PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: SYSTEMATIC INTERDISCIPLINARY APPROACH REFERENCE NOTEBOOK

FOR

DIVISION OFFICE CIVIL RIGHTS PERSONNEL

MODULE 4

TABLE OF CONTENTS

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 1

Training Outline


PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH
FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF CIVIL RIGHTS

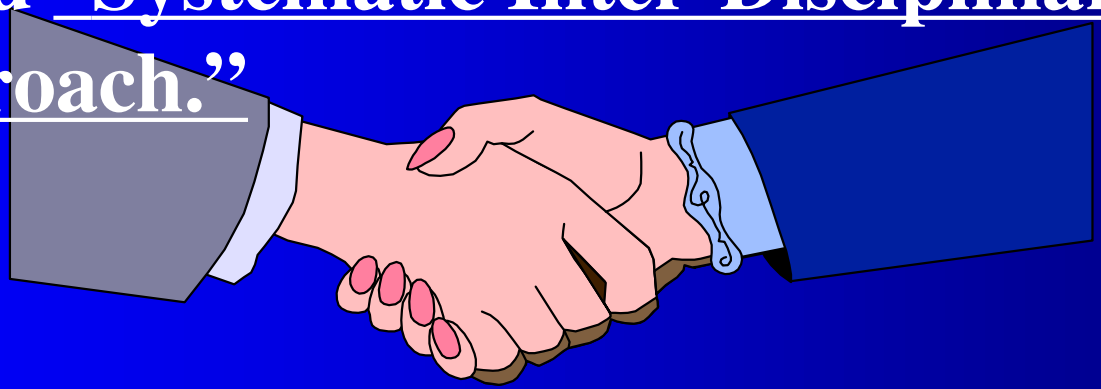
TRAINING OBJECTIVES

To enable participants to:

- **Understand and apply a preventive team approach to ensuring nondiscrimination in all programs or activities of DOT recipients.**
- **Identify major activities/decisions and address Title VI issues in each phase of project advancement including the Motor Carrier Safety Assistance Program.**
- **Understand the roles and responsibilities of program and civil rights officials in a team approach.**

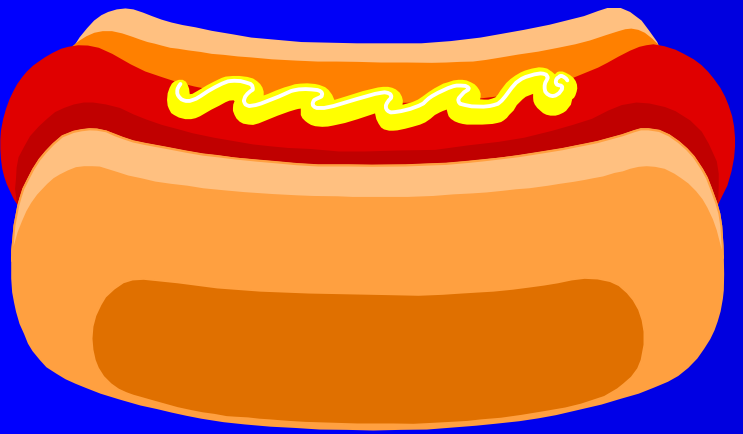
INTEGRATION OF TITLE VI IN THE PROCESS

- ➔ **ACTION: Follow discussion with handout.**
- **Traditional vs. Preventive approaches to Title VI Program Implementation.**
- **Approach initiated in Region 6 may be called "Systematic Inter-Disciplinary Approach."**



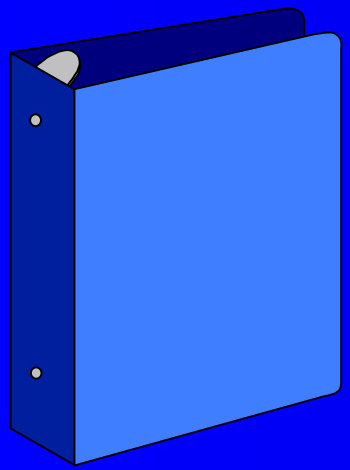
TRAINING OVERVIEW

- ACTION: Introduce yourself and tell us what you expect from course.



TRAINING OVERVIEW

- ACTION: Review Training Materials
  - Training Course Outline
  - Notebook, "Preventing Discrimination in the Federal Aid Program: A Systematic Inter-Disciplinary Approach"
  - Compliance Officer's Manual



TRAINING OVERVIEW

- ACTION: Review Training Materials, (continued)
  - Booklet, "Community Impact Assessment"
  - Handout, "Integration of Title VI and Highway Process"
  - Handout, "Nondiscrimination Case Studies"
  - Handout, "Title VI Inquiry - Arizona Center for Law in the Public Interest"

TRAINING OVERVIEW

- ACTION: Review Training Materials, (continued)
  - Handout, "Processing Complaints of Discrimination under Title VI of the Civil Rights Act of 1964"
  - Handout, "Data Collection/Analysis for Addressing Title VI & Environmental Justice in the Long Range Planning Process"
  - Course Evaluation Questionnaire
  - Attendance Roster

TRAINING OVERVIEW

- **ACTION**: Form Teams

LEADING CHANGE

INGREDIENTS TO EFFECTIVE LEADERSHIP

SITUATIONAL AWARENESS GETTING THERE

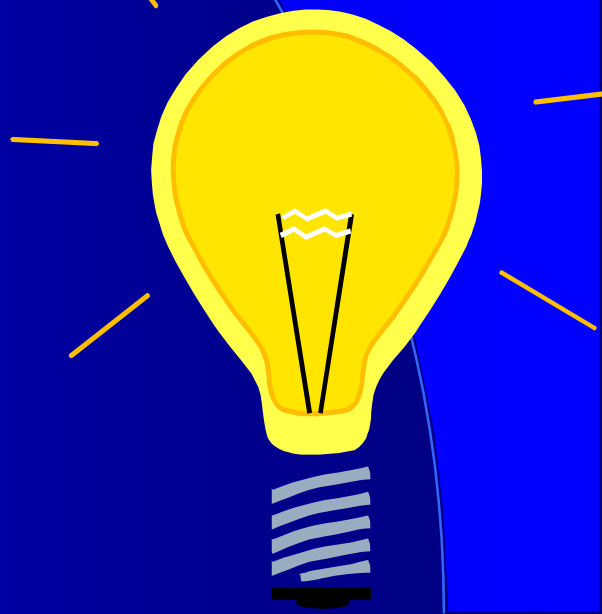
- SEE THE BIG PICTURE
- KNOW WHAT'S AROUND YOU

SITUATIONAL AWARENESS GETTING THERE

- IDENTIFY SPECIFIC OBJECTIVE OF PROGRAM {Civil Rights Programs, Planning, Project Development, Right of Way, Construction, Research, MCSAP}
- ASSESS YOUR ACTIVITIES/ POLICIES/PROGRAM AGAINST OBJECTIVE.
- USE INFORMATION TO LEAD/CREATE CHANGE.

THE SUCCESS OF FAILURE

- LEARN FROM FAILURE
- DON'T FEAR FAILURE
- TRY AGAIN BUT USE KNOWLEDGE OBTAINED FROM FAILURE
- LEAD CHANGE!!!



TITLE VI

- "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 subjected to discrimination under any program or activity receiving Federal financial assistance."

➔ ACTION: As a Team, Develop Objective Statement

23 U.S.C. 324

- "No person shall on the ground of **sex** be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title."

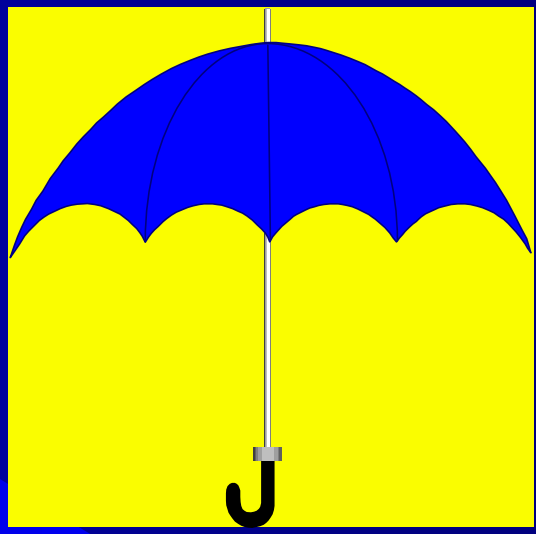
SECTION 504 - REHABILITATION ACT OF 1973, 29 U.S.C. 790

- "No **qualified handicapped person** shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance."

THE AGE DISCRIMINATION ACT OF 1975, 42 U.S.C. 6101

- "No person in the United States shall, on the basis of **age**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance."

TITLE VI - Continued

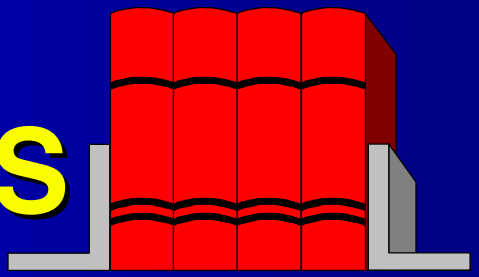


- **Employment** generally not covered under Title VI.
- **Title VI covers employment when:**
  - **The primary purpose of federal assistance is to provide employment or**
  - **Discrimination in employment leads to discrimination in services or benefits.**

THE CIVIL RIGHTS ACT OF 1964-Major Titles

- Title I-Voting Rights
- Title II-Public Accommodations (hotels, restaurants, gas stations)
- Title III-Public Facilities
- Title IV-Public Schools (Desegregation)
- Title V-Commission on Civil Rights
- Title VI- Programs & Activities
- Title VII-Fair Employment
- Title VIII-Registration and Voting

AUTHORITIES



- **Title VI of the Civil Rights Act of 1964** became law on **July 2, 1964**.
  - Initially prohibited discrimination in Federally assisted programs.
- DOT issued implementing regulations on **June 18, 1970 {49 CFR 21}**
  - Require Affirmative Action
  - Require recipients to execute Title VI assurance as condition of Federal aid.

AUTHORITIES-Continued

- **Standard DOT Title VI Assurance** Commits Recipient to:
  - Comply with Title VI
  - Include Title VI Provisions in its contracts.
    - **Appendix A**-All Contracts
    - **Appendix A** provides for sanctions for non-complying contractors, including withholding payments and cancellation, termination or suspension of the contract.

AUTHORITIES-Continued

- **Appendix B**-Deeds Transferring Property
- **Appendix C**-Deeds, Leases, Permits for further transfer of property acquired or improved for construction or use of or access to space on, over, or under property acquired.

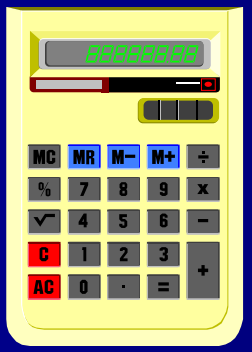
AUTHORITIES-Continued

- **FHWA Title VI Regulations {23 CFR 200}**
  - Issued **December 10, 1976**
  - Include guidelines for implementing Title VI Programs and conducting Title VI reviews.
  - Provide for correction of deficiencies uncovered by FHWA within 90 days.
  - Require recipients to conduct **annual reviews** of their various programs.

AUTHORITIES-Continued

- **FHWA Title VI Regulations** Require;
  - Recipient to establish **civil rights unit** with adequate staff to implement all civil rights requirements.
  - Development of **complaint processing procedures** and investigations by trained personnel.

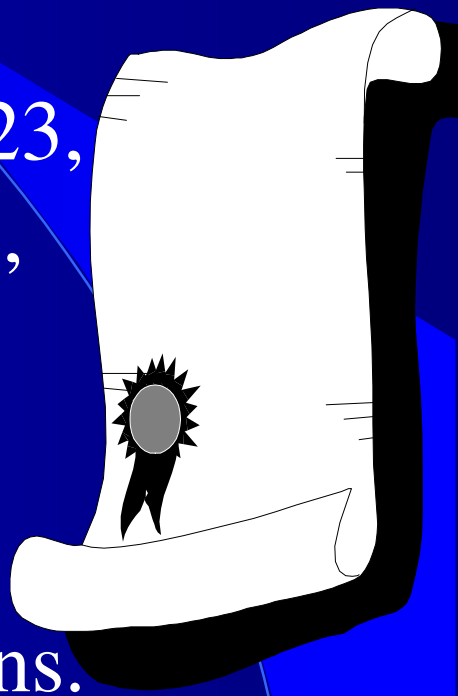
AUTHORITIES-Continued



- **FHWA Title VI Regulations** Require;
  - Development of **data collection** procedures to identify participants and beneficiaries of programs (relocatees, impacted citizens, affected communities).
  - Annual submittal of **Title VI Plan** and **Report of Accomplishment** and Goals for following year.

AUTHORITIES-Continued

- **Federal-Aid Project Agreement**
  - The Division Administrator and the State should agree on a format.
  - Requires **State to comply** with Title 23, the regulations implementing Title 23, and the policies and procedures established by the FHWA.
  - State must also comply with all other applicable Federal laws and regulations.



AUTHORITIES-Continued

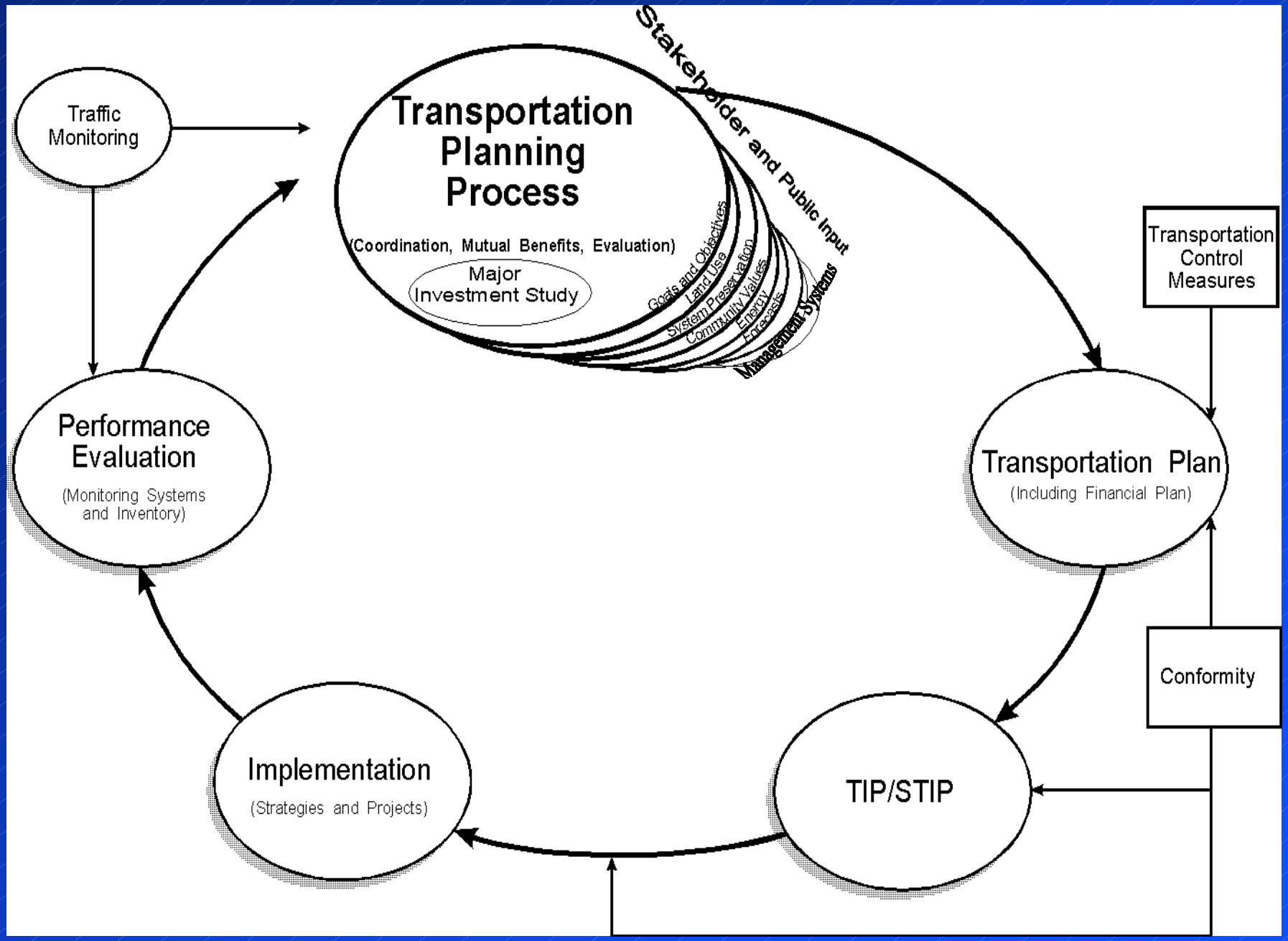
- **Required Contract Provisions**, Federal-Aid Construction Contracts (**Form FHWA 1273, Section I., Paragraph 3 and Section II., Paragraph 8.**)
  - **Prohibits discrimination in selection and retention of subcontractors and material suppliers.**
  - **Provides for the termination of the contract.**
- **State Approved Title VI Program Document**

AUTHORITIES-Continued

- **Executive Order 12898**, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"-Signed February 1994.
  - **Requires identification of high and adverse human health or environmental effects of programs, policies and activities on minority and low-income populations.**
- **DOT Order 5680.1**, Released April 15, 1997, establishes policies to promote the principles of Environmental Justice by incorporating those principles in all DOT programs.

THE PLANNING PROCESS

- Under ISTEA-Metropolitan & Statewide.
- Multi-modal.
- Joint FHWA & FTA oversight.
- Transportation Plan & TIP/STIP.
- Proactive public involvement.
- Financial plan.
- Linkage between planning & environmental considerations.
- 20 year horizon on State & MPO Plans.
- Continuous process.


Traffic Monitoring
Transportation Planning Process
(Coordination, Mutual Benefits, Evaluation)
Major Investment Study
Stakeholder and Public Input
Goals and Objectives
Land Use
System Preservation
Community Values
Energy
Forecasts
Management Systems
Transportation Control Measures
Performance Evaluation
(Monitoring Systems and Inventory)
Transportation Plan
(Including Financial Plan)
Conformity
Implementation
(Strategies and Projects)
TIP/STIP

THE PLANNING PROCESS - METROPOLITAN PLANNING

- Metropolitan Planning required since 1962-3C Planning Process (Cooperative, Continuous and Comprehensive)
- Cooperative effort - State, MPO & transit agencies.
- Linked to air quality.
- Project specific.
- Focus for transportation decision making.

THE PLANNING PROCESS - STATEWIDE PLANNING.

