Rights Restoration Act of 1987
 - f. Americans with Disabilities Act of 1990
 - g. Executive Orders 11246, as amended by E.O. 11375 and E.O. 11478
3. Regulations (See Exhibit C)
 - a. 23 CFR 200
 - b. 23 CFR 230, Subparts A, C and D
 - c. 23 CFR 633 Subpart A
 - d. 23 CFR 635.117(d) and (e)

- e. 49 CFR 21
 - f. 49 CFR 26
 - g. FHWA Order 4710.8
 - h. FHWA Notice N4720.7 (g)(Indian Preference)
4. Contract Provisions: FHWA 1273
(<http://www.fhwa.dot.gov/programadmin/contracts/1273.cfm>)
- D. FHWA Responsibilities
1. The Federal Highway Administration provides policy guidance for DelDOT on federal aid projects. FHWA Headquarters and Divisions have the stewardship, monitoring, and enforcement responsibility to work with DelDOT and institute a program that effectively assures that all activities of federal-aid recipients meet Federal Equal Opportunity, Equal Employment Opportunity, Non-Discrimination and contractual requirements.
 2. The FHWA approves DelDOT's Contract Compliance Program, reviews overall compliance activity, and reviews individual contracts and/or contractors as deemed appropriate. Then FHWA monitors DelDOT's compliance review activities, provides feedback on program activities, approves compliance review reports, and enforces the applicable regulations, laws, and statutes.
 3. The FHWA provides training and technical assistance to DelDOT staff.
 4. The FHWA insures compliance by utilizing sanctions; such as not extending Federal-aid assistance until compliance is achieved, canceling or terminating a Federal-aid project, or referring a case to an appropriate Federal agency for legal action.
- E. DelDOT Responsibilities
1. DelDOT must insure Equal Opportunity requirements are included in all federally assisted contracts and that contractors and consultants are in compliance with such requirements.
 2. DelDOT's Civil Rights section is responsible for developing and implementing the Equal Opportunity Program, including the Contract Compliance Program.
 3. DelDOT is responsible for conducting regular and periodic Contractor Compliance Reviews and rendering a determination regarding contractor compliance with requirements and regulations, subject to FHWA review and approval.
 4. DelDOT is responsible for using administrative remedies to enforce compliance.
- F. Contractor, Subcontractor, Consultant, Subconsultant or DBE Responsibilities
1. To insure non-discrimination in terms and conditions of employment.
 2. To provide EEO & Affirmative Action as necessary.
 3. To fully cooperate with FHWA and DelDOT in reviews.
 4. To insure compliance by all subcontractors with whom the prime contractor (consultant) employs.

G. Training

DelDOT will provide or facilitate training for contractor or consultant personnel regarding the requirements of the DelDOT Contract Compliance Program.

II. CONTRACTOR DUTIES CONTAINED IN CONTRACT PROVISIONS

The contractor or consultant has the fundamental role and responsibility to take all reasonable and necessary steps to insure that the terms and conditions of its employment policy and its selection of subcontractors is void of discrimination for minorities and women. A contractor's minimum equal opportunity requirements are set forth in the contract provisions referenced in Form FHWA 1273 in the Nondiscrimination section and include the following:

- A. Adopt an EEO Policy.
- B. Designate an EEO Officer within the company.
- C. Educate all company personnel on EEO issues. Conduct meetings with supervisory personnel and employees regularly before the start of work. Post notices and posters.
- D. Engage in recruitment designed to yield minority and women applicants and hires. Advertise broadly for vacant positions with identified sources of minorities and women, utilize referral sources and procedures to attract minorities and women for hire. Advise employees and applicants of training opportunities. Assist in increasing the skills of minority and women employees and applicants, including fully implementing designated OJT programs.
- E. Insure nondiscrimination in: wages, working conditions and benefits; hiring, upgrading, and promotion; transfer, demotion, layoff, and termination. Periodically review such actions to insure nondiscrimination.
- F. Investigate complaints of discrimination, and take corrective action remedying issues raised in complaints.
- G. To insure compliance with EEO requirements by subcontractors with whom they enter into subcontracts.