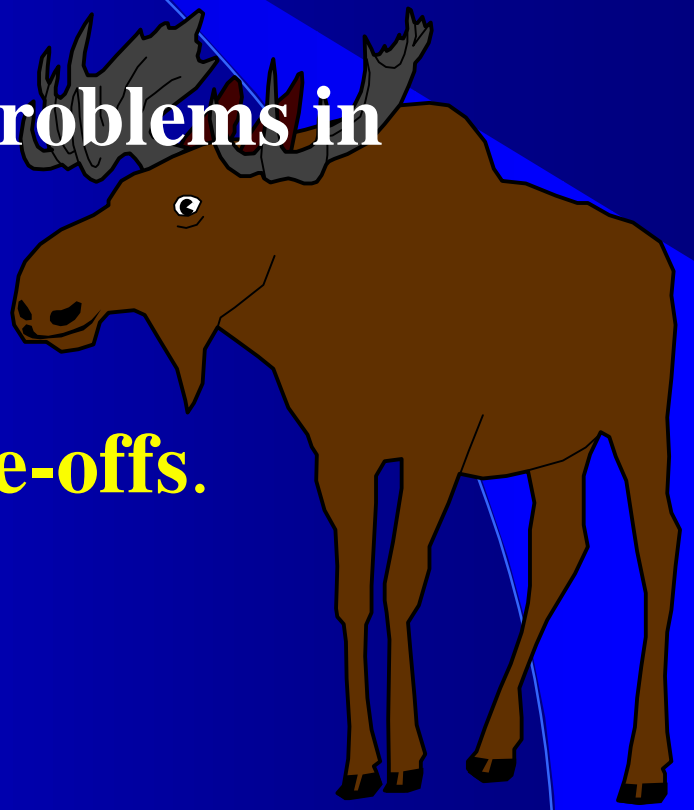
- New under ISTEA.
- State must cooperate/coordinate with planning partners.
- Different air quality connection.
- Can be policy plan.
- Not fiscally constrained.
- Focus for transportation decision making.

THE PLANNING PROCESS - PLANS & PROJECTS

- Project genesis should be planning process.
- Federally funded projects in metropolitan areas must be in plans.
- Transportation system is context.
- Focus is mobility, access & community goals.

THE PLANNING PROCESS - PLANNING & SEE FACTORS

- Social, economic & environmental factors.
- Analysis of transportation problems in community context.
- Level of analysis.
- Address key issues and trade-offs.



THE PLANNING PROCESS - PROGRAMS

- **Transportation Improvement Program** (TIP).
  - **3 year focus.**
  - **Project specific.**
  - **State (STIP) and Metropolitan (TIP).**
  - **Financial plan.**
  - **Public Involvement**.

THE PLANNING PROCESS - PROGRAMS

- Consistent with Metropolitan Area Plan.
- Updated every two years.
- Amendments.
- Air quality.
- Approved by MPO & Governor.
- STIP approved by FHWA & FTA.

THE PLANNING PROCESS - PUBLIC INVOLVEMENT

- Two way communication incorporating public views, concerns & issues into decision making.
- Designed to fit local circumstances.
- Performance not process oriented.
- Ensure involvement of transportation disadvantaged.

THE PLANNING PROCESS - KEY POINTS

- Public Involvement.
  - Should be able to demonstrate analysis of community profile.
  - Focus for system & community trade-offs.
  - Should be able to articulate key issues including social impacts.
  - Process not guarantee.

TITLE VI ISSUES - PLANNING & PROGRAMMING

- Is there effective public involvement process & participation?
  - Recognition of unique &/or key community context.
  - Mechanisms for reaching & involving minority community.
  - Availability & accessibility of information.
  - Multiple mechanisms for involving public.
  - Accessibility of process.

TITLE VI ISSUES - PLANNING & PROGRAMMING

- How effectively is citizen input considered?
- Equitable provision of transportation facilities & services.
- Coordination with sovereign Indian tribal governments.
- Off-setting impacts across investments.

TITLE VI ISSUES - PLANNING & PROGRAMMING

- Documenting consideration & analysis of issues?
  - Community description.
  - Ethnic & racial profile.
  - Income distribution.
  - Transportation service availability & accessibility.

TITLE VI ISSUES - PLANNING & PROGRAMMING

- How are project priorities, impacts & benefits addressed?
- Is there adequate analysis of SEE effects?
- Is there an open participation in contracting for key studies & activities?
- How are revisions & updates handled?

➔ ACTION: Review Handout, "Data collection/analysis for Addressing Title VI & Environmental Justice in the Long Range Planning Process"

THE PROCESS-PROJECT DEVELOPMENT

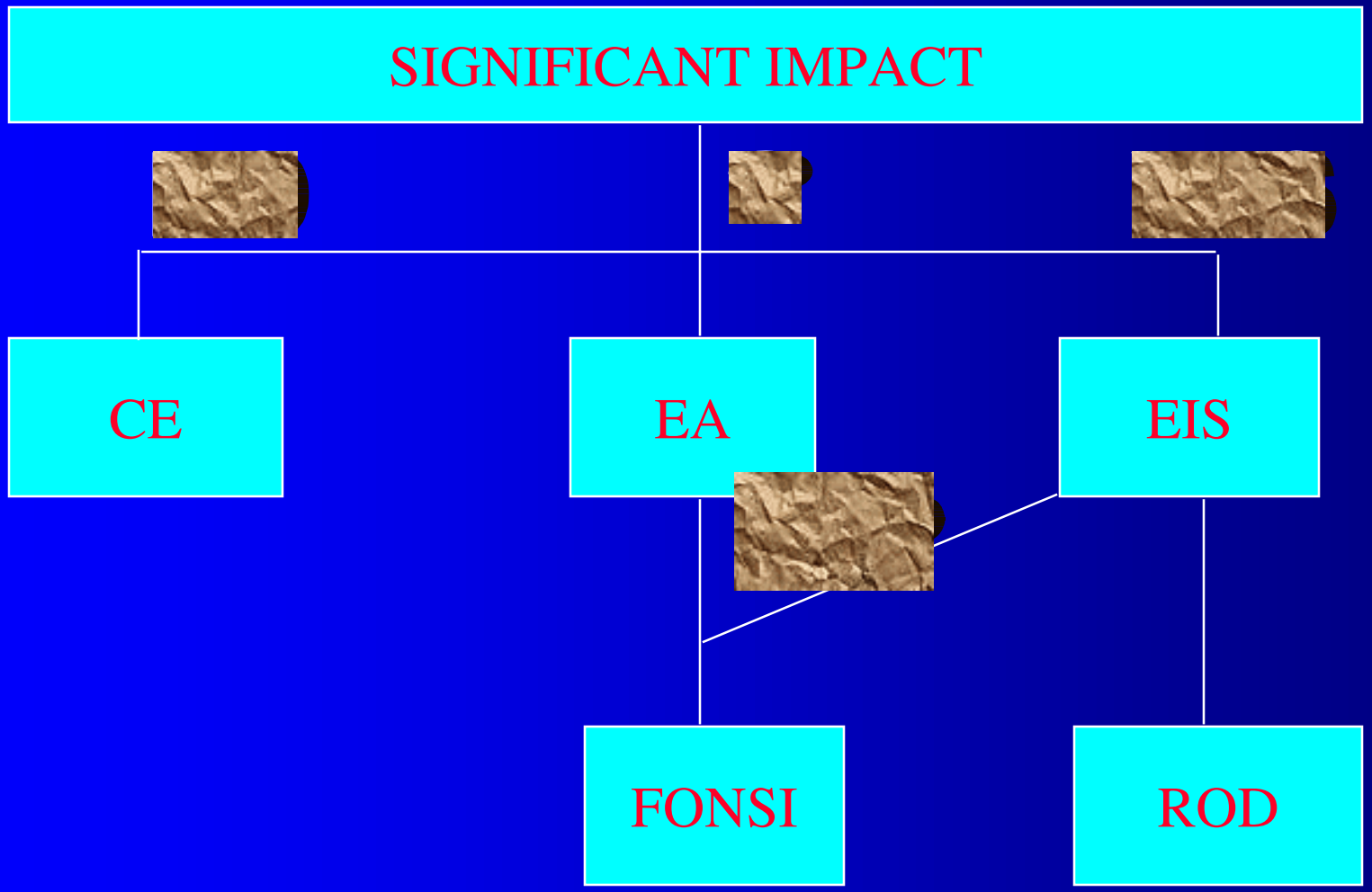
- Phase between Planning and Construction.
- Determination of SEE effects made pursuant to National Environmental Policy Act of 1969.
- Continues where Planning stopped and goes through design, right-of-way, and construction.

THE PROCESS-PROJECT DEVELOPMENT, Cont'd.

- State DOT's perform analysis and prepare environmental document with FHWA assistance and oversight
- Open and collaborative.
- Public interest decision making.
- Potential for impacts determine degree of needed analysis.

PROJECT DEVELOPMENT

IDENTIFICATION/ ANALYSIS OF SEE FACTORS



THE PROCESS - PROJECT DEVELOPMENT, Cont'd.

- **Categorical Exclusion** (CE)
  (23 CFR 771.117)
  - **Not an environmental document.**
  - **Represents determination that project will have no significant SEE impacts.**

THE PROCESS - PROJECT DEVELOPMENT , Cont'd.

- **CE Examples**
  - **Utility installations, bicycle/pedestrian lanes, fencing, signs, pavement markings, small passenger shelters, traffic signals, railroad warning devices, emergency repairs, rest area improvements, minor modification or reconstruction on essentially same alignment or location, etc.**
  - **Specifications, acquire rights-of-way and advertise project for construction.**

THE PROCESS-PROJECT DEVELOPMENT, Cont'd.

- **Environmental Assessment** (EA)
  - **May require consideration of one or two alternatives including no-build.**
  - **Prepared when significance of impacts not known or clearly established.**
- **Finding of No Significant Impact** (FONSI)
  - **Prepared if EA reflects no significant impact.**

THE PROCESS-PROJECT DEVELOPMENT, Cont'd.

- **Environmental Impact Statement** (EIS)
  - **Projects with significant impact on the environment.**
  - **Requires;**
    - **Consideration of all reasonable alternatives, including no-build.**
    - **In-depth analysis of SEE effects.**
    - **Preparation of Notice of Intent (NOI), Draft EIS (DEIS), Final EIS and Record of Decision (ROD).**

THE PROCESS-PROJECT DEVELOPMENT, Cont'd.

- DEIS should identify;
  - Location of project.
  - Population makeup.
- FEIS should identify preferred alternative.
  - Adoption of FEIS by FHWA constitutes approval of location and major design features.
  - State may develop final engineering design plans and specifications, acquire rights of way & advertise project for construction.

THE PROCESS-PROJECT DEVELOPMENT, Cont'd.

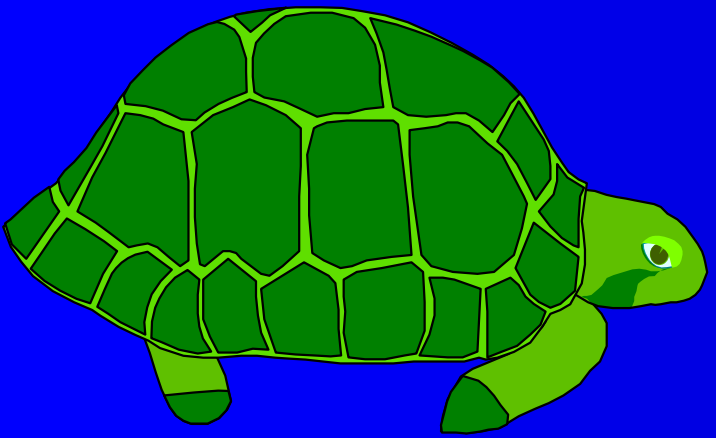
- **End product is a decision on location and design.**
- **Decision document: CE, FONSI, ROD.**

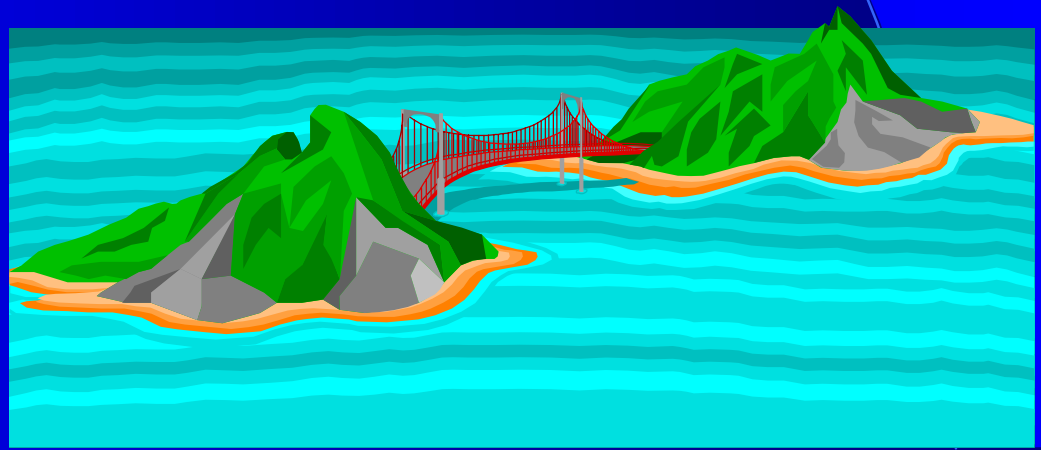
TITLE VI ISSUES-PROJECT DEVELOPMENT

- Is public involvement adequate?.
  - Early and continuous.
  - Appropriate community outreach.
  - Feedback to community during the process.
- Are public hearing requirements satisfied?
  - Informal v. formal.
  - Open forum public hearing format.

TITLE VI ISSUES-PROJECT DEVELOPMENT, Cont'd.

- **Is there adequate identification of SEE impacts?**
  - **Beneficial Impacts**
    - **Increased access to facilities/services**
    - **Upgrading of affected communities.**





TITLE VI ISSUES-PROJECT DEVELOPMENT, Cont'd.

- **Is there adequate identification of SEE impacts?**
  - **Adverse Impacts**
    - **Diminished access to facilities/services.**
    - **Disruption of community cohesion.**
    - **Disruption of people, businesses and farms.**
    - **Changes in tax base and property values.**

TITLE VI ISSUES--PROJECT DEVELOPMENT, Cont'd.

- **Is there equitable mitigation of impacts?**
  - **Sequencing of mitigation (CEQ regulation)**
  - **Identify in CE, EA, EIS.**
  - **Commitments in CE, FONSI, ROD are binding.**

TITLE VI ISSUES-PROJECT DEVELOPMENT, Cont'd.

- Examples of mitigation.
  - Restoration of circulation and pedestrian patterns.

  - Relocation assistance and advisory services, replacement housing and moving payments for displaced families and businesses.
  - Maximum retention of existing vegetation in grading plans for ramp and right-of-way areas.
  - Provision for last resort housing.

TITLE VI ISSUES-PROJECT DEVELOPMENT, Cont'd.

- Examples of mitigation.
  - Traffic control.
  - Traffic signalization and street lighting improvements.
  - Employment, training, and contracting opportunities.
  - Noise barriers and buffer zones.
  - Landscaping

THE PROCESS-RIGHT OF WAY

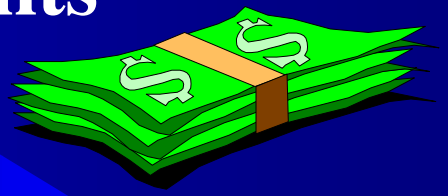
- Appraisal/Appraisal Review
  - Provides basis for payment.
  - Estimate of fair market value, an opinion.
  - Fee appraisers may be used.
  - All appraisals must be reviewed.

THE PROCESS-RIGHT OF WAY

- **Negotiations/Acquisition**
  - **Sensitive, involves direct contact with public.**
  - **Agency required to make prompt written offer for full amount believed to be just compensation.**
  - **Agency required to make every effort to acquire property by negotiation.**
  - **Coercion prohibited.**
  - **Condemnation proceedings available if agreement not reached.**

THE PROCESS-RIGHT OF WAY

- Relocation Assistance and Payments
  - Written notices
    - General information on relocation program
    - Notice of relocation eligibility
    - 90 day notice
  - Relocation services
  - Replacement dwelling prior to displacement
  - Replacement housing payments
  - Moving and related expenses

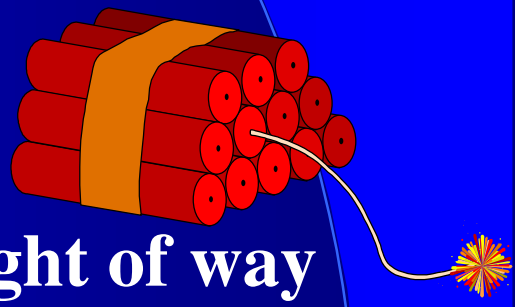


THE PROCESS-RIGHT OF WAY

- **Property Management**

(Refers to managing property acquired for highway purposes.)

  - **Activities**
    - **Selection of management firms/demolition contractors**
    - **Property lease/rental**
    - **Disposition of improvements/right of way**
    - **Management of airspace**

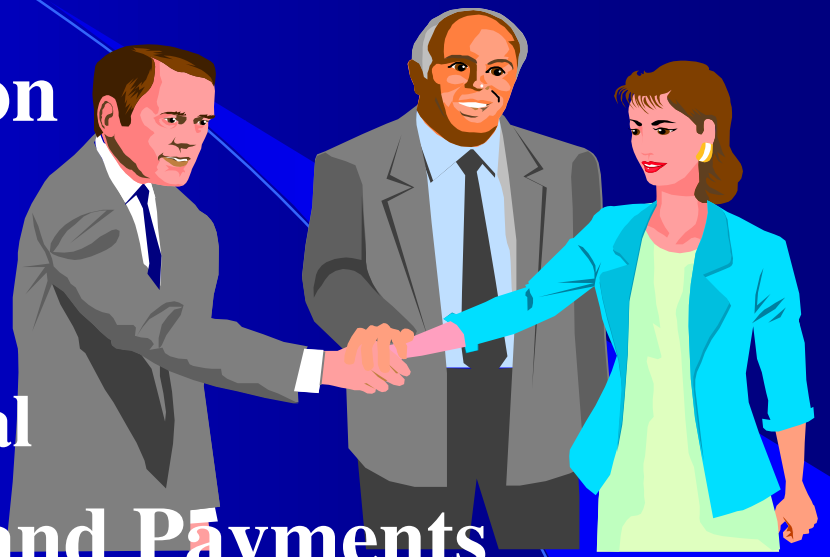


TITLE VI ISSUES-RIGHT OF WAY

- Appraisal/Appraisal Review
  - Use of fee appraisers
  - Selection of comparables
  - Adjustments to subject
  - Severance/consequential damages
  - Minimum payments

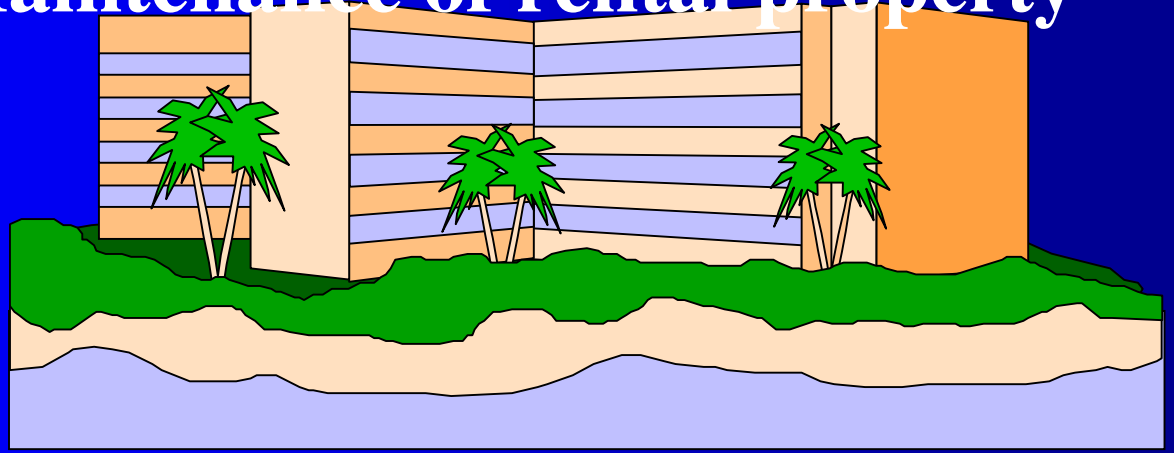
TITLE VI ISSUES-RIGHT OF WAY

- Negotiations/Acquisition
  - Advance condemnation
  - Require donations
  - Offer less than appraisal
- Relocation Assistance and Payments
  - Degree of relocation services provided
  - Selection of replacement housing
  - Decent, safe and sanitary inspections
  - Personal contacts



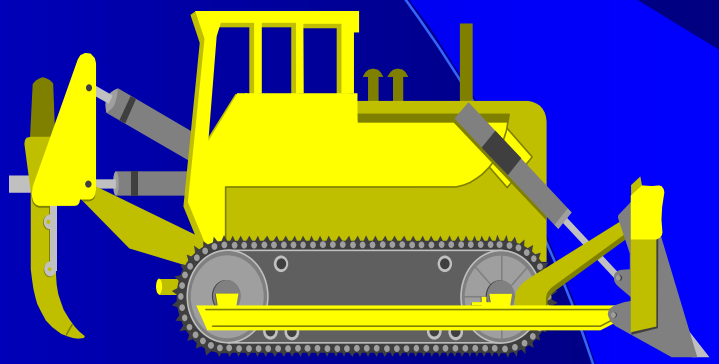
TITLE VI ISSUES-RIGHT OF WAY

- Property Management
  - Selection of contractors/firms
  - Determination of rent amounts
  - Procurement of bids
  - Maintenance of rental property



THE PROCESS-CONSTRUCTION

- Execution of Project Agreement (Approval of PS&E, Authorization to Proceed & Obligation of Funds).
- Advertising for bids.
- Contract award.
- Subcontract approvals.
- Monitoring of work.
- Implementation of mitigation measures.
- Final inspection and acceptance.



TITLE VI ISSUES- CONSTRUCTION

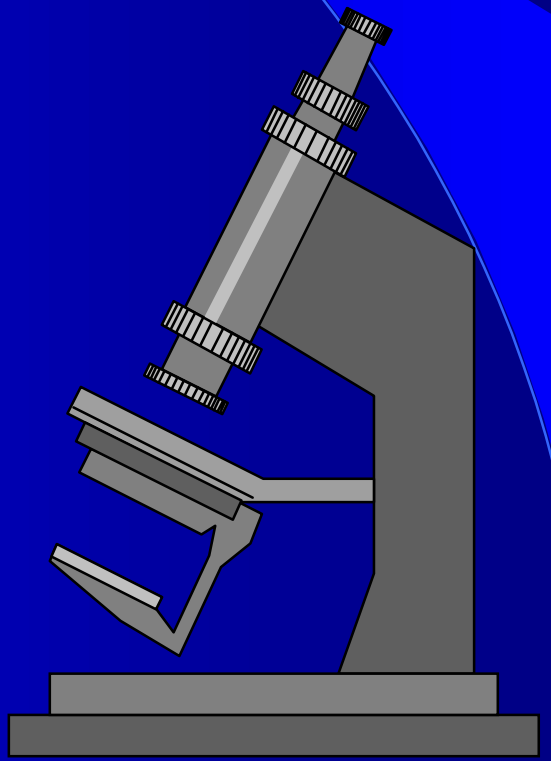
- Incorporation of contract provisions
- Monitoring/inspection of work by State.
- Impact mitigation
  - Safety through construction zones
  - Noise and air impacts
  - Employment and contracting goals
- Prequalification, bonding, licensing requirements

TITLE VI ISSUES-CONSTRUCTION

- Approval of subcontracts.
- Approval of plan changes, supplemental agreements.
- Assessment of sanctions
  - Liquidated damages
  - Withholding payment
  - Suspension/termination of contract
  - Decertification

THE PROCESS-RESEARCH

- Proposal/problem statement solicitation.
- Selection of researcher.
- Outreach



MOTOR CARRIER PROGRAMS

- To Enhance the Safe Transportation of Property and Passengers by Commercial Motor Vehicle
- Motor Carrier Safety State Programs:
  - Motor Carrier Safety Assistance Program (MCSAP)
  - *Commercial Driver's License Program
  - *Size and Weight Program
  - *No Zone Program

    (*No Federal Funds)

Motor Carrier Safety Assistance Program

A State-Federal Partnership That Works

- **STAA of 1982**
  - **Initial MCSAP Authorization. Grants for Program Development & Implementation**
  - **Activities 1983 - 1987: NAS Inspections; SN; SRs.**
  - **Inspections increased >72%; Fatal Crash Rate < 5.5 - 3.7 (per Mill. CMV Miles Traveled).**

Motor Carrier Safety Assistance Program

- CMVSA of 1986
  - Reauthorize MCSAP thru 1991
  - Introduces CDL, "Serious CDL Violations" & Sanctions
  - *Fatal CMV Crash Rate Declines from 3.8 - 2.9 (per mill. CMV Miles Traveled).*

Motor Carrier Safety Assistance Program

- ISTEA
  - Reauthorize MCAP thru 1997
  - CMV Traffic Enforcement (Detection & Enforcement of CMV Moving violations).
  - NGA Data Collection L& Movement to Performance Base Implementation
  - Public Outreach & Education (No-Zone).
  - *CMV Fatal Crash Rate hovers ~2.6 (per 100 mill. CMV Miles Traveled).*

Motor Carrier Safety Assistance Program

- **TRANSPORTATION EQUITY ACT (TEA-21)**
  - **Reauthorize MCSAP thru 2003.**
  - **Increases Funds to carry out "Performance Based" Implementation**
  - **State Specific Flexibility (Inspections; Improved Data Collection; Traffic Enforcement; PE; CRs).**
  - ***Search to stimulate next "bump downward" of CMV Fatal Crash Rate***

Motor Carrier Safety Assistance Program

- NATIONAL PROGRAM ELEMENTS OF MCSAP
  - Driver/Vehicle Inspections
  - Safety Net
  - Traffic Enforcement
  - Public Education
  - Compliance Reviews

Motor Carrier Safety Assistance Program

- **OBJECTIVE**
  - **To reduce number and severity of accidents and hazardous materials incidents involving CMVs by substantially increasing level of nationally uniform inspection & enforcement activity.**
    - **Enforce State traffic laws & regulations designed to promote safe operation of CMVs.**
    - **Provide grants to States to enhance safety.**
    - **Provide grants to States to educate the public.**

Motor Carrier Safety Assistance Program

- VEHICLE & DRIVER INSPECTION
  - Ensure regular inspection & repair of trucks & buses.
  - Interstate commerce vehicles must pass inspection.
  - Inspection standard developed by Commercial Vehicle Safety Alliance.
  - Motor Carriers:
    - Maintain drivers inspection report.
    - Require a post-trip inspection report.

Motor Carrier Safety Assistance Program

- COMMERCIAL DRIVER'S LICENSE (CDL) PROGRAM
  - Ensure drivers have one license & is qualified to operate the vehicle.
- PUBLIC AWARENESS GRANTS
  - National campaign to educate the motoring public.
  - Mechanism to reduce negative attitudes.
  - Awareness of Federal/State initiatives t reduce # of traffic crashes & deaths.

Motor Carrier Safety Assistance Program

- MOTOR CARRIER RESEARCH PROGRAM
  - Support high-priority national problem areas.
  - Examine new technologies.
  - Evaluate commercial drivers & vehicles.
  - Perform special tests.
  - Provide data for regulations.
  - May involve: hazardous material movement, vehicle inspections & maintenance, carrier assessment & compliance reviews, tax & registration uniformity, and size & weight.

Motor Carrier Program Issues

- SELECTION OF VEHICLES & DRIVERS FOR SAFETY INSPECTIONS
- SELECTION OF MOTOR CARRIERS FOR COMPLIANCE REVIEWS
- ADMINISTRATION OF CDL PROGRAM
- SELECTION OF CONSULTANTS/UNIVERSITIES FOR RESEARCH PROGRAMS
- RECIPIENT EMPLOYMENT PRACTICE RESULTS IN DISPARATE TREATMENT
- ADMINISTRATION OF FEDERAL & STATE LAW

ROLES & RESPONSIBILITIES

- Within context of Interdisciplinary Team
  - Traditional approach involved all disciplines working only within their respective discipline.
  - Traditional approach involved little or no systematic communication.
  - Team approach involves Civil Rights and Program Personnel working together.
- CIVIL RIGHTS/TITLE VI OFFICIALS
  - Assigned full time to civil rights programs

ROLES AND RESPONSIBILITIES

- PROGRAM PERSONNEL
  - Personnel in various program areas such as;
    - Planning
    - Design
    - Safety
    - Environment
    - Right of Way
    - Legal
    - Construction
    - Research
    - OMC

ROLES AND RESPONSIBILITIES, Cont'd.

- **CIVIL RIGHTS/TITLE VI OFFICIALS**
  - **Jointly w/Program Personnel develop and deliver Technical Assistance**
    - **Training**
    - **Guidelines**
    - **Interpretations**
    - **Environmental Program Review**
    - **Annual Work Plan Preparation**

ROLES AND RESPONSIBILITIES, Cont'd.

- Technical Assistance (continued)
  - Complaint Procedures
  - Assist in identification of Title VI impacts of proposed projects.
  - Assist in identification of mitigation measures.

ROLES AND RESPONSIBILITIES, Cont'd.

- Jointly With Program Personnel Develop and Conduct Program Oversight
  - Conduct Title VI Program reviews or participate w/Program Officials.
  - Determine Title VI Compliance.
  - Review Title VI Plans.
  - Monitor deficiency correction.

ROLES AND RESPONSIBILITIES, Cont'd.

- Program Oversight (continued)
  - Report accomplishments.
  - Process complaints.
- Program Personnel
  - Ensure Title VI requirements considered and addressed in program areas.
  - Inform Title VI Officials of Title VI Problem areas and complaints.
  - Notify Title VI Officials of Title VI findings from routine program reviews.

DOCUMENTATION

- Generally, routine correspondence reflecting Title VI/Environmental Justice issues identification and consideration will suffice.
- Program review reports focusing on Title VI or including Title VI also another method.

TITLE VI PLAN DEVELOPMENT

- Major Plan Components
  - Statement of Policy
  - Organization and Staffing of Civil Rights Unit
  - Title VI Monitoring/Review Process
  - Compliance Procedures
  - Title VI Assurances
  - Accomplishment Report
  - Annual Work Plan
  - List of State policies, manuals, directives applicable to Title VI

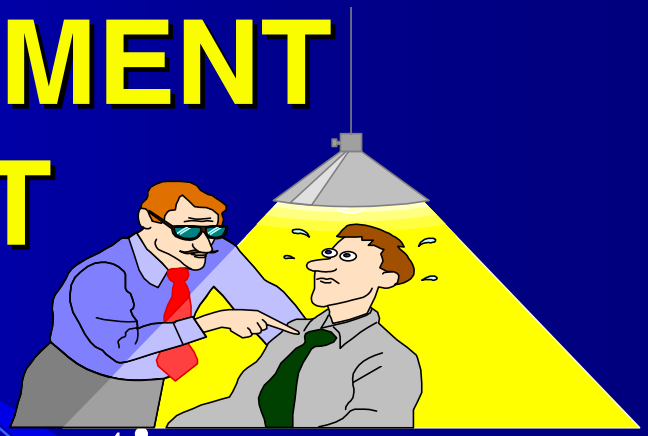
PROCESSING COMPLAINTS

- ➔ ACTION: Review and discuss handout, "Processing Complaints of Discrimination Under Title VI of the Civil Rights Act of 1964"
- A structured/organized, team approach is critical to effective complaints processing.
- The Law
- The Process
  - Authorities
  - Determination of Jurisdiction
  - Action

CREATING A SYSTEMATIC INTER-DISCIPLINARY APPROACH TO TITLE VI OF CIVIL RIGHTS ACT OF 1964

A STRATEGY

TOP MANAGEMENT SUPPORT



- Convince your CAO.
  - Approach is proactive vs. reactive.
  - Reduces State's vulnerability.
  - Reduces chance of program/project delays or disruptions.
  - Builds credibility for State in public's eye.
  - Involves all disciplines/creates team approach and improves quality.

CREATE INTER-DISCIPLINARY TEAM

- Brief program office heads on inter-disciplinary approach.
- Ask each program office to designate Title VI Liaison to serve on Title VI Team.
- Issue notice under CAO's signature announcing the team, its objective and identifying team members.

PROGRAM ASSESSMENT

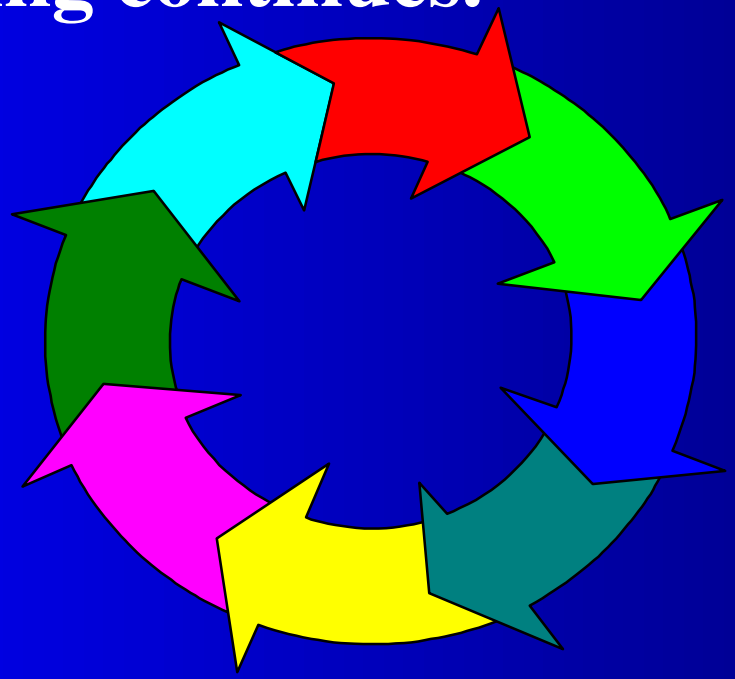
- Conduct first team meeting.
- Ask team to review current Title VI Plan Document
- Ask team to assess status of transportation program in State.
- Identify areas of vulnerability and/or need.
- Prioritize areas of vulnerability.

PREPARE PLAN

- Formulate strategies to address areas of vulnerability.
- Prioritize strategies.
- Make necessary revisions to Title VI Plan Document
- Develop Work Plan.
- Establish roles and responsibilities.
- Act on plan.
- Periodically assess plan.
- Adjust as necessary.

MAINTENANCE

- Maintain awareness.
- Meet periodically.
- Ensure training continues.
- Assess.
- Evaluate.



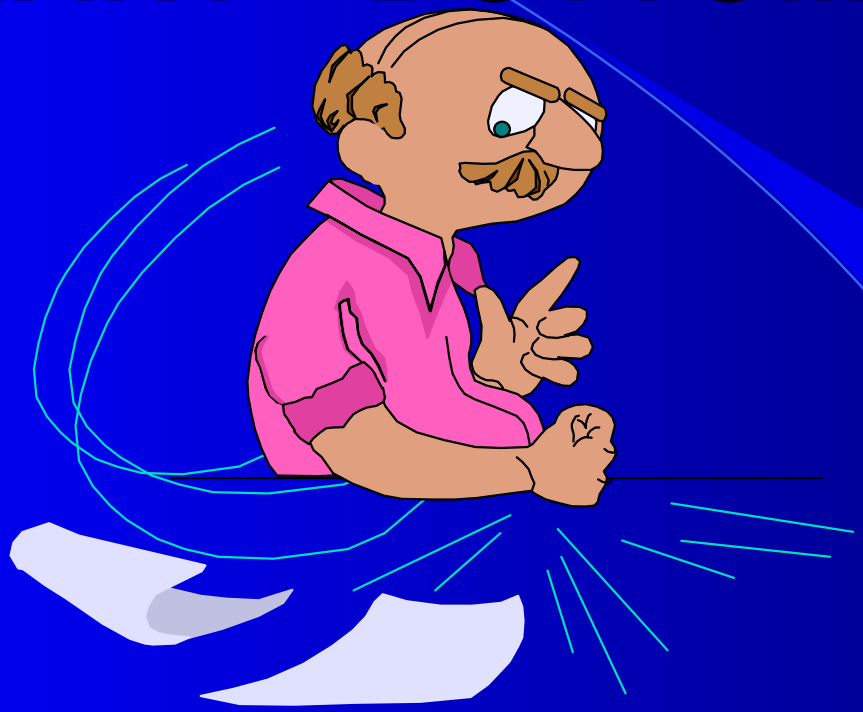
SUMMARY - BOTTOM LINE

- Another Perspective--Key Considerations
- Data Collection
  - Identify affected populations, communities.
  - Identify target for delivery of information.
  - Identify sources of input.
- Distribution & Types of Systems, Facilities & Projects
  - Identify beneficiaries.
  - Identify exclusion.

SUMMARY - BOTTOM LINE

- **Public Involvement**
  - At all phases.
  - During all activities.
  - Systematic/ongoing.
- **Identification of Impacts**
  - Adverse.
  - Beneficial.
  - Disproportionately high.