CHAPTER 2

COMPANY EEO/AA REQUIREMENTS

I. GENERAL

- A. Purpose
Contractors, subcontractors, consultants, subconsultants and DBEs (hereinafter references as Companies/contractors) participating on federally aided projects are required to comply with certain requirements that exhibit their company's permanent commitment to equal employment opportunity and affirmative action. These required elements are designated as Company requirements in this Contract compliance Program. **A company's/contractor's Equal Employment Opportunity/Affirmative Action (hereinafter EEO/AA) documents and data are reviewed, as part of the Contract Compliance Program, by DelDOT or its designees, and DelDOT personnel determine compliance, subject to FHWA approval.**
- B. Scope & Responsibilities
1. All companies/contractors seeking to participate or active on any federally aided project are to conform to these Company/Contractor EEO/AA requirements.
 2. Companies/Contractors are responsible for establishing and administering wages, working conditions, and employee benefits, and taking personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, **without regard to race, color, religion, age, disability, sex, or national origin.**
- C. Company's/Contractor's EEO/AA Elements
The following elements are included in the Company/Contractor EEO/AA Requirements. Subsequent sections of this manual detail each element and the related necessary recordkeeping for compliance.
1. EEO/AA Policy, Plan, Officer and Program
 2. Supervisory and Office Personnel EEO Communications
 3. Company Wide EEO Communications
 4. Workforce Documentation
 5. Employee and DBE Recruitment Efforts
 6. Complaint Documentation
 7. Training Efforts Documentation

II. COMPANY EEO/AA POLICY, PLAN, OFFICER and PROGRAM

- A. Companies/Contractors must have a written EEO/AA Policy and Plan. This document must reflect the signature of a company officer and be implemented and practiced. Samples are available
<http://www.dol.gov/esa/regs/compliance/ofccp/pdf/sampleaap.pdf>
- B. Companies/Contractors must have continuously appointed an individual responsible for effectively administering and promoting a company's/

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contractor's active Equal Employment Opportunity Program and insuring that the company's/contractor's policy, plan and program are being carried out.

1. Selection of an employee to serve as EEO Officer should take into consideration the following factors:
 - a. The appointee should have the knowledge and authority, within the company/contractor, to effectively perform the necessary functions, which precludes appointing clerical staff to perform such functions;
 - b. The appointee must be considered an Official of the company/contractor (but not necessarily an officer of the company/contractor);
 - c. The appointee must have meaningful interaction with principals of the company;
 - d. The appointee must be accountable for the on-going execution, evaluation, and re-direction of this area;
 - e. The appointee must be capable of and willing to effectively administer and promote an active EEO/AA program.
 2. Companies/Contractors must widely disseminate the EEO Officer's name and contact information to employees and specifically to DelDOT.
- C. Companies/Contractors will develop, implement, and regularly evaluate a program(s) for achieving the EEO/AA policy and plan.
- D. Companies will maintain a continuous written record documenting policy, plan officer designations, programs, communications and disseminations, and effectiveness assessments. Such record is subject to review as part of a compliance review.

III. SUPERVISORY AND OFFICE PERSONNEL EEO COMMUNICATIONS

- A. The two groups that should be targeted for attendance at supervisory meetings are:
1. Employees or agents of the company/contractor with supervisory responsibilities, working at project sites as well as in the offices. This includes individuals who are authorized to initiate, approve, or otherwise influence one or more of the following types of personnel actions:
 - a. Active supervision
 - b. Hire
 - c. Promotion
 - d. Discharge
 2. Office personnel that may influence personnel actions should be included in supervisory meetings. Persons in this group may not initiate or approve but may influence such actions officially or unofficially (i.e. greeting applicants, maintaining applicant logs, scheduling interviews, etc.).

B. Timeframes and Content of Supervisory Meetings

1. Within thirty (30) days of hire or appointment, supervisory personnel and others involved in personnel matters should have communicated to them the required content regarding EEO/AA policy, plan, program and advised of their responsibilities related to the same.
2. At routine intervals, at least every six months, meetings should be held with all supervisory and office personnel employees addressing the following content:

- | | |
|---|---|
| * EEO Policy and Affirmative Action Plan | * Identification of EEO Officer |
| * Workforce Diversity and Recruitment | * Wages and Payroll |
| * Training Opportunities | * Complaints (investigation and resolution) |
| * Utilization of Disadvantaged Businesses | |

3. Documentation of the dates, attendees, and information covered for all supervisory and office personnel meetings will be maintained for a period of three (3) years and is subject to review as part of a compliance review. Records will include the name, title, and signature of all attendees. Sample documentation is available.