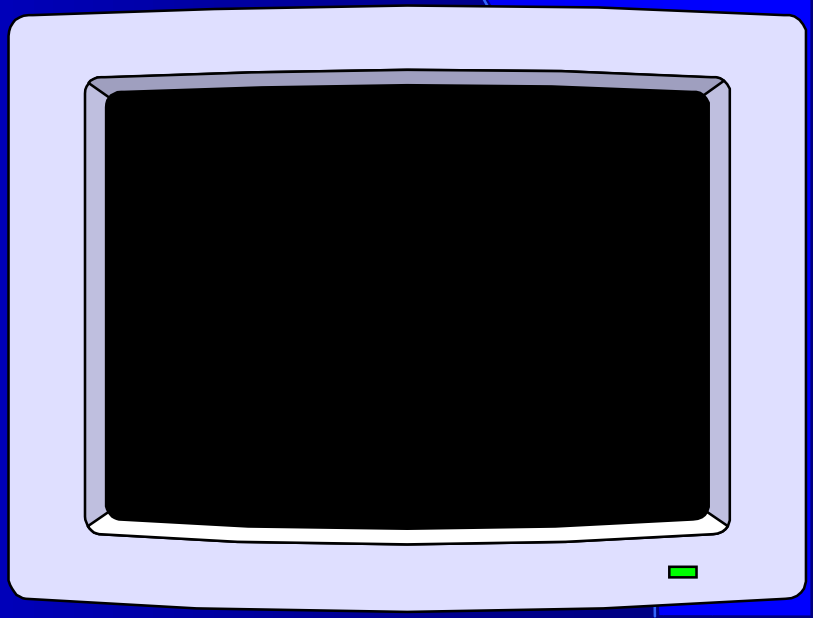
SUMMARY - BOTTOM LINE



- Elimination/Mitigation of Impacts & Enhancements
- Employment/Contracting Opportunities

SHOW TIME

“TRUE COLORS”

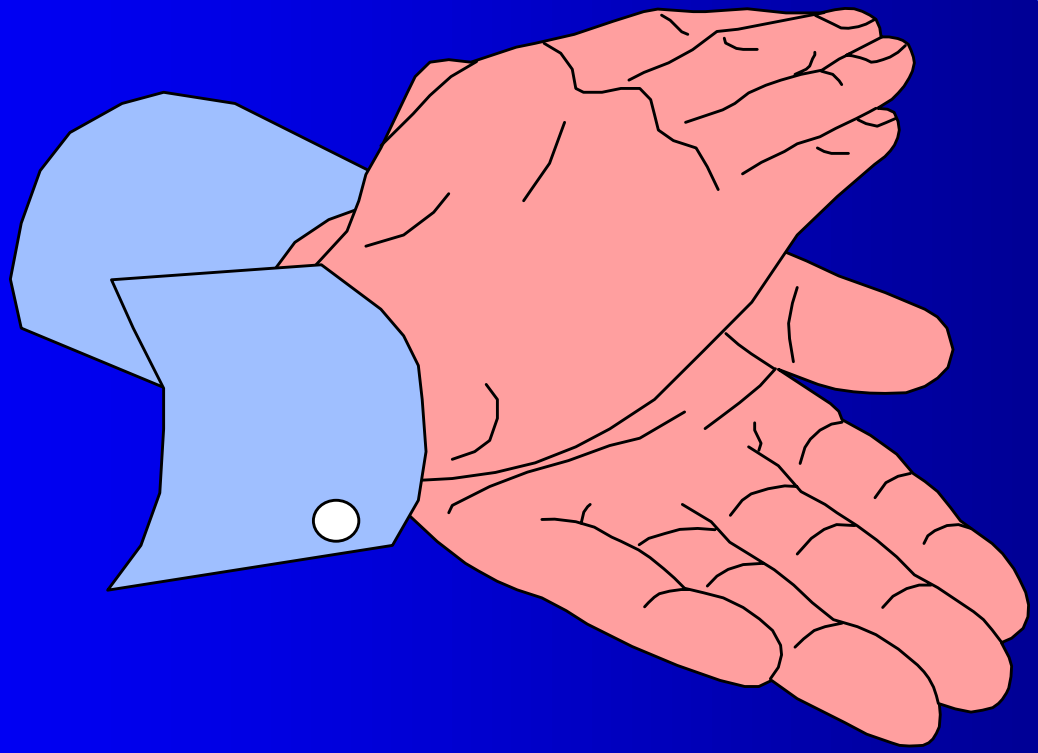


COURSE EVALUATION (Payback!)

- **ACTION**: Tell us about course by commenting on the following:
  - **What did we do right?**
  - **What can we do better?**
  - **How can we do better?**
  - **Any other comments or recommendations.**
- **ACTION**: Turn in your evaluation.

EL FIN (THE END)

- THANK YOU VERY MUCH!!!



PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 2

Federal-Aid Highway Programs

Introduction

Nondiscrimination

The focal point of nondiscrimination law is Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin. However, the broader application of nondiscrimination law may be found in other statutes, regulations and executive orders. Discrimination based on sex is prohibited by Section 324 of the Federal-Aid Highway Act, which is the enabling legislation for the Federal Highway Administration (FHWA). The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 prohibits unfair and inequitable treatment of persons as a result of projects which are undertaken with Federal financial assistance. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability as does the Americans with Disabilities Act of 1990 (ADA). The ADA also prohibits discrimination in the provision of access to public buildings, and it requires that nonconforming rest stops be made accessible by wheelchair. Age discrimination is prohibited by the Age Discrimination Act of 1975. The Civil Rights Restoration Act of 1987 clarified the intent of Title VI to include all programs and activities of Federal-aid recipients and contractors whether those programs and activities are federally funded or not.

In addition to these statutory authorities, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," signed in February of 1994, requires Federal agencies to achieve environmental justice as part of its mission by identifying disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. It is the intent of FHWA to carry out its environmental justice responsibilities as part of its overall nondiscrimination program.

Due to the broad scope and extensive number of nondiscrimination laws, most civil rights and program personnel have had difficulty in keeping up with, as well as understanding how nondiscrimination requirements apply to their daily program activities. Just as often, civil rights and program personnel are unable to keep up with the changes in the Federal-aid highway process, especially since the inception of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Title VI issues may arise during any phase of the Federal-aid program.

If Title VI issues are not recognized, they cannot be addressed by program personnel. Decisions made could violate Title VI and adversely affect the lives of people. Findings of discrimination can also result in costly disruptions to the Federal-aid program. In one State, for example, a finding of discrimination by the U.S. Department of Transportation, based on a complaint, delayed construction of a major urban freeway.

The purpose of this manual is to describe the various elements of the Federal-aid program in order to ensure that all nondiscriminatory requirements are identified and considered in advance of any decision-making activities. A coordinated and cooperative approach by program and civil rights specialists is essential.

Chapter I
Federal-Aid Highway Programs

The following narrative describes the Federal-aid highway program. It is primarily for the guidance of Federal and State Civil Rights personnel as well as Federal and State program personnel since both groups are charged with the effective execution of nondiscrimination laws and regulations relating to the Federal-aid highway process. The information and terms used in this guide may vary from State to State. Therefore, questions regarding how the Federal-aid highway process is carried out in any particular State should be directed to appropriate program area personnel. It should further serve as an opportunity for Civil Rights personnel and program area personnel to work closely in carrying out their mutual nondiscrimination program responsibilities.

I. THE PLANNING PROCESS

A. General

There are various analyses and studies which are completed in the process of developing an efficient transportation plan. States have the primary responsibility for preparing and maintaining the statewide plan and the Statewide Transportation Improvement Program (STIP). Many Metropolitan Planning Organizations (MPO) have their own staff which perform most of the technical work. Other MPOs rely on a consortium of State and local government staff to perform the necessary technical analyses. In the smaller urban areas, the State may do the analyses for the MPO. Occasionally, when MPOs do not have the capabilities, consultants may be hired to conduct planning studies, traffic studies, corridor studies, or other highly technical work.

Major changes were made in the planning process by ISTEA. The changes are reflected in the implementing rules 23 Code of Federal Regulations (CFR) 450, jointly published by FHWA and the Federal Transit Administration (FTA) in the October 28, 1993, *Federal Register.* Subpart B covers statewide planning and Subpart C covers metropolitan planning. Related regulations are in 23 CFR 500 dealing with Management and Monitoring Systems and in 40 CFR 51 and 93, dealing with air quality conformity. Implementation of the Federal planning requirements is a cooperative process involving several key agencies. The FTA and FHWA jointly oversee the planning process.

B. Statewide Planning

A statewide transportation planning process is now required. There was no requirement for statewide planning prior to ISTEA. The statewide transportation planning process produces long-range intermodal statewide transportation plans and short-range programs of projects. The decision-making effort for this process is open for input from a variety of participants and any others who wish to be involved. The short-range program of projects is called a STIP and must include at least all projects proposed to be funded by Title 23 or FTA funds. The ISTEA and the rules contain a list of 23 factors that must be considered in the statewide planning process. The 23 factors are listed here and at 23 CFR 450.208.

23 Factors Considered in the Statewide Planning Process

1. The transportation needs (strategies and other results) identified through the management systems required by 23 United States Code (U.S.C.) 303 (modified by the National Highway System).

2. Any Federal, State, or local energy use goals, objectives, programs, or requirements.

3. Strategies for incorporating bicycle transportation facilities and pedestrian walkways in appropriate projects throughout the State.

4. International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations.

5. The transportation needs of nonmetropolitan areas (areas outside of MPO planning boundaries) through a process that includes consultation with local elected officials with jurisdiction over transportation.

6. Any metropolitan area plan developed pursuant to 23 U.S.C. 134 and Section 8 of the Federal Transit Act, 49 U.S.C. app. 1607.

7. Connection between metropolitan planning areas within the State and with metropolitan planning areas in other States.

8. Recreational travel and tourism;

9. Any State plan developed pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (and in addition to plans pursuant to the Coastal Zone Management Act).

10. Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities (including consideration of all transportation modes).

11. The overall social, economic, energy, and environmental effects of transportation decisions (including housing and community development effects and effects on the human, natural, and manmade environments).

12. Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel.

13. Methods to expand and enhance appropriate transit services and to increase the use of such services (including commuter rail).

14. The effect of transportation decisions on land use and land development, including the need for consistency between transportation decision-making and the provisions of all applicable short-range and long-range land use and development plans (analyses should include projections of economic, demographic, environmental protection, growth management and land use activities consistent with development goals and transportation demand projections).

15. Strategies for identifying and implementing transportation enhancements where appropriate throughout the State.

16. The use of innovative mechanisms for financing projects, including value-capture pricing, tolls, and congestion pricing.

17. Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, identification of those corridors for which action is most needed to prevent destruction or loss (including strategies for preventing loss of rights-of-way).

18. Long-range needs of the State transportation system for movement of persons and goods.

19. Methods to enhance the efficient movement of commercial motor vehicles.

20. The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavements.

21. The coordination of transportation plans and programs developed for metropolitan planning areas of the State under 23 U.S.C. 134 and Section 8 of the Federal Transit Act with the statewide transportation plans and programs developed under this subpart, and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems.

22. Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development.

23. The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

C. Metropolitan Planning

The planning process that has been required since the 1962 Highway Act has been greatly enhanced by ISTEA. Just like the statewide planning process, the metropolitan planning process must produce a long-range plan and transportation improvement program (TIP) that includes at least all projects that are to be Title 23- or FTA-funded and all others involving an FHWA or FTA approval action. Financial considerations, movement of environmental considerations into the planning process, etc., are emphasized in the ISTEA and in the implementing rules. The ISTEA and its rules contain a list of 15 factors that must be considered in the metropolitan planning process. The National Highway Designation Act of 1995 added a sixteenth item referred to as Recreational Travel and Tourism. These factors are listed below and in 23 CFR 450.316.

16 Factors Considered in the Metropolitan Planning Process

1. Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.

2. Consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives.

3. The need to relieve congestion and prevent congestion from occurring where it does not yet occur including:

(a) The consideration of congestion management strategies or actions which improve the mobility of people and goods in all phases of the planning process; and

(b) In Transportation Management Areas, a congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operation management strategies (e.g., various elements of Intelligent Transportation Systems) shall be developed in accordance with Section 450.320.

4. The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans. The analysis should include projections of metropolitan planning area economic, demographic, environmental protection, growth management, and land use activities consistent with metropolitan and local/central city development goals (community, economic, housing, etc.), and projections of potential transportation demands based on the interrelated level of activity in these areas.

5. Programming of expenditures for transportation enhancement activities as required under 23 U.S.C. 133.

6. The effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the source of funding (the analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demands and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing, and employment).

7. International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations (supporting technical efforts should provide an analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to, addressing interconnected transportation access and service needs of intermodal facilities).;

8. Connectivity of roads within metropolitan planning areas with roads outside of those areas;

9. Transportation needs identified through the use of the management systems required under 23 U.S.C. 303 (strategies identified under each management system will be analyzed during the development of the transportation plan, including its financial component, for possible inclusion in the metropolitan plan and TIP).

10. Preservation of rights-of-way for construction of future transportation projects, including future transportation corridors.

11. Enhancement of the efficient movement of freight.

12. The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement (operating and maintenance costs must be considered in analyzing transportation alternatives).

13. The overall social, economic, energy, and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on the human, natural and man-made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation related air quality problems in support of the requirements of 23 U.S.C. 109(h), and section 14 of the Federal Transit Act (49 U.S.C.1610), section 4(f) of the DOT Act (49 U.S.C. 303) and section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)).

14. Expansion, enhancement, and increased use of transit services.

15. Capital investments that would result in increased security in transit systems.

16. Tourism and recreation.

Long-range plans frame the State's long-range transportation goals and objectives for the State and/or region. Projects should be identified and programmed on the STIP and ultimately implemented. The projects implemented from the STIP should be in line with the goals and objectives identified in the long-range plan.

Projects are placed on the STIP or TIP through a cooperative process involving the State DOT, MPOs, and transit operators. Project priorities are established in the TIP development process and revised through procedures that meet the project selection stipulations in 23 U.S.C. 134 and 135 for the various funding categories. An implementing agency then advances projects from the approved STIP.

D. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

Plans and programs have the potential of being discriminatory in more subtle ways than projects. The major area of impact by plans and programs is through decisions which identify one or more planned improvements over other options. This consequence may result from procedures and processes that shut a group out of the process, or from the failure to consider the impacts of various transportation system alternatives and programs of projects on one or more identified groups. To the extent that plans and programs include proposed improvements with disproportionate beneficial impacts or reflect decision processes that exclude certain groups, the long-term agenda for

transportation improvements may be inappropriately biased. This could lead to project implementation that is inconsistent with nondiscrimination requirements. The actual impacts may only be experienced as projects are implemented. The planning process represents a comprehensive perspective from which to assess the potential consequences of developing and operating the transportation system.

Issue:

1. *Whether there is effective public involvement/ participation.*

Under ISTEA, planners and decisionmakers have a great deal of flexibility in shaping a State or metropolitan region's transportation system. Public involvement is a key source of input for these planning and programming decisions during the planning process.

Inadequate efforts to reach and involve minority groups during the planning process can result in denying minorities the opportunity to participate in public decisions on transportation systems and projects directly affecting them.

Public involvement in transportation planning and programming is performance based. This means that the FHWA-FTA joint planning regulations do not have detailed specifications as to how the public, including minorities, are to be involved in statewide or metropolitan planning. Instead, the Federal agencies give performance specifications for public involvement processes in the joint planning regulations (23 CFR 450, Sections 212 and 316). States and MPOs then develop detailed public involvement processes custom tailored for local conditions. The processes describe in detail how the public is provided the opportunity to be involved in the development and approval of transportation plans, State and MPO transportation improvement programs, major transportation investment studies, and the annual formal public meetings required in transportation management areas. The public participates in the development of the public involvement processes. At a minimum there is a 45-day public review period before adoption of public involvement approaches. The 45-day public review of draft public involvement processes should be advertised in minority media and minority comment sought through contact with minority spokespersons.

The FHWA and FTA field staff give technical assistance to MPOs and statewide planning units during development of their public involvement processes. Proactive approaches should provide adequate opportunity for minority involvement in the development of the processes. Statewide or metropolitan planners can achieve involvement through contacts with minority group leaders, focus group discussions, and workshop format public meetings. Focus groups can identify factors hindering participation by minorities, as well as explore their concerns in depth. Workshop meetings in minority communities can solicit ideas as to how minority persons would like to participate. The FHWA program staff advocate these activities best through contact with the metropolitan or statewide planning staff responsible for public involvement. Contact should be conducted in coordination with FHWA and FTA planning staff. Minority groups should be included in all aspects of the planning and programming process to support decisionmaking which is sensitive to community impacts and concerns.

Statewide and metropolitan planning staff responsible for public involvement should review the public involvement process operation in terms of local minority groups' participation. The public involvement effort should be sensitive to the following questions and information related to them.

- Are minority media appropriately included in all notification processes for public meetings or public review of agency documents?
- Are contacts with minority groups or leaders used appropriately to identify information needs and planning/programming issues of concern? Focus group discussions are also useful in exploring minority issues in depth.
- Is technical information available in formats and at places and times conducive to review by minorities? This may require provision of information to sight-impaired persons, non-English speakers, or to persons without extensive formal schooling.
- Are persons traditionally underserved by transportation systems such as low-income or minorities actively sought out for involvement? This active effort goes beyond merely offering a passive opportunity to comment to those who see a notice in a newspaper of general circulation. Often, it is necessary to translate bureaucratic documents into lay language and to describe why minorities and other groups should be interested in participation. Another effective approach is to use a neutral facilitator to encourage minority persons at public meetings to participate actively. Some MPOs have used minority citizens advisory committees to foster minority participation. Meetings held in minority areas in the evening encourage minority attendance at far higher levels than meetings in downtown offices during the day.
- Do meeting formats encourage participation by minorities or Americans with disabilities? Less formal meetings are far less intimidating, e.g., circulating at an open house and asking agency staff one-on-one about plans or programs. Informal discussions provide information tactfully to persons who read with difficulty. Contribution of comments in one-on-one settings facilitates commenting by all, including minorities.

Mitigation:

–Obtain participation from those most directly impacted;
–Contact minority community leaders, organizations, media;
–Consider availability of information (time, place, language, educational level);
–Conduct adequate number of meetings and hearings;
–Citizen advisory committees; and
–Appropriate meeting location, time, day of week, and atmosphere.

2. *Whether input from minority groups/persons is seriously considered.*

Failing to seriously consider comments by minority groups/persons may be discriminatory. When public agencies receive comments towards the end of the plan or TIP preparation, members of the public may feel that commenting is futile because the agency position is obvious. Consequently, comments tend to be very critical and unconstructive. On the agency side, there is commitment to the work invested in draft plans and programs. In responding to comments, agencies then tend to focus on explaining why public comments cannot be implemented. Collaborative task forces are effective ways to reassure public citizens that they can influence decisionmaking. The use of newsletters is also an effective medium to provide information to minority communities or groups on how past input has been considered and to continue soliciting their involvement.

Anticipatory and supportive review of the metropolitan and statewide public involvement processes can ensure Title VI compliance. There are three review processes required under the joint planning regulations:

- All MPOs and State DOTs must periodically review metropolitan or statewide public involvement processes to ensure that full and open access is provided. Civil rights staff may assist MPOs and State DOTs specifically with ways to address minority participation during these reviews.
- The FHWA and FTA conduct regular certification reviews in MPOs with populations in excess of 200,000. The certification reviews cover compliance with all provisions of the metropolitan planning regulations including public involvement. The FHWA and FTA review public involvement processes in other MPOs, as necessary. Civil rights staff may seek to participate in these reviews and may address minority participation.
- The FHWA and FTA make a planning finding on statewide planning processes including the public involvement process at least every 2 years. Title VI compliance is an identified part of the finding, and civil rights staff can provide input to the finding.

Mitigation:

–Actively demonstrate consideration of community input via newsletters, letters, leaflets, or whatever medium that will potentially reach the target group/audience.

3. *Whether there is coordination with Indian tribal governments in statewide metropolitan transportation planning.*

The projects which usually have the greatest potential for discriminatory impacts are those within metropolitan areas that involve large numbers of relocations and/or community disruption. However, some rural projects also have potential for discrimination, especially those impacting Native Americans. Furthermore, users of the system, rural or metropolitan, may be adversely impacted by its development, operation, and/or maintenance. Hence, it is very important that special efforts are made to reach out to those segments of society that have been traditionally underserved during the planning process to secure their input.

It is necessary for States and MPOs to provide opportunity for active involvement of Indian tribal governments in statewide and metropolitan transportation planning and programming. However, when planning for the involvement of Indian tribal governments, it is important for agency staff to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of tribal governments. Tribal governments should be actively solicited to participate in the development of metropolitan and State plans and programs as independent government bodies rather than as specific minority groups. The coordination activities with Indian tribal governments should reflect the following:

- Early involvement.
- Timely information exchange.
- Adequate notice.
- Consideration of input.

Mitigation:

–Establish better/effective relationships with Indian tribal governments.
–Training/knowledge of Indian tribal customs and laws that govern their various sovereign nations.

4. *Whether data collection/analysis is adequate.*

The information that is collected and analyzed during the planning process is critical to the development

of studies and the decisions that are to be reached during project development. It is essential that data collection and analysis reflect the metropolitan area and appropriately address:

- Community boundaries.
- Racial and ethnic make up.
- Income levels, property taxes, etc..
- Community services, schools, hospitals, shopping areas.