IV. COMPANY WIDE COMMUNICATIONS

A. Companies will develop, implement, and maintain a communication/dissemination program for on-going announcement of EEO/AA policy, plan, and EEO Officer to employees, applicants, and other parties of interest, including DelDOT.

1. Regular communication and dissemination of the EEO/AA Policy, plan, and EEO Officer is required. This includes written, verbal, electronic, or any other communications issued internally and externally to employees, applicants, the public, and to other businesses and contractors.
2. Communication methods used for employees should be broad based and may include meetings, payroll stuffers, employee handbooks, company newsletters, notices, bulletin board postings, websites, solicitations for employment and other appropriate means.

B. Records or documentation will be maintained of company-wide communications and are subject to review as part of a compliance review. Such records will include the dates posters are posted or payroll stuffers are issued, copies of electronic postings, documentation of meetings held or employees handbooks distributed, etc.

V. WORKFORCE DOCUMENTATION

A. Companies will periodically review identified selected personnel actions (hiring, promotions, terminations, etc.) in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will

promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons. Documentation of the Contractor's review of personnel actions, corrective measures taken in any of the areas listed below must be maintained for three (3) years and is subject to review as part of a compliance review. For the purpose of these activities minorities are defined as Black (African-American), Hispanic, Asian (including Pacific Islander), American Indian or Alaskan Native.

The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

1. The number of minority and non-minority group members and women employed in each work classification;
2. The progress and efforts being to increase opportunities for minorities and women;
3. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation.

B. Utilization and Representation

Company/Contractor are expected to maintain data and information reflecting the equitable representation and utilization of minorities, women and persons with disabilities in the Company's/Contractor's workforce. Such records include certified payroll records for federally aided projects as well as the Company's/Contractor's certified payrolls for other work paid for by the Company/Contractor.

C. Wage and Hour Issues

Company/Contractor must maintain data and information on the entire work force, listing positions/classifications, rates of pay and race, national origin and gender of those holding the positions/classifications. Documentation must also be maintained of changes in rates of pay and the reasons, such as promotions, terminations, etc and changes to part-time status. This documentation must reflect the previous job classification/position and pay/wage rate. Company/Contractor must maintain data and information on all terminations including the reasons for termination, by job classification/position, race, national origin and sex.

D. Non-Segregated Facilities

Contractors are to insure that working conditions and facilities used or provided in connection with employment are not discriminatory. Companies/contractors must not maintain segregated facilities at any of the locations under their control and take affirmative steps to insure that their employees do not perform their functions where segregated facilities are permitted. Documentation of any affirmative steps

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taken by the company/contractor must be maintained and is subject to review as part of a compliance review.

Segregated facilities, as used in this program, includes any waiting rooms, work areas, restrooms, wash rooms, eating areas, time clocks, locker rooms, storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated, on the basis of race, color, religion, sex or national origin because of company/contractor policies, written or oral, or employee custom. Separate or single-user restrooms or necessary dressing or sleeping areas provided to insure privacy between the sexes are not deemed segregated facilities in this context.

VI. EMPLOYEE and DBE RECRUITMENT EFFORTS

Laws, regulations and contract provisions pertaining to federally aided projects specify recruitment efforts are required of companies and contractors in order to insure non-discrimination, equal employment opportunity and affirmative access to employment which is funded, in whole or in part, by federal funds. A company's EEO/AA Policy and Plan should provide further detail regarding recruitment efforts. The recruitment requirements are to be put in place and effectively maintained in good faith. Compliance with provisions designed to increase opportunities for employment and upward mobility for minorities and females is required whether the company or contractor is in a hiring or non-hiring mode. The requirements apply to recruitment for part-time or full-time employees as journeymen/women, trainees and/or apprentices in all EEO job categories. Recruitment requirements should also be structures effective in a unionized work environment.

Companies and contractors are likewise required to engage in recruitment efforts to select Disadvantaged Business Enterprises (DBEs) as business partners in seeking and securing awards of federally aided contracts from DelDOT. These recruitment efforts should also include locating and doing business with DBEs in the procurement of materials and leases of equipment. DelDOT Civil Rights section personnel are available to assist company/ contractor personnel to develop and maintain successful recruitment plans and activities for employees and DBEs.

Documentation must be maintained of all recruitment efforts and activities for both employee and DBEs for three (3) years. Compliance with the recruitment requirements is evidenced by a company's/ contractor's *good faith* to fulfill the contract and policy recruitment requirements and achieving the stated purpose. Characteristics of good faith efforts are sincere, meaningful and results-oriented actions, evaluations, and redirection of efforts to improve results.

Companies/contractors have an affirmative duty to investigate, respond to and, if possible, resolve complaints of discrimination made against them. Companies/contractors must maintain documentation of all complaints of discrimination made against the company/contractor with external agencies or under internal complaint procedures. Such documentation must be maintained for three (3) years and is subject to review as part of a compliance review. Documentation must include the name, job title/position, date of receipt of the complaint, identification of any governmental agency involved in the complaint resolution, and contact information for the complaining party/parties, along with the nature of and resolution of the complaint.

VIII. TRAINING EFFORTS and DOCUMENTATION

A. Internal Activities

Companies/contractors are expected to review the training and promotion potential of minority and female employees. Companies/contractors should assist in increasing skills of minorities and women employees and applicants. This responsibility includes advising employees and applicants of training opportunities and encouraging minorities and women to apply for training and promotion.

A. Unionized Work Environments

In those work environments where employees belong to collective bargaining units, companies/contractors also have responsibilities to assist in increasing skills of minorities and women employees and applicants. These responsibilities include engaging in best efforts to gain union cooperation in increasing opportunities for minorities and women, to develop training programs with unions and to incorporate in each collective bargaining agreement EEO language binding unions to non-discriminatory referrals for employment. Companies/contractors should obtain information on union referral practices to insure non-discriminatory actions. Contractors should make full use of apprenticeship training programs available.

(<https://joblink.delaware.gov/ada/customization/Delaware/documents/employer.cfm>)

B. On-the-Job Training (OJT) Program

Contractors/Companies must make efforts to identify OJT opportunities for minorities and females. Where, based on regulations and/or contract provisions, contractors are required to include OJT opportunities and an OJT program/plan as part of their contractual obligations; documentation of such efforts must be generated and maintained. Such documentation must be maintained for three (3) years and is subject to review as part of a compliance review.

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C. Training Special Provisions (TSP)

As noted above, where based on the regulations and/or contract provisions, Contractors/Companies are required to include special training provisions as part of their contractual obligations; documentation of such efforts must be generated and maintained. Such documentation must be maintained for three (3) years and Is subject to review as part of a compliance review.

CHAPTER 3

COMPLIANCE REVIEW PROCESS

I. PLANNING and SELECTION

- A. DelDOT will generally determine which type of compliance review is to be conducted. This is generally at DelDOT's discretion. Notification to any contractor/ company being reviewed will clearly communicate the type of review being conducted. This will facilitate the gathering of appropriate documentation by the contractor/company.
1. **Area-wide Company/Contractor Based compliance review** – is a review of a contractor's/company's operation in one geographical area. The purpose of this type of compliance review is to obtain and consider information on the contractor's/company's efforts to insure non-discrimination and provide equal opportunity in employment, training, and contracting on all of the contractor's/company's federally-funded projects within the designated area.
 2. **Project-specific compliance review** – is a review of a single project to determine whether a contractor/company and its subcontractors are meeting the employment, training, and subcontracting requirements on a specific contract. Project reviews should include all primes and subcontractors, including joint ventures and material suppliers. This type of review is best for major projects with significant employment, training, and subcontracting potential.
 3. **Consolidated compliance review** – is a cooperative effort by multiple governmental agencies, such as FHWA and OFCCP, to review all active federal aid contractors in a particular geographic area. Most often this type of review is conducted if it is known that contractors in a certain area are experiencing similar problems with respect to EEO issues.
- B. Selection Process
1. To accomplish the selection of companies/contractors for compliance review DelDOT has adopted a mechanism that evaluates each company/contractor in an objective and quantifiable manner, resulting in a ranking.
 2. An objective analysis will be conducted of companies/contractors based on:
 - a. the awarding of contracts to any company/contractor;
 - b. the nature of funding on any contracts awarded to any company/contractor within a designated evaluation period;
 - c. the percentage value of the contract(s) awarded to any company/contractor as compared to total value of contracts awarded by DelDOT within the designated evaluation period;
 - d. the potential for employment opportunities for minorities and females for the contractor/company based on work performed during the designated evaluation period, utilizing geographic census demographic data related to actual projects awarded;
 - e. an assessment of the company's/contractor's business practices during the designated evaluation period.
 3. Each of these areas will be valued and all companies/contractors will be ranked as part of the analysis. Selection for contractor compliance review will be made solely on this analysis, except where issues of potential non-compliance have been detected or review has been directed by the FHWA.