Mitigation:

Forms, surveys, and other data collection methods designed to obtain the following information:

–Description of community boundaries;

–Racial/ethnic makeup;

–Income levels, tax base; and

–Community services, schools, hospitals, shopping, public safety.

5. *Whether Social, Economic, and Environmental (SEE) effects and impacts have been identified and described.*

In order to ensure a balanced view of the SEE effects of the planning process, the utilization of a systematic interdisciplinary approach is recommended. The use of a coordinated effort by various disciplines working together can more easily identify all the SEE effects and propose possible mitigation options. The thrust of the overall decisionmaking process is making transportation decisions which are sensitive to and address community impacts.

Mitigation:

–Systematic interdisciplinary approach, and

–Public involvement techniques such as minority citizen advisory committees.

6. *Whether contracting opportunities for planning studies, corridor studies, or other work have been provided to minorities and women.*

Consultants may be hired to conduct planning studies, corridor studies, or other highly technical work. Efforts should be made to ensure that minority- and women-owned businesses have opportunities to bid on and undertake these studies.

Mitigation:

–Outreach efforts to minority and women-owned businesses and minority institutions of higher education.

II. THE PROJECT DEVELOPMENT PROCESS

A. General

The term project development refers to the process of a highway or transit project in which the environmental study necessary for the National Environmental Policy Act (NEPA) compliance is performed. The NEPA of 1969 is the foundation of the project development process as described in 23 CFR 771, the FHWA/FTA joint environmental regulation. The NEPA requires that all Federal agencies examine and disclose the possible and likely effects of their actions on the human environment. The FHWA uses the term human environment in its broadest sense to include neighborhoods, communities, and natural ecosystems. Effects on the human environment similarly include a broad array of impacts including direct physical effects to air, water, and land as well as less quantifiable effects, such as impacts to cultural resources, community life, and land use patterns.

For highway projects, the State Departments of Transportation perform this analysis and prepare an environmental document with the FHWA's assistance and oversight. Final approval of the process is the responsibility of the FHWA. Environmental compliance requires consideration of all possible SEE effects of a proposed project and seeks to ensure that the decisions made are in the best public interest. During this process, data and information on project alternatives and related environmental effects are collected and analyzed. The goal of this process is to develop a complete understanding of the existing and future environmental conditions and the possible effects of a proposed project in order to make the best project decision in terms of meeting the intended transportation need, the goals of an area or community, and for protection and enhancement of the environment. Often the project decision requires that the project be modified to avoid or minimize impacts to sensitive resources identified during the environmental studies. At other times, mitigation measures are made part of the proposal. Furthermore, it is FHWA policy to seek opportunities to go beyond traditional mitigation and implement innovative enhancement measures to help the project fit harmoniously within the community and the natural environs.

Consideration of existing environmental conditions and the potential for a proposed project to negatively or positively affect or impact the human environment actually begins much earlier with the statewide and metropolitan planning processes. (See discussion in previous section relating to planning). The project development process begins where planning ends and is continued through all other developmental phases, such as, final design, and right-of-way acquisition.

Consideration of environmental effects is necessary for any project that proposes to use Federal funds, or which could require another action by the Administration (such as an Interstate system access approval) regardless of the size, type, cost, or purpose of the project. Different levels of environmental documentation and processing are available to satisfy the project development and NEPA compliance process for a particular project. The level of documentation or process selected depends on the significance of the environmental impacts which are directly, or indirectly the result of a project. Documentation and processing options are referred to as "classes of actions" in the FHWA/FTA environmental regulation. They are Environmental Impact Statements (Class I), Categorical Exclusions (Class II), and Environmental Assessments (Class III).

B. Environmental Impact Statement (EIS)

An EIS is prepared when it is determined through the planning process; environmental studies, public involvement, and coordination with other Federal, State, and local agencies that the project will have a significant impact on the environment. An EIS is typically prepared for new freeway projects and for highways of four or more lanes on a new location. The EIS process is the most involved, detailed, demanding, and formal type of process and document. It is also the least commonly used processing option for NEPA compliance in the project development process. The EIS requires a detailed and thorough consideration of all reasonable alternatives, including the no-build alternative; indepth analysis of the SEE effects that are associated with the alternatives; and involvement of the public and other Federal, State, and local agencies, not only in the process, but in the decisions related to the selection of a preferred alternative. The EIS process requires the preparation of a Notice of Intent (NOI), a Draft Environmental Impact Statement (DEIS), a Final Environmental Impact Statement (FEIS), and a Record of Decision (ROD).

The NOI is a notice published in the Federal Register that indicates that the FHWA is proposing to prepare and EIS. The NOI summarizes the purpose of the project, the range of alternative solutions to be studied, an known impacts or issues. The NOI is issued as part of a process, known as scoping, that attempts to identify issues, impacts, interests, alternatives, and analytical methods to be employed. Scoping involves engaging members of the general public, interested organizations, and affected agencies early in the project development process, so that issues can be identified and addressed systematically as the DEIS is being developed.

The DEIS should identify the location of the project, the makeup of the population and other characteristics of the affected neighborhoods or communities, the estimated number of residences and businesses that will be affected, and other potential and probable impacts for each alternative being considered. The DEIS should also present a detailed and thorough discussion of the analysis of all reasonable alternatives and the related SEE impacts and outline all measures to mitigate any adverse impacts.

The FEIS identifies the preferred alternative, provides a basis for comparison of the various alternatives considered, and describes mitigation measures likely to be implemented. After the FEIS has been available for public comment for at least 30 days, the FHWA issues a ROD that explains the basis for the decision and describes any commitments that will be adhered to in implementing the project. The adoption of the FEIS and signing of the ROD by FHWA constitutes approval of the location and major design features. After the ROD is signed, the State may be authorized to proceed with development of the final engineering design plans and specifications; acquire rights-of-way; and advertise the project for receipt of construction bids.

C. Categorical Exclusion (CE)

The CE is probably the most commonly used environmental processing option. The CE is not an environmental document, but a determination that a project will have no significant individual or cumulative SEE impacts. Therefore, there is no requirement for the preparation of an environmental document (EA or EIS), although environmental studies may be undertaken to support that the CE determination is proper. A list of project types that have been determined to meet the CE criteria and to have no significant impacts are provided in 23 CFR 771.117(c) and (d). Some of these activities, for example, are: utility installations; bicycle and pedestrian lanes, paths and facilities; installation of fencing, signs, and pavement markings; small passenger shelters; traffic signals; railroad warning devices; emergency repairs; improvements to rest areas and truck weigh stations; reconstruction or modification of an existing bridge structure on essentially the same alignment or location; minor modifications of an existing highway; and highway safety or traffic operation improvement projects.

D. Environmental Assessment (EA)

The EA is prepared for projects when the significance of the impacts are not known or clearly established. Projects that are not categorical exclusions and do not obviously require an EIS will require the preparation of an EA to determine the significance of the impacts and whether an EIS should be prepared. The amount of information and degree of analysis that

should be performed and included in an EA will depend on the size, type, location, number of reasonable alternatives, potential for significant impacts, and other factors of the project.

The EA should identify the location of the project, the makeup of the population and other characteristics of the affected neighborhoods or communities, the estimated number of residences and businesses that will be affected, and other potential and probable impacts for each alternative being considered. The EA may only require that one or two alternatives be considered, including the no-build alternative.

If the analysis of the SEE impacts, along with appropriate interagency coordination and public involvement, indicate that the action will not have any direct, indirect, or cumulative significant impacts, a Finding of No Significant Impact (FONSI) is prepared. The FONSI will finalize the EA process, document the decisions, and explain why the impacts are not considered to be significant. However, if it appears that there will be significant impacts, a NOI will be published in the *Federal Register* and a DEIS will be prepared.

In the cases where an EA is prepared, the preferred alternative may or may not be indicated as part of the analysis. The EA usually will focus the analysis on a preferred alternative but defer selection until it is determined whether or not an EIS will be needed.

All of the above environmental documents require FHWA concurrence and adoption.

E. Selection

A preferred alternative will be selected from the range of alternatives presented in the DEIS or EA. The decision and selection of a preferred alternative should be based on how well the alternative will solve the transportation problems and meet the stated purpose and need identified and defined in the planning process. The potential for avoiding and minimizing SEE impacts that are likely to result from the implementation of a given alternative, must be considered for any proposed alternative regardless of its ability to satisfy the purpose and need or meet the transportation goals of a given area.

The preferred alternative will usually not be identified in the DEIS, and selection of a preferred alternative will be deferred until the results of the analysis are completely understood and the public has had an opportunity to comment. The decision will be documented in the FEIS.

Approval of the FEIS and subsequent ROD, or preparation of a FONSI by FHWA constitutes acceptance of the general project location and major design elements as described in the environmental documents. After completion of the project development process, the State may be authorized to proceed with development of the final engineering design plans and specifications, acquire rights-of-way and advertise the project for receipt of construction bids.

F. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

The environmental study of project alternatives and impacts must include the consideration of mitigation measures for unavoidable impacts. Mitigation measures and other agreements that are made as part of the decision-making process must be documented and implemented. All projects and environmental studies, whether a CE, EA, or EIS, must include mitigation for environmental impacts regardless of significance. Environmental commitments, such as noise barriers, joint use facilities, replacement housing and others should be monitored to assure that these mitigative measures are included in the design plans, and the construction of the project.

Mitigation measures are provided to minimize the adverse impacts of a project. They may be identified in general terms during the planning process. Specific measures are identified in the Environmental Impact Statement during the project development phase and should be monitored during the remaining phases of the highway process. Some of mitigative measures are as follows:

- Restoration of circulation and pedestrian patterns for disrupted communities.
- Provision of relocation assistance and advisory services, replacement housing and payments for moving displaced families and businesses.
- Provision for maximum retention of existing trees and shrubs included in grading plans for ramp areas and along right-of-way.
- Provision for last resort housing.
- Provision of traffic control.
- Improvements in traffic signalization and street lighting.
- Establishment of priorities for employment, training and contracting opportunities for residents of the affected community.
- Provision of noise barriers and buffer zones.
- Provision of landscaping.
- Functional replacement of publicly-owned facilities displaced by the project.
- Coordination with community development agencies to implement jointly funded initiatives.

Issues:

1. *Whether public involvement was adequately solicited and considered.*

The public involvement performance specifications appear in the FHWA regulations implementing the NEPA process (23 CFR 771.111(h)). The FHWA approves all State public involvement/public hearing procedures. The FTA has a different public involvement process under 23 CFR 771.111(i). Currently, the two agencies are discussing the possibility of revising the procedures to unify their environmental regulations and to include public involvement. The chief difference between public involvement during planning/programming and during project development is that a public hearing or the opportunity for a public hearing is required for certain projects as described in the regulations. Public hearings are scheduled late in project development just after release of the draft environmental impact statement or environmental assessment. This is before the decision-making reflected in the final environmental documents.

Just as in the planning and programming processes, the FHWA staff gives technical assistance to State highway agencies SHA's during development of their public involvement processes. Approaches to ensure adequate minority participation are similar to those discussed in public involvement processes in statewide and metropolitan planning, with the exception that public involvement is not required during development of public involvement procedures under the NEPA process.

The required public hearing (or opportunity for a public hearing) has often focused too much attention on a single public involvement event. Many SHA's agencies have supplemented hearings with public meetings; however, meeting formats tended to be formal like a public hearing. Public involvement is far more effective if it is scheduled early and continuously during project development and contact with the public is kept informal. Many SHA's now use the open forum public hearing format in which people gather information through an informal open house and make comments for the record one-on-one to a recorder. Under this format, a far higher percentage of hearing attendees make comments than under the traditional public hearing format.

Public involvement in project development is part of the NEPA process. Under ISTEA, FHWA retains oversight of the environmental process for all Federally-funded highway projects, including Surface Transportation Program projects. Division staff periodically observe selected public meetings and public hearings, particularly for controversial projects. Civil rights staff may also observe public meetings and public hearings. The section on Proactive Approaches under Public Involvement Processes in Statewide and Metropolitan Planning outlines specific items to observe. Observation of early meetings for projects with impacts in minority areas is more effective since technical assistance to the SHA on minority participation can then affect subsequent public involvement activities. A public hearing is very late in the project development process to discover that minority participation is low to non-existent.

Some division offices regularly conduct program reviews, including reviews of public involvement. Civil rights staff should provide themselves with the opportunity to participate in such reviews.

Mitigation:

–Develop a public involvement program, during the planning stage and continue during the project development process, to meet the needs of a particular community (e.g., minority, disabled, elderly).

–Use newsletters, speakers bureaus, and media to provide a consistent flow of information on project development status.

–Provide opportunity for public hearing after release of the DEIS or EA.

–Focus outreach on appropriate community to ensure involvement.

–Use informal contact which is more effective than a formal atmosphere for a public hearing.

–Experiment with informal open forum public hearing formats; allowing one-on-one comments to a recorder.

2. *Whether SEE impacts were adequately identified.*

The treatment of impacts to individuals, neighborhoods, and communities in environmental documents sometimes does not allow decisionmakers to focus on the issues of greatest concern to members of the community. As a result, avoidance, minimization, and mitigation strategies are not developed until after political action, administrative complaints, or lawsuits have focused attention and urgency on the real issues. Effective public involvement and agency coordination efforts can identify these concerns prior to the preparation of a DEIS or EA, so that appropriate analysis can be undertaken to assess the severity of the impacts and the potential for mitigation. The FHWA's 1996 handbook, *Community Impact Assessment: A Quick Reference for Transportation,* provides a framework for evaluating impacts to people.

Mitigation:

–Identify beneficial impacts such as increased access to facilities/services and upgrading of affected communities.

–Identify adverse impacts such as:

- Diminished access to facilities/services;
- Disruption of community cohesion;
- Disruption of people, businesses, and farms;
- Changes in tax base and property values
- Traffic;
- Noise;
- Relocation of residences and businesses; and
- Diminished quality of the water, air, or natural environment used by residents.

–Develop mitigation and enhancement strategies based on public involvement and agency coordination.

3. *Whether the potential for disproportionate or discriminatory impacts has been adequately addressed.*

Project teams sometimes think that because there is no discriminatory intent on the highway agency's part, it is self evident that impacts of the various alternatives under consideration are not discriminatory or do not fall disproportionately on a particular segment of society. This can be a faulty assumption on some projects–an assumption that can lead to misunderstandings and mistrust. Therefore, it is important to be aware of the signs that a potentially discriminatory situation might exist. Such signs include:

- Demographics profiles that show whether the impacted population has a concentration of minority individuals;
- A history of impacts from governmental projects on a particular minority group or community in the project area. This might include not just highways projects but other governmental projects as well; and
- Complaints or assertions of disproportionate impacts that are unveiled during public involvement activities.

Mitigation:

–Community impact assessments should include compilation and analysis of demographic data, including breakdowns by characteristics protected under Title VI and related statutes;

–The project team should become aware of other actions that have occurred in the impacted area and of how these actions were perceived by members of the community;

–The project team should effectively utilize public involvement techniques to identify issues of discriminatory potential as early as possible in the project development process; and

–The project team should study avoidance, minimization, mitigation, and enhancement strategies, working with the affected community on the specifics as a definite proposal begins to take shape.

III. RIGHT-OF-WAY

A. General

While the project development phase of the highway process is in progress, the right-of-way phase is initiated. Title VI requirements of nondiscrimination apply during all phases of the right-of-way process (See 49 CFR, Part 21 in Appendix C). Certain activities, such as preparation of an abstract of title and consideration of hardship and protective buying, may be underway while the environmental documents are being processed. The design work must be finished and, if people are affected, relocation planning must be completed before proceeding with actions which will cause displacement. Right-of-way functional activities include appraisal of all properties to be purchased, negotiation with the property owners, acquisition of the property, management of the property acquired, relocation of people and businesses, and the adjustment of utilities. Replacement housing must be made available to all displaced persons before FHWA authorizes advertising for construction bids. After right-of-way has been obtained and upon completion of the project development phase, the construction phase may begin.

B. Appraisals

Right-of-way activity involves appraisal of properties that are impacted by highway construction. The appraisal provides the basis for payment to a property owner.

The appraiser estimates the fair market value of real property on the basis of objective information and analysis. Objectivity requires that data collection, analysis, and reconciliation be conducted in an unbiased manner.

The estimate of fair market value must reflect market activity. It represents the price that a property would sell for under typical circumstances. The appraisal presumes that no undue pressure exists for either the buyer or seller.

The appraisal examines and considers all legal and relevant issues that may influence the value of a particular property. The appraisal is prepared by an appraiser who must act independently and impartially.

Appraisal activity must comply with Title VI, Nondiscrimination in Federally Assisted Programs and Title VII, Equal Employment Opportunity when Federal funds are used for a highway project.

When contract appraisers are hired, the contracting and assignment process must be done without restriction as to race, color, national origin, sex, age, or disability. Available and qualified minority and/or disadvantaged appraisers must be included in the hiring process. Excessive qualifications standards may impose unacceptable barriers.

Information gathering, analysis and reporting must be objective, without regard to race, color, national origin, sex, age, or disability.

Some examples of how appraisal reports may reflect bias are by including unfounded statements, inappropriate data, prejudicial analysis or misleading conclusions. Such practices are unethical and illegal. The same concerns may apply to appraisal review reports.

C. Appraiser Qualifications

Each SHA has minimum appraisal education and experience requirements. All States have State appraiser certification and licensing. In some States these may be mandatory, in others, voluntary. Agencies may prequalify appraisers for inclusion on an approved list according to minimum requirements.

Outreach activities such as on-the-job training and subcontracting through qualified firms may be encouraged for Disadvantaged Business Enterprises (DBEs) that cannot meet the qualification requirements.

D. Acquisition

Acquisition is one of the most sensitive parts of an Agency's effort in the construction of a highway since it involves direct personal contact with the public and may have a substantial impact on people's lives.

To complete the acquisition process, an agency must fulfill the following requirements by law:

1. Make a prompt written offer to the property owner for the full amount the agency believes is just compensation.

2. Provide the owner with the offer in a written statement that must include the amount established by the agency as just compensation along with a summary of the basis for the offer.

3. Before requiring the property owner to surrender possession of their property, the agency shall pay the agreed purchase price or deposit with the court, for the benefit of the owner, an amount no less than the Agency's approved appraisal of the fair market value or the court award of compensation determined in the condemnation proceeding for the property.

4. Offer to acquire any uneconomic remnants.

The offers to purchase property are established by appraisals and are generally made in person. The agency must make every reasonable effort to acquire the property by negotiation. The owner must be given reasonable opportunity to consider the Agency's offer and to present any information that is considered relevant to determining the property's value.

When an agreement on the sale of the property cannot be reached, the agency can institute formal condemnation proceedings to acquire the property by exercising the power of eminent domain.

After a settlement has been reached with the property owner either through negotiation or condemnation, the agency prepares the necessary documents required by law for transferring the title to close the transaction. This function is handled by the Agency's staff attorney, fee attorney, or other qualified person. The transfer may require the payment of some incidental expenses by the owner. These incidental expenses are generally reimbursable by the agency.

E. Relocation

To meet Title VI requirements, all relocation services and payments must be provided without discrimination. In determining the location of replacement properties made available to the displacee, the State must also ensure that the selection process is conducted without discrimination. Contracts for providing relocation services must contain the provisions of Appendix A of the Title VI Assurances.