4. Companies/Contractors will also be selected for compliance reviews in those instances where credible information creates a presumption of potential compliance deficiencies in any of the EEO Program areas.

C. Scheduling and Notification

1. Once DelDOT has determined the type of compliance review, and the selection process has been completed, the selected contractor/company will be formally notified, in writing, of the compliance review.
2. This notice will contain requests for specific information, documentation and records, including *but not limited to*:
 - a. Identifying information regarding the contractor/company EEO Officer and documentation of required meetings, etc.;
 - b. Payroll documentation (certified, annotated and project) as identified in the request and for the period requested, broken down by race, gender, national origin, job classifications of all employees;
 - c. Copies of any current collective bargaining agreements;
 - d. Copies of executed purchase orders and subcontracts;
 - e. Information on any complaints of discrimination filed against the company/contractor within one year (1) of the review.
 - f. A list of new hires, rehires, promotions or firings/terminations during the six month period immediately preceding the notice of compliance review;
 - g. A list of all recruitment sources utilized;
 - h. A list of all firms including minority and women-owned firms contacted as possible subcontractors and material suppliers, and those firms selected, with contact information for all listed.
3. The notice of compliance review will include a timeframe for responding and a deadline by which documentation must be received.
4. In the instance of a project-specific compliance review, the Company/Contractor will be provided sufficient time to secure the requested documentation from all subcontractors on the project as well. It is the responsibility of the Company/Contractor to secure such documentation from the subcontractors or to provide sufficient evidence of a *good faith effort* to do so.

II. PRELIMINARY ANALYSIS

A. Workforce Analysis

1. Availability Analysis

Availability is defined as an estimate of the number of qualified minorities or women available for employment in a particular job group. This estimate is generally derived from a number of sources outside of DelDOT such as the current census data, state employment offices, governmental entities etc. This estimate is expressed as a percentage of all qualified persons for employment in the particular job group and is used as a benchmark against which to compare the Company/Contractor's existing workforce.

2. Representation Analysis

The next step is to review the Company's/Contractor's workforce to determine the number and percentage of minorities and women employed in a particular job classification/trade. If the percentage of minorities or women is less than would be reasonably expected, given the availability in the labor force of the geographic region, the Company/Contractor must demonstrate good faith efforts or equal employment opportunity in hiring and recruiting.

3. Utilization Analysis

Utilization analysis looks to the number of hours worked by minorities and women as compared to the total hours worked by all employees to determine if equal opportunity is provided to employees irrespective of race and gender. A comparison of the Company/Contractor's workforce, the hours they worked and their respective race and gender is done. Where there are disparities detected then further review is conducted to insure the reason for the disparity is non-discriminatory.

4. The purpose of these analyses is to determine if there is a reasonable representation and utilization of minorities and women in each craft, classification or occupation, based on their availability in the relevant labor market. Additionally, if disparities are determined, review must continue to ascertain what good faith efforts have been undertaken to reduce or eliminate such disparities by the Contractor/Company. These analyses are also instrumental in gathering evidence of discriminatory practices relating to employment terms and conditions.

B. DBE Utilization Analysis

This step looks into how the Company/Contractor solicits, reviews and selects subcontractors, vendors and suppliers for all of their work. Emphasis is placed on determining whether the Contractor/Company has an open process, inviting quotes from diverse business entities or considers quotes from a particular group and excludes others. Review is also made of any good faith efforts undertaken by the Company/Contractor to open up their subcontracting and vendor opportunities.

III. ON-SITE VERIFICATION

A. Scheduling and Notification

Conducting an on-site review and verification is optional, based on the preliminary analysis of the documents, information and data supplied by the Contractor/Company. DeIDOT determines when it is appropriate to conduct an on-site review. Instances where documentation submitted is incomplete, insufficient, untimely or otherwise problematic will require an on-site review process to clarify and verify inconsistencies, inaccuracies, ambiguities or other concerns.

The on-site review process commences with official written notification. This written notification will inform the Contractor/Company management of the purpose, scope, date, and time of the review. A major purpose of an on-site review is to accomplish the following:

1. Verify information obtained in the desk-audit phase and to clarify and discrepancies in the material submitted;
2. Conduct interviews with representative members of the Contractor's/Company's workforce and management;
3. Verify implementation of employee referral sources and methods used to place employees;
4. Conduct a physical tour to insure non-segregation of facilities;
5. Discuss issues and concerns.

Efforts will be made to provide any Contractor/Company ten (10) business days notice of the on-site review process. Efforts will also be made to adjust the timing of the on-site review, upon legitimate request by the Contractor/ Company. The notification will clearly describe the responsibilities of the Contractor/Company to provide all pertinent documentation and information requested as well as to make all arrangements to have the other steps of the review process go smoothly, such as providing meeting space, facilitating requested interviews, and insuring needed individuals are present.

B. Kick-off Meeting

The Kick-off meeting should include company/contractor senior management/owner/executives. At the initial meeting the DelDOT representative will discuss and review the following information:

1. Objectives of the on-site review and visit;
2. Authorities for the review;
3. Materials submitted by the Contractor/Company;
4. Arrangements for on-site inspections and employee/management interviews.

The DelDOT representative will respond, as much as possible, to questions from the Contractor/Company.

C. Exit Conference

The purpose of the exit conference is not to communicate the results or findings of the on-site review to the Contractor/Company. The exit conference is to advise the Contractor/Company that the on-site process has been completed. The DelDOT representative will advise the Contractor/Company of the time frame within which a formal determination will be provided, in writing.

IV. COMPLIANCE REVIEW DETERMINATIONS

A. DelDOT determines compliance based on information submitted and on-site verification. A notice of compliance will be sent to the Company/Contractor within thirty (30) days of the determination of compliance. Full compliance review reports must be submitted to FHWA for review and concurrence prior to notice to the Company/Contractor.

B. Compliance

1. A Contractor/Company is in compliance when there is sufficient information, data and evidence obtained during the compliance review to determine the equal opportunity requirements have been effectively implemented.

2. Compliance determinations are based on the data, records and other information gathered during the entire compliance review process, including but not limited to the on-site review process.
3. Compliance determinations will be made by the DelDOT Civil Rights Section, considering the following:
 - a. Does the Company/Contractor have a designated EEO Officer, EEO plan and policy and has such information been appropriately disseminated to management and employees within the business?
 - b. Is there reasonable representation and utilization of minorities and women in each craft, classification, occupation or job based on their availability in the relevant labor force?
 - c. Has the Contractor/Company taken any action to increase recruitment, hiring opportunities, promotions, and training of minorities and women and/or minority and women owned subcontractors?
 - d. Have the Contractor's/Company's efforts to provide equal opportunity been effective or are those efforts likely to result in an increase in the representation and utilization of minorities and women or in the increase of minority-and women- owned businesses with whom the Company/Contractor enters into agreements?
 - e. Is there impartiality in the treatment of minorities and women?
 - f. Are the Contractor's/Company's affirmative action efforts an isolated or of an on-going nature?
 - g. Have the Contractor's/Company's efforts produced results?
4. Good Faith Efforts
 - a. A Contractor/Company is deemed to be in compliance with equal opportunity requirements where there is evidence that *every good faith effort* has been made, in spite of continued disparities in representation, etc.
 - b. Good faith efforts must be targeted, specific and reasonably calculated to result in the desired compliance. Repeated use of unsuccessful activities, such as sending form letters, which produce no results, will not be considered good faith efforts.
 - c. Documentation of good faith efforts must include specific information such as which referral sources were used, with whom the Contractor/Company interacted, documentation of telephone requests for women and minorities in specific crafts with underrepresentation, etc.
 - d. Good faith efforts also apply to a Contractor's/Company's efforts to do business with minority-owned and women-owned businesses and suppliers. A pattern of using DBE business partners only on federally aided projects, with no similar involvement in other business ventures will require closer examination to be considered good faith efforts.