Persons who are required to move from their homes for a Federal or federally-assisted project must be provided advisory assistance by State Highway Agencies in relocating to decent, safe, and sanitary replacement dwellings. Owners and tenants of displaced businesses, farms, and non-profit organizations are to be provided similar assistance in obtaining suitable replacement properties.

Advisory assistance includes those measures and services necessary to determine the relocation needs and preferences of persons displaced and an explanation of the relocation payments and other assistance for which such persons may be eligible. Assistance also includes providing current and continuous information on the availability, purchase prices, and rental costs of comparable dwellings or suitable replacement properties for businesses, farms or non-profit organizations.

Relocation benefits provided to displacees includes the provision of relocation payments. Examples of such payments include replacement housing payments, rental supplements, moving cost payments, and business reestablishment expense reimbursement.

When comparable replacement housing is not available, or is not available within the financial means of the person displaced, the State may provide such hous-

ing under Last Resort Housing provisions. Methods of providing housing under this provision may include ,but are not limited to, the following:

1. A replacement housing payment in excess of statutory limits.
2. Rehabilitation of an existing replacement dwelling.
3. Construction of a new replacement dwelling.
4. Providing a direct loan.
5. Purchase of land and/or the replacement dwelling by the displacing agency and a subsequent sale or lease to the displaced person.
6. Removal of barriers to handicapped displacees.
7. Where cost effective, change in status of displacee from tenant to owner.

In addition to prohibitions against discrimination, the relocation regulations also provide affirmative provisions to ensure equal treatment of displacees and to ensure that assistance will be given to those in special need. Examples of these provisions are as follows:

- When possible, without the expenditure of a larger payment than is necessary to relocate to comparable housing, minorities will be given the opportunity to relocate to replacement dwellings not located in areas of minority concentration, that are within their financial means.
- All persons, especially the elderly and disabled ,shall be offered transportation to inspect housing to which they are referred.

F. Property Management

Property management refers to managing and administering property acquired for highway purposes so that the public interest is served. This property is often called highway airspace and is defined as that space located above, at, or below the highway's established guideline, lying within the approved right-of-way limits. Lands acquired for a highway project that are no longer needed for highway or transportation use are called excess property.

Property management involves a variety of responsibilities that include the rental and/or clearance of improvements from the highway right-of-way, access control to the highway facility, the lease of highway airspace, and the disposal of excess property.

The Federal policies for administering the property management program apply to all State and political subdivisions that manage highway real property acquired with Federal funds.

G. Special Right-of-Way Program Areas

There are several special program areas where the Office of Real Estate Services has responsibilities. These programs are the Outdoor Advertising Controls, Functional Replacement, and Right-of-Way Research.

The Outdoor Advertising program involves the control of billboard signs along controlled highways outside of the highway limits. States are responsible for the removal of illegal and nonconforming signs as determined by State law.

The Functional Replacement program was developed to provide a method of acquiring and compensating for publicly owned property providing essential public service. Through this program publicly owned land and/or improvements may be functionally replaced with a facility of equivalent functional utility to that acquired for the highway project. Examples of the public properties replaced under this program are schools, police and fire stations, and local parks.

H. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

Appraisal/Appraisal Review Issues:

1. Whether there is diversification in the use of appraisers.

   Mitigation: Expand the pool of qualified fee appraisers via aggressive outreach.

2. Whether the selection of comparable sales and rental properties reflects discrimination and stereotypes.

   Mitigation: Maximize quality of appraisal reviews (training, selection of fee/staff appraisers, qualified review appraisers, etc.).

3. Whether adjustments to the comparable sales and rental properties reflect discrimination.

   Mitigation: Same as above.

4. Whether there is consistency in the determination of severance/consequential damages.

   Mitigation: Same as above.

Negotiation/Acquisition Issues:

1. Whether every effort was made to negotiate for required property before filing condemnation.

   Mitigation: Ensure compliance with regulatory requirements prior to institution of condemnation proceedings.

2. Whether property owners were fully informed of their rights to receive just compensation for their property before any donation of such property.

   Mitigation: Ensure the parcel record documents the basis for donations and notification of entitlement to just compensation.

3. Whether the offer was made for the full amount of the review appraiser's determination of compensation.

   Mitigation: Ensure consistency in the implementation of negotiation procedures.

4. Whether there is consistency in the application of minimum payment policy.

   Mitigation: Ensure that policy is applied uniformly from project to project.

Relocation Advisory Assistance and Payment Issues:

1. Whether relocation advisory assistance was provided equitably and without discrimination to displaced individuals.

   Mitigation: Ensure diversification of relocation staff; obtain feedback from displaced individuals; conduct appropriate needs assessment; conduct self evaluations, etc.

2. Whether the selection of comparable replacement housing is fair, consistent, and without discrimination.

   Mitigation: Same as above.

3. Whether decent, safe, and sanitary inspection standards are consistently applied.

   Mitigation: Training; diversification of staff; self evaluations, etc.

4. Adequacy of personal contacts.

   Mitigation: Ensure diversification of relocation staff; appropriate needs assessment; sensitivity training; self evaluations, etc.

Property Management Issues:

1. Whether the determination of rent amounts is equitable.

   Mitigation: Diversification of staff; training; self evaluations, etc.

2. Whether the procurement of bids provides equal opportunity.

   Mitigation: Aggressive outreach; removal of barriers, etc.

3. Whether the maintenance of rental properties on projects is adequate and consistently performed for all renters.

   Mitigation: Self evaluations; tenant feedback; referral services, etc.

IV. CONSTRUCTION

A. FHWA Approval and Oversight

In the past, our FHWA field offices were traditionally closely involved in the development, approval, and oversight of Federal-aid construction projects. However, with the gradual completion of the Interstate system and the gradual downsizing of our agency, beginning in the early 1980's, oversight and approval actions were becoming more and more our grant recipient's direct responsibility. Prior to the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991, FHWA had already established mechanisms which began shifting this responsibility. These mechanisms included the use of certification acceptance plans, secondary road plans, and various other streamlining and consolidation efforts to enhance Federal-aid program delivery. After ISTEA amended 23 U.S.C., the Federal-aid construction program responsibility was further shifted by giving State highway agencies (SHA) increased abilities to be exempt from FHWA oversight, approval, and regulatory compliance on specific categories of Federal-aid projects. However, any waiver on regulatory policies were, in general, not applicable when they pertained to Non-Title 23 matters (i.e., DBE program, labor compliance, Equal Employment Opportunity (EEO) provisions, etc.), or pertained to Title 23 provisions which involved the competitive bidding process.

States, under ISTEA, now have several options through which they may exempt themselves from FHWA oversight and/or required FHWA approval actions. Under these various options the SHA is essentially acting on behalf of the FHWA, adhering to the many requirements and performing the functions that were once the direct responsibility of our division field offices. The following are the options available to the States and a brief description of each:

- *Certification Acceptance (CA):* This option requires the State to establish and follow procedures to administer the Federal-aid program through an approved CA plan. These plans must be reviewed and approved by FHWA and must comply with all Title 23 and non-Title 23 statutory requirements. If the CA plan does not address a particular pertinent FHWA policy, then the State must follow established FHWA policy.

- *Exempted National Highway System (NHS) Projects:* This option is different from CA in that States must follow all applicable statutes, regulations, and policies. However, this option is similar to CA in that many of the approval actions by FHWA are delegated to the States.
- *Exempted Non-NHS Projects:* This option allows States to follow their own policies or procedures, unless they pertain to non-Title 23 requirements or Title 23 requirements involving the competitive bidding process. If State policies or procedures do not address a particular pertinent FHWA policy, then the State must follow established FHWA policy.

B. Project Development

The creation of a Federal-aid construction project begins with field reviews, need assessments, planning, and preliminary engineering. Once a project is conceived in general scope, work begins on the preliminary design to establish appropriate parameters to address the need or problem within established constraints. These constraints can be functional geometric, environmental, as well as budgetary. Once the design parameters have been finalized the SHA begins preparation of the plans, specifications, and estimate (PS&E) for the project.

C. Federal-aid Contract Provisions

Federal-aid construction contracts contain required contract provisions, as stipulated in Form FHWA-1273. The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all contracts as well as appropriate subcontracts and purchase orders. These required contract provisions contain requirements that prohibit discrimination; provide for EEO; require payment of predetermined minimum wages; stipulate subcontracting requirements and limitations; mandate compliance with health and safety standards at the work place, and require compliance with all appropriate environmental regulations among the noted provisions. The FHWA-1273 also contains a number of certification/provision requirements including non-collusion, lobbying, and suspension/debarment.

In addition Federal-aid contracts must also contain Buy America, DBE special program provisions and, unless exempted by State statute or promulgated by its own developed provision, must include a standardized changed-site condition clause. On contracts that stipulate specific DBE goals, the successful bidder must either meet the goals or demonstrate that he/she has made a good faith effort to meet them. When there are no DBE goals specified, the contractor may solicit bids from any number of subcontractors, but is required to provide DBEs the maximum opportunity to participate in subcontract and procurement bid process whenever possible. Also on selected Federal-aid contracts, SHAs can have provisions for on-the-job (OJT) training and Indian preference.

D. Project Authorization and Advertisement

Competitive bidding by private businesses (i.e. contractors) is basic to the Federal-aid highway construction program. The intent of this policy is to eliminate the unfair advantage that public agencies may have relative to available resources, to provide equal economic opportunity for all qualified contractors, and to permit projects to be completed at the lowest possible cost.

A project may only be advertised for bids from prospective contractors after PS&E approval and project authorization to proceed to the construction phase. This is typically documented through the preparation of an FHWA Form-1240 (Letter of Authorization) or adopted equivalent. This authorization to proceed is based on the following assurances:

- That all right-of-way clearances, utility, and railroad work either have been completed, or that arrangements have been made for coordination during construction,
- That all matters involving the relocation of individuals and families when such circumstances exist have been properly addressed,
- That all the requirements pertaining to the public involvement/hearing process and the location and design approval process have been satisfactorily addressed,
- That where applicable, required area-wide agency reviews, requirements and issues (i.e., clearinghouses) have been accomplished appropriately, completed, and/or resolved.

All SHA advertising policies and practices must assure free and open competition. This also relates to requirements and practices involving the following:

- Licensing, bonding, prequalification and bidding
- Title VI, nondiscrimination assurances with regard to age, race, color, sex, national origin or disability.

Contracts are normally advertised in newspapers, trade journals, or other appropriate media to reach a wide audience, attract greater attention, and enhance competition. Normally the minimum advertisement period is 3 weeks. However, there can be exceptions when circumstances warrant shorter periods. This period can also be longer for more complex projects, especially those with scheduled pre-bid meetings to

address prospective contractors' concerns and questions.

Addendums to an advertised contract may be issued to correct plan and/or specification errors or to append more current contract document items such as revised wage rate schedules, certified DBE firm lists, etc. The advertisment period can be extended for up to 10 calendar days in order to give prospective contractors time to receive addendums, review project changes and additions, and to correct/change their bid submissions.

E. Bid Opening

The contractors submit sealed bids which are opened at bid opening, often referred to as the "bid letting." The bid opening is a public forum for the announcement of all bids, and is the point in time where the bids are opened and read aloud. The bid opening is also the time given in the advertisement period as the last moment that bids can be accepted. For the bidder, the reading of the bids confirms whether his/her bid is successful. For the SHA and the general public, this forum establishes the apparent low bidder and the range of bids received for the given project.

Federal policy requires that all bids be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced. Reasons for not reading a bid will either be the result of a bid itself being non-responsive, often called "irregular," or a bidder is determined to be not responsible.

The SHAs bidding documents should clearly identify those requirements which the bidder must assure are complied with to make the bid responsive. Reasons for finding a bidder not responsible may include:

- Failure to meet the SHAs qualification requirements, or
- Suspension or debarment by a State/Federal agency.

A successful bid opening should identify the responsible bidder submitting the apparent lowest, responsive bid.

F. Bonding, Licensing & Prequalification

Most States require that the contractors submit a bond (i.e., Bid Bond, Payment Bond, Performance Bond, etc.) or other security with the bid. Upon submission of bid, the contractor provides a certified check or negotiable instrument which ensures the contractual document will be executed in the specified time.

Generally, contractor qualification, whether prequalification or post qualification, consists of an evaluation of the contractor's experience, personnel, equipment, financial resources, and performance record. If a State has a prequalification requirement, the evaluation is normally performed annually. Once deemed prequalified, a contractor may be further rated for contract value in a given classification, such as general highway construction, grading and minor structures, grading and paving, or miscellaneous specialty items. The information required for prequalification may be extensive and can also serve as a basis for subsequent bid rigging investigations.

The FHWA does not require the SHAs to implement procedures or requirements for prequalification, qualification, bonding, or licensing, on Federal-aid projects. However, if the SHAs have such procedures or requirements, they must conform to the FHWA competitive bidding policy.

All proposed procedures/requirements/changes are to be submitted to FHWA for advance approval. No procedure/requirement may operate to restrict competition, prevent submission of a bid, or prohibit consideration of a submitted bid from a responsible contractor, whether resident or non-resident. Thus the requirements must be uniformly applied to all the contractors (including DBE contractors).

No contractor is to be required to obtain a license before a submission of a bid or before the bid may be considered for award of a contract. The SHA may require licensing of contractors after the bids are opened, if the requirement is consistent with competitive bidding principles.

In regard to prequalification of contractors, such requirements may be imposed as a condition for submission of a bid or award of contract only if there is sufficient time between the date of advertising and the date of the bid opening to allow a bidder to obtain the required prequalification rating.

G. Bid Analysis and Contract Award

The engineer's estimate should be accurate and credible, based on realistic current data, and in general, kept confidential. The SHA should have written procedures for justifying the award of a contract, or rejection of the bids, when the low bid appears excessive. Bid analysis is the process performed to justify the award or rejection of bids.

A proper bid analysis better assures that good competition and the lowest possible cost were received and ensures that funds are being used in the most effective manner. The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of

prices, other factors that a bid analysis may consider include:

- Number of bids
- Distribution or range of the bids
- Geographic location of the bidders
- Urgency of the project
- Unbalancing of bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences.

Not all these factors need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an unreasonable amount, a more thorough analysis should be undertaken to justify award of the contract. In order to justify award of a contract, a bid analysis should provide answers to the following questions:

- Was competition good?
- Is the project essential and would deferral be contrary to public interest?
- Would re-advertisement result in higher bids?
- Is there an error in the engineer's estimate?

Sometime after the bid opening, an award meeting is scheduled to formalize a contract award determination. An adequate time frame is required to get the bid tabulations reproduced and distributed to the appropriate personnel within the SHA and FHWA, as applicable, for review and award concurrence determinations prior to the actual award meeting. States vary this established time frame to award the contract after opening of bids. However, awards shall be within a predetermined time limit established by the SHA and subject to prior concurrence by FHWA. Usually this time limit is specified in the State's standard specifications.

During the award meeting the projects may be awarded, rejected, or held for further details and study. If all bids are rejected, the delay is added to the project by pushing it back to the re-advertisement stage or beyond if other changes in the project plans and documents need to be addressed.

FHWA requires a concurrence in award to a responsible bidder with the lowest responsive bid. FHWA further requires the concurrence to be formally documented in writing and include any qualifying statements concerning the concurrence. Concurrence is also required in the rejection of the low bidder or the rejection of all bidders.

H. Notice of Award and Execution of the Contract

After the award is made, the contractor is advised by a "Notice of Award." A copy of this award is sent to the appropriate SHA field office in order that appropriate plans for staffing, supervision, and project control can be arranged. The Notice of Award, the contract, and the contracting bonding forms are sent to the contractor for his/her surety company. These executed documents are to be returned, usually within 15 to 30 calendar days from the date of award, including all evidence of appropriate insurance. If the contractor fails to execute the contract and file a performance bond within this allotted timeframe, a cause for annulment of the award has been established. The proposal guaranty is forfeited to cover liquidated damages. The award may now be made to the next lowest bidder or re-advertised as determined by the SHA and concurred by FHWA.

Immediately following the award, the appropriate SHA field offices can schedule a preconstruction conference. This conference is typically scheduled 30 calendar days after the award date, which is usually 10 extra calendar days after the Notice of Award period. The purpose of this conference is to permit advance control planning by the State, to permit discussion of known and potential major problems before they occur, to let the contractor know the scope and status of agreements, to analyze agreements based on proposed operations, to outline the sequence of operations, to coordinate the efforts and schedules of the agencies concerned, and to introduce department personnel who will be assigned to the project. The contractor, his/her superintendent, or his/her authorized agent are to be present at this conference and are to present the proposed schedule of work, list of proposed subcontractors, if any, and a list of suppliers from whom materials are anticipated to be purchased. Subcontractors may be invited to attend the reconstruction conference.

Current FHWA policy requires that the prime contractor perform at least 30 percent of contract work with its own organization. The SHAs may be more restrictive and specify a higher percentage if they so desire. The FHWA further requires each subcontract to be approved in writing by the SHA. This allows some control to screen subcontractors that are not qualified or that may be ineligible (e.g., debarred). It also assures that all Federal and State requirements will be included in the subcontract.

At the preconstruction conference or shortly thereafter a "Notice to Proceed" is issued to the contractor once all requirements and forms have been properly completed by the contractor. This notice stipulates the date on which it is expected the contractor will begin the construction and from which date the contract time will be charged.

I. Construction Project Administration and Project Monitoring

Contract time, as well as the construction work itself, usually begins 10 to 30 calendar days after the date of the preconstruction conference. This time is given to the contractor in order to allow him/her adequate time to mobilize equipment, materials, and personnel. The time frame can be longer depending on the nature of the project, particularly if time is needed to order specialty/custom-manufactured materials.

Once contract time has started, progress payments can start being received as early as two weeks to one month into the project's construction. However, payments received are a function of the value of work completed.

Title 23, Section 302 requires the SHAs to be suitably equipped and organized to carry out the Federal-aid program. Projects are required to be completed in accordance with approved plans and specifications, thereby assigning responsibility to the SHA. Therefore, it is the responsibility of the SHA to administer a Federal-aid construction contract.

Adequate construction personnel should be provided to ensure that quality highways are constructed. State project engineers and inspecting technicians monitor the construction work to ensure compliance with the contract plans and specifications. The monitoring work also includes the sampling and testing of all materials for acceptance, as well as the monitoring and enforcement of required mitigative measures included in the environmental documents and agreements. This monitoring further includes the labor compliance, EEO provisions, DBE program requirements, etc.

The FHWA's role in this phase of a construction project can include periodic on-site inspections to monitor the State's control of the work or be included as part of a broader process review. The level of Federal oversight/presence will be a function of the extent of exceptions the State has elected to take (as noted in the discussion of the first section) and the division offices stewardship plan.

When construction is completed, final inspections are made by the State and FHWA, when appropriate. If the construction is completed in reasonably close conformance with the approved plans and specifications, including all authorized changes and extra work orders, the State and FHWA can grant final acceptance of the project.

J. Title VI Federal-aid Construction Contract Requirements

Federal-aid construction contracts must include provisions which require compliance with Title VI. The specific contract provision language is included in Form FHWA-1273. The specific provisions related to Title VI are covered under Sections II and III. Form FHWA-1273, Required Contract Provisions, is a convenient collection of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies. Copies of the current version of FHWA Form-1273 and FHWA Form-1273A are included in Appendix F.

The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all contracts as well as appropriate subcontracts and purchase orders. An alternate format of the required contract provisions may be used for projects authorized under Certification Acceptance (CA) procedures as well as exempted non-NHS projects. However, required contract provisions based on other than Title 23 requirements cannot be changed.