C. Non-compliance with Supporting Findings

1. A Contractor/Company is in **non-compliance** when there is sufficient information, data and evidence to make a determination that the

Contractor/Company failed to effectively implement the equal opportunity requirements.

2. **Non-Compliance** determinations are based on the data, records and other information gathered during the entire compliance review process, including but not limited to the on-site review process.
3. Efforts to bring a Company/Contractor into compliance may be accomplished through negotiating immediate corrective action or through the issuance of a Show Cause Notice.
4. Negotiation of immediate corrective action(s) is appropriate where the findings of **non-compliance** are based on relatively minor deficiencies in the Company's/Contractor's implementation of the equal opportunity requirements.
5. A Show Cause Notice is required when the finding of **non-compliance** is based on any one of the following:
 - a. The findings of a compliance review;
 - b. The results of an investigation, which verifies the existence of discrimination;
 - c. Reports reflect underutilization of minorities and women throughout the Company's/Contractor's workforce.

V. CORRECTIVE ACTION and ENFORCEMENT

A. Voluntary Corrective Action Plan (VCAP)

1. A Company/Contractor determined to be in **non-compliance** has thirty (30) days from the receipt of a Show Cause Notice to develop and submit an acceptable Corrective Action Plan, in writing
2. If cited deficiencies can be corrected within thirty (30) days, no written Corrective Action Plan is necessary. However the time frame for corrective action remains thirty (30) days for completion.
3. Any Show Cause Notice is rescinded upon submission and approval of a Corrective Action Plan.
4. The written Corrective Action plan must state a clear action plan with time limits for the Company/Contractor to correct each cited deficiency. The Corrective Action Plan submitted to DelDOT must be sufficient to correct deficiencies or DelDOT will not approve it.

B. Follow-Up

1. In circumstances where cited deficiencies can be corrected within thirty (30) days, DelDOT personnel will monitor progress on the corrective action during that thirty (30) day period. At the completion of the corrective action or the thirty (30) day period, whichever ever comes first, a report of progress will be generated, sent to the Company/Contractor, and become part of the compliance review record.
2. Failure to correct deficiencies where those deficiencies could have been corrected within thirty (30) days will result in a formal finding of **non-compliance**, reinstatement of the Show Cause Notice and time frame, and appropriate enforcement action taking place.

3. In those circumstances where a Voluntary Corrective Action Plan has been approved, DelDOT will monitor progress on the correction of deficiencies cited.
4. Failure to complete a Corrective Action Plan, once approved, or failure to make reasonable progress under a Corrective Action Plan on correction of deficiencies cited will result in a formal finding of **non-compliance**, reinstatement of the Show Cause Notice and time frame, and appropriate enforcement action taking place.
5. Satisfactory completion of a Corrective Action Plan, written or otherwise, will remove any finding of **non-compliance**. A final closure letter will be sent to the Company/Contractor culminating the review process. Such documentation will be retained by DelDOT.

C. Enforcement

1. Administrative action to address **non-compliance** after a Show Cause Notice has been issued will be the same as those taken for other failure to perform issues pursuant to a contract.
2. Contract administration procedures may also be invoked against a **non-compliant** Contractor/Company. Such measures **include but are not limited** to:
 - a. Determining the Contractor/Company a non-responsible bidder on contracts containing the provisions which were violated and not subsequently corrected when the opportunity existed;
 - b. Future bids being held irregular and non-responsive based on deficiencies on other contract(s);
 - c. Disqualification as a bidder pending correction of deficiencies;
 - d. Creating the Contractor's/Company's bid ceiling;
 - e. Canceling or suspending the contract(s) on which the violations were found;
 - f. Determining Contractor/Company is in default on the contract where the violation occurred and terminating the Contractor's/Company's right to do work on that contract and initiating action pursuant to the termination of the contract;
 - g. Debarment from future federal contracts.
3. Documentation of all enforcement efforts will be forwarded to FHWA