State highway agencies (SHA's) are not permitted to modify the provisions of FHWA Form FHWA-1273. Minor additions covering State requirements may be included in a separate supplemental specification, provided they do not conflict with State or Federal laws and regulations and do not change the intent of the required contract provisions.

The FHWA Form-1273 provisions apply to all work performed on the contract including work performed by subcontract. The FHWA Form-1273 provisions are required to be physically incorporated into each subcontract and subsequent lower tier subcontracts and may not be incorporated by reference. The prime contractor is responsible for compliance with the FHWA Form-1273 requirements by all subcontractors and lower tier subcontractors. Failure to comply with the Required Contract Provisions may be considered as grounds for contract termination.

Section II - Nondiscrimination

The provisions of Section II of FHWA Form-1273 are derived from the basic statutory authority of Title VI of the Civil Rights Act of 1964, and are implemented by 23 CFR 200. Section II applies to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.

The provisions of Section II promulgate Title VI mandates that basically do not allow any Federal assistance to be used to discriminate. Through expansion of this mandate and the issuance of parallel legislation, the prescribed basis of discrimination include race, color, sex, national origin, age, and disability.

Title VI assures that the SHA's guarantee that no person is subjected to discrimination in connection with any activity, including any contract, for which the State receives Federal assistance. In the event of noncompliance by a contractor and/or subcontractor, payment may be withheld or the contract may be canceled in whole or in part.

Section II of the FHWA Form-1273 is essentially the Standard EEO Construction Contract Specifications, as included in 23 CFR 230, Subpart A. The goal of EEO is increased participation of minorities and women in the work force, and extends to contractor practices in recruitment, hiring, pay, training, promotion, and retention.

General Guidance

Guidance on Title VI is fairly simple in that no person, firm, or other entity is to be subjected to discrimination because of race, color, religion, sex, national origin, age, or disability. The nondiscrimination provisions extend to the contractor's employment practices, solicitations for employment, selection of subcontractors and suppliers, and procurement of materials.

1. FHWA Form-1273 Sections II.1 - II.9.

Section II.1. Requires the contractor to have an EEO policy that prohibits discrimination and provides for affirmative action in employment practices. The contractor shall adopt the following statement as his operating policy:

"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, national origin, age, or disability. 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."

Affirmative action is defined as a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur. Actions aimed at addressing under-representation of minorities and women are outlined in the "Sixteen Steps" in 41 CFR 60.

Section II.2. Requires the contractor to have a designated EEO Officer who has the responsibility and authority to administer the contractor's EEO program.

Section II.3. Requires all of the contractor's employees who have an active role in the hiring, supervision, or advancement of employees to be aware of and to implement the contractor's EEO policy. In addition, it is required that employees, including applicants and potential employees, be informed of the contractor's EEO policy through posted notices, posters, handbooks, and employee meetings.

Section II.4. Mandates the contractor not to discriminate in his recruitment practices and to make an effort to identify sources for potential minority and women employees.

Section II.5. Requires the contractor to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The contractor is to promptly investigate all alleged discrimination complaints.

Section II.6. Requires the contractor to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women, and applicants, through such programs.

Section II.7. Deals with labor unions in that the contractor is not, and cannot be, required to hire union employees; however, if the contractor relies on unions as a source of employees, the contractor is encouraged to obtain cooperation with the unions to increase opportunities for minorities and women. The contractor is required to incorporate an EEO clause into union agreements.

Section II.8. Deals with the contractor's EEO policy as it pertains to selection of subcontractors, including material suppliers and equipment leasing companies. Contractors are encouraged to use DBEs or other subcontractors that employ minorities and women. Furthermore, contractors are required to exercise their best efforts to ensure that subcontractors comply with the EEO requirements.

Section II.9. Requires the contractor to prepare records that document compliance with the EEO policy and to retain these records for a period of 3 years after project completion. These records should include the number of minority, women, and nonminority employees in each work classification on the project, and the progress and effort being made to increase the employment opportunities for minorities and women.

The contractor is required to submit an annual EEO report to the SHA each July, for the duration of the project. If the project contains on-the-job training (OJT), this information is also required to be collected and reported.

2. Compliance Oversight

Enforcement responsibilities have been vested with the contracting agency which ultimately falls on the shoulders of the SHA project engineer. The project engineer should be cognizant of the contractual requirement and observe the contractor for compliance. Specifically, the project engineer's concern should center on whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees.

Noncompliance with the EEO specifications may be considered a breach of contract for which payment may be withheld or the contract canceled. The State compliance staff should conduct reviews and make noncompliance determinations. In addition, reviews by the Office of Federal Contract Compliance Programs (OFCCP), or actions ordered by OFCCP, may affect the contractor's eligibility to participate in Federal-aid programs.

Section III - Nonsegregated Facilities

The intent of the provisions of Section III of FHWA Form-1273 is to ensure that past discriminatory practices for providing separate facilities or prohibiting minorities access to certain facilities are eliminated. Section III, which is also derived from Title VI, applies to contractors, subcontractors, and material suppliers on all Federal-aid contracts and related subcontracts of $10,000 or more.

By entering into a Federal-aid construction contract, organizations and firms are certifying that they maintain nonsegregated facilities that conform to requirements of 41 CFR 60.1.8. These regulations also require a prime contractor to obtain a similar certification from each subcontractor and supplier, as applicable.

K. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

Issues:

1. Whether appropriate contract provisions are incorporated in Federal-aid contracts.

   Mitigation: Process reviews.

2. Whether the monitoring/inspection of work by the State results in disparate treatment of protected groups.

   Mitigation: Process reviews; training; diversification of staff, etc.

3. Whether required mitigation measures have been effectively implemented, i.e, safety through construction zones; noise and air impacts; employment and contracting goals, etc.

   Mitigation: Process reviews; feedback from public involvement; coordination with public interest groups, etc.

4. Whether barriers exist in pre-qualification, approval of subcontractors, bonding, and licensing requirements.

   Mitigation: Process reviews; survey subcontractors; supportive services; self evaluations, etc.

5. Whether uniformity exists in the approval of plans changes, and supplemental agreements.

   Mitigation: Process reviews; training; feedback; supportive services, etc.

6. Whether uniformity exists in the assessment of sanctions, liquidated damages, withholding payments, suspension/termination of contracts, and decertification.

   Mitigation: Process reviews; training; feedback, etc.

V. RESEARCH

A. Description of Research Program

The States are encouraged to conduct transportation-related research projects which may be funded with Federal-aid funds. The research may be conducted by State personnel or contracted to universities or consultants who have the capabilities and staff to perform the research.

A research project usually begins with a solicitation of problem statements. The problem statement provides a brief description of the proposed research, need for the research, and estimated cost. The problem statements are then prioritized by the State Transportation Agency. The projects may be undertaken by transportation agency personnel or awarded to a university or consultant according to the State's procurement regulations. If it is determined that a university will be used and more than one university has the capability, a request for proposal may be sent to the universities. The selection of a university to perform the research is usually predetermined based on type of research and area of expertise of the university. Minority universities interested in performing research for a transportation agency are encouraged to learn the procurement regulations for that agency and to submit proposals when there are studies proposed which they have the capability to accomplish.

Each research project awarded is monitored by State personnel and a principal researcher who is usually a member of the involved department at the university. University research may be actually conducted by university students under the supervision of the principal researcher. Not all research projects are engineering-related; e.g., socio-economic, environmental, transit or transportation needs studies.

B. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

Issues:

1. Whether there is diversification in the selection of consultant/universities.

   Mitigation: Aggressive outreach; supportive services; feedback; removal of barriers, etc.

2. Proposal/problem statement solicitation.

   Mitigation: Same as above.

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 3

Motor Carrier Safety Assistance Program

Chapter II

Motor Carrier Safety Assistance Program

I. General

The ISTEA was signed into law in December of 1991. The ISTEA builds on the long-standing relationship between the FHWA and State transportation agencies to ensure the highest quality surface transportation system, to promote economic vitality for the Nation, and to enhance the quality of life for all its people. The Act will maintain and create jobs, reduce congestion, and provide business opportunities as the Nation's infrastructure is rebuilt. It is equally important that the decision-making processes required by the ISTEA not be diminished by discrimination or the lack of equal opportunity. It is the FHWA's responsibility to ensure that no one affected by or participating in programs or activities of the FHWA, its recipients, or contractors is subjected to discrimination in terms of impact, access, benefits, treatment, or employment.

Under the program the FHWA provides grants to States to enforce Federal and compatible State motor carrier safety and hazardous materials regulations. The objective of the MCSAP is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles. The MCSAP seeks to accomplish this by substantially increasing the level of nationally uniform inspection and enforcement activity.

The ISTEA identified a number of new program initiatives that expand MCSAP beyond its core roadside inspection and carrier review activities and enlarge the Office of Motor Carrier's (OMC) stewardship responsibilities. These ISTEA initiatives include many new activities eligible for MCSAP reimbursement. The MCSAP eligibility activities include:

- Enforcement of State traffic laws and regulations designed to promote safe operation of commercial motor vehicles when performed in conjunction with a roadside inspection;
- Enforcement of size and weight limitations;
- An ISTEA requirement that the State join the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA) program for fuel tax and registration of commercial motor vehicles;
- Provide grants to the States for research and development, demonstration of technologies, analyses, and information systems designed to enhance commercial motor vehicle safety; and
- Provide grants to the States to educate the motoring public on how to share the road safely with commercial motor vehicles.

The following narratives describe the OMC's basic MCSAP activities.

II. Vehicle and Driver Inspection

Federal inspection standards help ensure that carriers regularly inspect and repair trucks and buses. Commercial motor vehicles operating in interstate commerce must periodically pass an inspection to comply with Federal standards. Motor carriers must maintain drivers inspection reports to ensure safe operating conditions before driving a commercial motor vehicle in interstate commerce. Carriers must also require drivers to prepare a post-trip inspection report certifying that any listed defects are corrected. Drivers and vehicles are subject to random roadside inspections by States.

Inspections performed under MCSAP are conducted in accordance with the North American Standard inspection procedure developed by Commercial Vehicle Safety Alliance (CVSA) in cooperation with FHWA/OMC. The CVSA is an organization of Federal, State, and Provincial government agencies and representatives from private industry in the United States, Canada, and Mexico dedicated to commercial vehicle safety.

III. Size and Weight Program

The FHWA transferred the commercial motor vehicle size and weight enforcement program responsibilities from the Federal-aid staff to the Office of Motor Carriers. Each year, the States must certify to the FHWA that they are enforcing size and weight limitations on their Federal-aid highways.

The size and weight enforcement activities directly affect overdimensional and overweight vehicles. Enforcement is a State responsibility; however, it is a

condition for receiving full apportionment of Federal-aid construction funds. As part of the documentation of adequate enforcement, each State must have a size and weight enforcement plan accepted by FHWA/OMC. The plan must describe the procedures, resources, and facilities that the State intends to devote to the enforcement of its vehicle size and weight laws. It must provide for at least two of the four types of scales, either fixed, portable, semi-portable, or weight-in-motion. It must describe the staff assigned to the enforcement of size and weight limits and a plan of operation for the scales. Together, all of the requirements give a comprehensive picture of how the State plans to control oversized and overweight vehicles on its highways.

IV. Commercial Driver's License (CDL) Program

The Commercial Motor Vehicle Safety Act of 1986 established the CDL program to improve highway safety by ensuring that each driver of a commercial motor vehicle has only one driver's license and is qualified to operate the vehicle. Unlike most other Federal safety requirements, the CDL requirements apply to intrastate and interstate operations.

V. Public Awareness Grants

Public awareness grants are used to provide a national campaign to educate the motoring public on how to share the road safely with a commercial motor vehicle, thereby reducing the incidence of accidents, injuries, deaths, and property damage involving automobiles, trucks, and buses.

In addition, the public awareness program serves as a mechanism to reduce the negative attitudes that exist between the traveling public and commercial vehicle operators. This program also heightens awareness of the Federal and State initiatives to reduce the numbers of traffic crashes and deaths involving commercial motor vehicles on our nation's highways.

VI. Motor Carrier Research Program

The Motor Carrier research program is a multi-year effort consisting of projects that support high-priority national problem areas and traditional motor carrier safety research areas. Funding for motor carrier research has increased over the past few years. The program must examine new technologies, evaluate commercial drivers and vehicles, perform special tests, and supply data for regulations governing the motor carrier industry. Other research projects involve hazardous materials movement; vehicle inspections and maintenance; carrier assessment and compliance reviews; tax and registration uniformity; vehicle size and weight; and advanced technologies.

VII. Civil Rights Responsibilities of MCSAP

The FHWA Order 4720.1A outlines the civil rights responsibility of MCSAP and clarifies roles and responsibilities by which FHWA may help MCSAP recipients in meeting all civil rights requirements.

VIII. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

Issues:

1. Whether the selections of vehicles and drivers for inspection are targeted in a discriminatory fashion.

   Mitigation:

   –Conduct random roadside inspections

   –Ensure that inspections are conducted in accordance with the North American Standard inspections procedures

   –Training, diversification of staff; self evaluations

2. Whether the monitoring/inspections of size and weight inspections results in disparate treatment.

   Mitigation: Training; self evaluations

3. Whether the CDL program is administered in a discriminatory manner.

   Mitigation:

   –Diversity of staff that administer the examination

   –Provide the CDL exam in more than one language (ethnic make up of the community)

   –Increase the access to CDL facilities/services in ethnic communities

4. Whether public awareness grants and research grants include diversification in the selection of consultant/universities.

   Mitigation:

   –Aggressive outreach to all communities

   –Effective contact with minority print and audio media institutions

   –Ensure that public safety community service materials are distributed in minority schools, shopping districts, etc

   –Outreach efforts with minority and women-owned businesses

–Focus outreach on appropriate community to ensure involvement

5. Whether barriers exist between MCSAP grant recipients and hiring, promotions, and training of staff.

Mitigation:

–Ensure diversification of staff; conduct self evaluations

–Advertise positions via minority audio and print media

6. Whether the Federal Motor Carrier Safety regulations or State laws are discriminatory.

Mitigation:

–State enforcement policies should not be targeted toward a specific race/ethnic group, gender, or age of driver; and

–A review of regulatory requirements should be made to ensure that there are no conflicts with the intent of the Americans with Disabilities Act and other Civil Rights requirements.

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 4

Implementation

Chapter III
Implementation

Implementation of the Title VI program is a joint responsibility of FHWA and State program managers at all levels, although, primary responsibility lies with the State. To ensure nondiscrimination in their programs, program managers should be familiar with Title VI, related issues, as identified in the previous section, in their day-to-day activities. Impact of these programs on minorities, women, the disabled, the elderly, and nonminorities should be monitored to ensure that the programs provide equitable treatment in the provision of benefits, services, and opportunity to all beneficiaries of the program.

I. ROLES AND RESPONSIBILITIES

A. FHWA Headquarters Office of Civil Rights

The role of the Headquarters Office of Civil Rights is to interpret Title VI law and regulations, provide technical assistance where needed, and to establish agencywide policy for compliance. Specifically, the Head-quarters Office of Civil Rights will:

1. Provide technical assistance to all program and field offices.
2. Provide training on Title VI law and regulations to all program offices, field offices, and SHA's.
3. Process and investigate Title VI complaints of discrimination.

B. FHWA Regional Office

The role of the Regional office is to interpret Title VI law and regulations, establish regional policy, determine Division office and SHA compliance, and provide technical assistance.

In carrying out this role the Regional Office of Civil Rights (ROCR) has the following responsibilities:

- Review and approve SHA Title VI plans.
- Determine Title VI compliance. Program personnel may, in their review of the various program areas, determine whether Title VI issues are being addressed adequately. However, determination of the State's compliance with Title VI is within the purview of ROCR.
- Upon a finding of noncompliance, attempt to obtain voluntary resolution. If efforts to obtain compliance fail, initiate enforcement proceedings against the State.
- Direct regional Title VI program in coordination with regional program officials, the Regional Counsel, and Division Administrators.
- Establish program areas for regionwide emphasis.
- Serve as lead agent in coordinating activities in connection with controversial projects where discrimination has been alleged.
- Conduct on-site Title VI reviews to determine program implementation at Division and State levels.
- Participate with program area officials in conducting Title VI reviews.
- Review and comment on Title VI issues in EISs and EA/ FONSIs.
- Recommend appropriate action to program area officials where Title VI issues are involved.
- Provide technical assistance on Title VI requirements to regional program offices, Division offices, and SHAs.
- Process complaints of discrimination.
- Conduct investigations of external complaints in coordination with Washington Headquarters Office of Civil Rights.

In carrying out their roles in the Title VI Program the regional program offices have the following responsibilities:

- Implement regional Title VI policy through daily activities and on-going monitoring.
- Evaluate adequacy of division office program activities in ensuring Title VI compliance.
- Cooperate with ROCR in conducting Title VI reviews.
- Provide ROCR programmatic advice in implementing regional Title VI program.

- Notify ROCR of Title VI, related problem areas and complaints.
- Cooperate and assist ROCR in investigations of external discrimination complaints.
- Address Title VI issues in program area reviews.
- Advise ROCR of Title VI, related findings made during program reviews.
- Include ROCR in review of EISs and EA/FONSIs where there may be Title VI issues.
- Recommend actions to ROCR where needed changes in Title VI program are identified.

C. FHWA Division Offices

The role of the division offices is to assist the State in program implementation, review the State's implementation of programs, and provide feedback to the regional office.

In carrying out this role, the division office Title VI coordinator has the following responsibilities:

- Coordinate division office Title VI activities.
- Provide information and technical assistance to Division office program personnel and SHA Title VI Specialists.
- Serve as Division office contact for ROCR on Title VI matters.
- Coordinate review and update of SHA Title VI Plan.
- Assist in conducting Title VI Reviews.

In carrying out their role in the Title VI program, division office program area personnel have the following responsibilities:

- Monitor SHA programs and activities on an on-going basis to ensure nondiscrimination. This should normally be accomplished through daily involvement with State program personnel and reviews of State program activities and documents.
- Provide technical assistance to the State to ensure that Title VI issues are considered and addressed within their program areas.
- Monitor adequacy of State Title VI Specialist as involvement within their respective program activities.
- Communicate problem areas to Regional office.
- Provide training, information, and technical assistance to State Title VI Specialist as needed and requested.

The above provides general descriptions of the respective roles for the division office Title VI Coordinator and program area personnel. The remainder of this section of the guide describes suggested techniques for the Division s use in monitoring the State s Title VI compliance. The underlying philosophy of the suggested techniques is the same as for the entire guide: nondiscrimination ideally is best ensured through an ongoing preventive approach with special type reviews used periodically to evaluate the State's process for ensuring Title VI compliance.

Title VI Awareness of Program Area Operational Personnel

The key Division office implementers of the Federal-aid highway program are the Area Engineers, District Engineers, Planners, Right-of-Way Specialists, and Environmental Specialists. It is crucial to effective Title VI monitoring that these individuals be made fully aware of the kinds of Title VI issues which can arise in their program areas. Such awareness can be promoted through:

- Reading the Title VI guide with emphasis upon those parts pertinent to their program areas.
- General discussion of Title VI guide by program area personnel.
- Circulation of Title VI, related correspondence and/or publications.
- Meetings with Division office program personnel and State Title VI Specialists.
- Communication with the ROCR.

Division Office Monitoring of Title VI

To increase the effectiveness of the division's Title VI monitoring, a systematic approach should be employed. The division office's monitoring plan should be developed consistent with the needs in their particular State. In States that have effectively and continually integrated Title VI considerations into their day-to-day program operations, the division office's monitoring could be considerably reduced. Accordingly, the level of monitoring required will vary from division to division. With this in mind, the following are some suggested components of a Division Office's monitoring plan:

- The Division office should develop an overall monitoring plan to address as appropriate any of the major areas covered by Title VI (Planning, Project Development, Right-of-Way and Construction). The plan would detail items which Division personnel should be aware of on a daily basis and as necessary provide for periodic special reviews of the State's processes for ensuring nondiscrimination.
- When conducted, special reviews should be carried out in accordance with guidelines which address the State's Title VI Plan.
- The monitoring plan should describe the assignment of responsibility for Title VI within the division office.

- The monitoring plan should provide for a Title VI work plan to be carried out and updated on a regular basis to reflect the current level of program implementation by the State.
- The Division office should advise the ROCR on particularly significant program deficiencies. Any other recommendations or comments may be provided along with the State's Annual Title VI Accomplishment Report and Work Plan.

D. FHWA State Highway Agency

The role of the State highway agencies involves implementing Title VI, developing the Title VI Program, and establishing adequate procedures for identifying and addressing Title VI issues.

While the Title VI Specialist is the focal point for the Title VI program at the State level, it is essential that the program's implementation and monitoring activities be undertaken in a joint fashion with program area officials. In certain cases, the Title VI Specialist's role will be participatory, particularly in the reconstruction phases. In other cases, the Title VI Specialist's role will be a lead role, such as in monitoring of program areas for Title VI compliance. However, even in these activities it is essential that the Title VI Specialist consult with the appropriate program area officials to ensure that the end product is accurate from a programmatic standpoint.

In carrying out this role, the State Title VI Specialist has the following responsibilities. These responsibilities may vary from State to State depending upon the particular organization and structure of each State highway agency.

- Coordinate Title VI Program development with program area officials.
- Provide technical assistance and advice on Title VI matters to State program area officials.
- Conduct Title VI reviews of program area activities when necessary to cover aspects not covered through the day-to-day approach. Only those parts of programs where Title VI issues are involved should be reviewed.
- Participate with program area personnel in reviews of program activities which include Title VI issues.
- Review findings of program area reviews which address Title VI issues to ensure findings of discrimination or nondiscrimination are adequately supported.
- Participate with program officials in developing Title VI information for dissemination to the public.
- Develop and implement procedures for the prompt processing of complaints of discrimination.
- Work with program officials to correct identified Title VI problems or discriminatory practices or policies.
- Establish procedures to resolve determinations of noncompliance.
- Conduct Title VI training programs.
- Prepare annual summary of Title VI activities, accomplishments, and problems.
- Update Title VI Plan as necessary to reflect organizational policy or implementation changes.

The following are examples of specific activities which may be undertaken by the Title VI issues previously identified. Title VI implementation activities should be undertaken on a day-to-day basis whenever possible. Since budgetary and staff resources are usually limited, it is expected that the Title VI Specialist will prioritize program areas based on the status of the highway program in his/her State.

1. *Identification of Impacts*
   - Assist program area personnel in identifying Title VI impacts of proposed projects.
   - Review and provide feedback to program area personnel on data reflecting the racial makeup, ages, or other characteristics of communities affected by projects.
   - Review environmental documents.
   - Attend meetings of program area personnel during development of environmental assessments of projects.
   - Review procedures followed in identifying and considering impacts of projects on minority areas.

2. *Mitigation Measures*
   - Assist program area personnel in identifying mitigation measures for minority areas.
   - Follow up on mitigative measures identified in EIS which have significant impacts on minorities. Determine whether measures have been taken and if so, assess their effectiveness or, as appropriate, identify alternative measures.

3. *Public Involvement*
   - Assist program area personnel in obtaining public involvement, particularly in minority areas.
   - Attend MPO planning meetings involving Title VI issues.
   - Attend public meetings and hearings held for projects with potential Title VI impacts.
   - Assist program personnel in the development of Title VI information for dissemination to the general public and in languages other than English when necessary.

- Review procedures and efforts of the MPOs and State program area personnel to obtain public involvement, particularly minority citizen participation.

4. *Benefits and Services*
   - Assist program area personnel in the identification of minorities in right-of-way activities.
   - Accompany program personnel on selected right-of-way activities to compare treatment received by minorities and nonminorities.
   - Review property management procedures to ensure nondiscrimination.
   - Review appraisal, acquisition, and relocation procedures to assure equitable benefits and services are provided to minority and nonminority property owners.

5. *Contracting*

   (a) Consultants
   - Review consultant selection procedures of MPOs and State program areas.
   - Review program area personnel's monitoring of Title VI compliance by consultants.

   (b) Fee Appraisers/Fee Attorneys
   - Review selection procedures for fee appraisers/fee attorneys to ensure nondiscrimination.
   - Assist program area personnel in identifying minority and female fee appraisers/fee attorneys.

   (c) Construction
   - Review prequalification and bonding requirements and contractor selection procedures to determine uniformity in their application to minority and nonminority contractors.
   - Assist program area personnel in communicating contracting opportunities to minority contractors and subcontractors.
   - Ensure that State policies and procedures for monitoring activity during construction are not applied in a discriminatory fashion. Examples of these activities are plan changes, supplemental agreements, liquidated damages, project inspections, and traffic control.
   - Ensure insertion of Title VI requirements in contracts, subcontracts, and material supply agreements.

   (d) Research
   - Review selection procedures for principal researchers and research staffs to determine minority participation.
   - Assist program area personnel in identifying minority universities interested in conducting research.

In carrying out their role, the State's program area officials have the following responsibilities in their day-to-day monitoring activities:

- Implement the State's Title VI policy through daily activities and ongoing monitoring.
- Pursuant to 49 CFR 21.9(b) and 23 CFR 200.9(b)(4), maintain statistical data by race/ethnic origin and sex of participants and beneficiaries of the State's highway programs (i.e., relocatees, affected citizens, and affected communities).
- Pursuant to 23 CFR 200.9(b)(7), conduct Title VI reviews or include Title VI issues in program reviews of cities, counties, consultant contractors, universities, colleges, planning agencies, and other subrecipients of Federal-aid highway funds.
- Ensure that Title VI requirements are included in program area directives and that procedures used have built-in safeguards to prevent discrimination.
- Advise Title VI Specialist of Title VI related problems or discrimination complaints.
- Cooperate with Title VI Specialist in conducting reviews.
- Advise Title VI Specialist of findings related to Title VI in conjunction with program area reviews.
- Request that Title VI Specialist be involved in development of projects where there may be Title VI issues.

II. Documentation

A certain amount of documentation is necessary to substantiate Title VI monitoring and compliance determinations. In most cases, routine correspondence between the various offices and review reports addressing Title VI issues or findings will suffice. The following outlines examples of suggested documentation.

1. *Regional Program Offices*
   - Correspondence to Division offices providing guidance or information on Title VI.
   - Reports of on-site reviews reflecting findings related to Title VI issues.

2. *Division Offices*
   - Review reports containing Title VI findings should include a basis for conclusions made. For example, a review of State appraisals should include information on minority appraisals reviewed and comparison of benefits to comparable nonminority appraisals.
   - Normal correspondence with the State where Title VI related issues are discussed.
   - Division Office Title VI monitoring plans, as appropriate.

- Guidelines followed in making special Title VI reviews. Special Title VI Reviews are reviews by the Division Office of the State's Title VI process within a particular program (Planning, Project Development, Right-of-Way or Construction) to assess the program's effectiveness in identifying and addressing Title VI issues.
- Documentation of assignment of Title VI responsibilities.

3. *State Title VI Specialist*
   - Reports on Title VI reviews of program areas.
   - Correspondence documenting advice or assistance to program area offices.
   - Documentation related to Title VI complaints.
   - Annual Title VI Summaries.
4. *State Program Offices*
   - Identification of Title VI issues in routine correspondence, environmental documents, and planning documents.
   - Correspondence reflecting efforts to address Title VI issues and responsibilities.
   - As appropriate, records identifying participants and beneficiaries of the Federal-aid highway program by race and sex.

III. Title VI Plan Development

This section outlines the required elements of the State's Title VI Plans:

1. *Statement of Policy*

Include the State's Policy on Title VI. Policy must be signed by the top State Highway Agency official.

2. *Organization and Staffing of Civil Rights Unit*

Include a description of the organization and staffing of the Civil Rights Unit, an organization chart which shows the relationship of the Civil Rights Unit to the head of the highway agency, and an organization chart of the Civil Rights Unit showing the names and titles of the staff.

3. *Title VI Monitoring and Review Process*

For each of the following major program areas, summarize how Title VI monitoring will be accomplished by the Title VI Specialist and by the program area personnel.

a. Planning
b. Project Development
c. Right-of-Way
d. Construction
e. Research

4. *Compliance*

Enforcement procedures to be followed by the FHWA in the event of a SHA's noncompliance with Title VI may be found at 49 CFR 21.13 and 23 CFR 200.11. Where compliance cannot be corrected by informal means, Federal financial assistance may be suspended or terminated and further assistance may be refused.

Sanctions to be applied by State Highway Agencies in the event of a subrecipient's or contractor's noncompliance with Title VI may be found in Appendix A of the Standard DOT Title VI Assurances executed by the State Highway Agency as a condition to receiving any financial assistance from the U.S. Department of Transportation. These sanctions include withholding of payments and/or cancellation, termination, or suspension of the contract, in whole or in part.

5. *Title VI Assurances*

Include copies of the State's signed Title VI assurances, including appendixes.

6. *Accomplishment Report*

List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problems identified and corrective actions taken. Include a summary and status report on any Title VI complaints filed with the State.

7. *Annual Work Plan*

Outline Title VI monitoring and review activities planned for the coming plan year; state by whom each activity will be accomplished and target date for completion.

8. *List of State Procedures, Manuals, Directives Applicable to Federal-aid highway program*

List all procedures, manuals, and directives the State uses which are applicable to the Federal-aid highway program and Title VI.

IV. Contract Requirements

Introduction

Federal-aid contracts normally must include provisions which require compliance with Title VI. The specific contract provision language is included in Appendixes A, B, and C of the Title VI Assurances

which each State has executed. Examples of the applicability of each Appendix to Federal-aid contracts are described below.

1. *Appendix A*

This appendix applies to all Federal-aid contracts and must be included as a contract provision. Examples of such contracts in the Federal-aid highway program are:

- Construction contracts, both prime and subcontracts, and vendor/supply agreements.
- Consultant agreements for performance of work in connection with Federal-aid highway projects. Typical ones are those for design work and environmental studies.
- Research agreements with colleges, universities, or other institutions.
- Fee appraiser and fee attorney contracts in connection with Federally-aided right-of-way work.
- Contracts between a State Highway Agency and a contractor for relocation of utilities. It should be noted that Appendix A would not apply when the utility company itself or its contractor relocates utilities.

2. *Appendix B*

This appendix applies to conveyances of land or property to the States by the Federal government. It conditions the conveyance to require nondiscrimination in connection with the State's use of the property.

3. *Appendix C*

Applicable to all deeds, licenses, leases, permits, or similar instruments.

Examples:

- Leases and Property Management Agreements
- Permits and Licences, except where they are issued for the construction of utilities on highway rights-of-way, the cost of which is borne by the utility company without Federal participation.
- Tenancy Agreements
- Air Space Agreements
- Railroad Agreements

Once the purpose for which Federal financial assistance is extended terminates and/or the State no longer retains ownership or possession of the property, the Title VI Assurances do not apply.

Examples of agreements where Appendix C is not applicable are as follows:

- Pit Agreement
- Stockpiling Agreement
- Encroachment Agreement
- Relocation Agreement
- Determination of Vacation and Abandonment
- Quit Claim Deeds
- Contracts with property owners, i.e., royalty agreements for obtaining materials (borrow agreements)
- Warranty Deeds

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 5

Appendices

Appendix A
Title VI Review Guidelines

Organization and Process

- Who is the Title VI Coordinator? (23 CFR 200.9)
- Has a Civil Rights Unit been established to carry out Title VI program objectives? (23 CFR 200.9)
- Does the recipient's Title VI Coordinator have direct access to the Chief Executive Officer? (23 CFR 200.9)
- Describe the staffing of the Civil Rights Unit. (23 CFR 200.9)
- Is the staffing level adequate? If not, why not? What would be an adequate staffing level? (23 CFR 200.9)
- What process has been established to conduct annual reviews of various program areas? (23 CFR 200.9)
- Who is responsible for determining areas to be reviewed? (23 CFR 200.9)
- How are the areas to be reviewed identified? (23 CFR 200.9)
- What role do the program area officials play in the Title VI program in general and in the conduct of annual reviews? (23 CFR 200.9)
- Describe the recipient's process to conduct Title VI reviews of cities, counties, consultants, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds? (23 CFR 200.9)
- How are the recipient's directives reviewed to ensure that Title VI and related requirements are included? (23 CFR 200.9)
- What is the process followed whenever a new directive is issued?
- Has the recipient's Title VI Coordinator conducted Title VI training programs for program and civil rights officials? (23 CFR 200.9)
- If so, list the training provided by the coordinator in the last five years, the number of persons receiving the training, and the subject matter presented.
- Who is responsible for preparing the annual Title VI Plan, report of accomplishments, and work plan for the next year? (23 CFR 200.9)

Title VI Coordinator

- How does the Title VI Coordinator coordinate the development of the Title VI Program with each program official?
- What assistance and training on Title VI does the Title VI Coordinator provide?
- What Title VI program area reviews has the Title VI Coordinator conducted?
- What review guidelines were used?
- How were the program areas selected for review?
- Summarize major findings.
- What major results occurred?
- What reviews of program activities did the Title VI Coordinator conduct with program area personnel?
- What mechanism is used by the Title VI Coordinator to review program area review reports which address Title VI issues to ensure Title VI findings are adequately supported?
- What role do the program area officials play in the Title VI program in general and in the conduct of annual reviews? (23 CFR 200.9)
- Describe the recipient's process to conduct Title VI reviews of cities, counties, consultants, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds? (23 CFR 200.9)
- How are the recipient's program directives reviewed to ensure that Title VI and related requirements are included? (23 CFR 200.9)
- What is the process followed whenever a new directive is issued?
- Has the recipient Title VI Coordinator conducted Title VI training programs for program and civil rights officials? (23 CFR 200.9)
- If so, list the training provided by the Coordinator in the last five years, the number of persons receiving the training, and the subject matter presented.
- Who is responsible for preparing the annual Title VI Plan, report of accomplishments, and work plan for the next year? (23 CFR 200.9)

- How does the Title VI Coordinator follow up to ensure mitigative measures identified for projects significantly impacting minorities are carried through?
- How does the Title VI Coordinator assist program area personnel in obtaining public involvement?
- Has the Title VI Coordinator attended MPO planning meetings?
- During the last three years, has the Title VI Coordinator attended public meetings and hearings held for projects with potential Title VI impacts?
- How does the Title VI Coordinator review procedures and efforts of MPOs and program area personnel to obtain public involvement, particularly minority citizen participation?
- Does the Title VI Coordinator assist program area personnel in the identification of minorities in right-of-way activities?
- Does the Title VI Coordinator accompany right-of-way personnel on selected activities to compare treatment provided to minorities versus nonminorities?
- How does the Title VI Coordinator review property management procedures to ensure nondiscrimination?
- What reviews of appraisal, acquisition, and relocation procedures has the Title VI Coordinator conducted to ensure nondiscrimination in benefits and services to property owners?
- How does the Title VI Coordinator do the following:
  - –Review consultant selection procedures of the recipient?
  - –Review program area personnel monitoring of Title VI compliance by consultants?
  - –Review selection procedures for fee appraisers/fee attorneys to ensure nondiscrimination?
  - –Assist program area personnel in identifying minority and female fee appraisers/fee attorneys?
  - –Review prequalification and bonding requirements and contractor selection procedures to ensure uniform application to minority and nonminority contractors?
  - –Assist program area personnel in communicating contracting opportunities to minority contractors?

Planning

- What office or section within the planning function has lead responsibility for Title VI matters?
- What process has the recipient developed to ensure Title VI issues are addressed in the planning process?
- How does the recipient ensure that MPOs have representation in their membership reflecting the makeup of the population they serve?
- How does the recipient ensure that MPOs solicit and consider the views of all groups within the population in the planning of highway projects?

Project Development

- What office or section with the project development function has the lead responsibility for Title VI matters?
- Who is responsible for identifying Title VI issues in the environmental effects determination of proposed projects?
- What is the role of the Title VI Coordinator in the project development stage? Please describe that role in the following areas:
  - –Public involvement and citizen advisory committees
  - –Scheduling time and location of public meetings and hearings
  - –Identification of impacts
  - –Identification of mitigation measure.
  - –Environmental assessments
  - –Consideration of alternatives with respect to corridors and locations.

Right-of-Way

- What office or section within the right-of-way function has the lead responsibility for Title VI matters?
- What is the role of the Title VI Coordinator in the right-of-way stage?
- What efforts are exerted by the recipient to ensure that minority and female fee appraisers are provided maximum opportunity to participate in the appraisal process?
- How does the recipient ensure nondiscrimination in the following areas:
  - –Appraisals
  - –Replacement housing
  - –Decent, safe, and sanitary housing determinations
  - –Negotiation
  - –Compensation
  - –Last Resort Housing authorizations.

Construction

- What office or section within the construction function has the lead responsibility for Title VI matters?
- What is the role of the Title VI Coordinator in the construction stage?
- How does the recipient ensure that its bidding and contract award procedures are consistent with the nondiscrimination and affirmative action requirements of Title VI?

- What has the recipient done to identify any requirements or procedures that may present barriers or obstacles to DBE firms attempting to seek contract opportunities? Areas to look at include the following:

  –Preparation of PS&Es

  –Bonding requirements
  (1) Bid Bond
  (2) Payment Bond
  (3) Performance Bond

Research

- What office or section within the research function has the lead responsibility for Title VI matters?
- What is the role of the Title VI Coordinator in the research area?
- What efforts have been made to ensure that minority universities or universities with significant minority student representation participate in research projects?

Complaints

- What are the procedures for processing complaints alleging reprisal and retaliation? (49 CFR 21.11)
- How are the recipient's Title VI complaint procedures disseminated internally and externally? (49 CFR 21.11)
- What records does the recipient maintain on complaints? (23 CFR 200.9)
- Does the recipient maintain complaint data to reflect, at minimum, the following about the complaint:

  –Name

  –Race

  –Color

  –Sex

  –National Origin

  –Nature of complaint

Records and Reports

- What records and reports does the recipient maintain that specifically reflect compliance with Title VI? (40 CFR 21.9)
- What data (race, color, religion, sex, and national origin) does the recipient maintain that reflects the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance? (49 CFR 21.9).
- Who is responsible for developing, maintaining, and reporting this data?
- How is this data used?

Appendix B

Standard DOT Title VI Assurances

Standard DOT Title VI Assurances

DOT 1050.2

Dated 8/24/71

The (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, 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 financial assistance from the Department of Transportation, including the *(Name of Appropriate Administration)*, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsecion 21.7(a)(1) of the Regulations, a copy of which is attacted.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its *(Name of Appropriate Program)*:

1. That the Recipient agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all *(Name of Appropriate Program)* and, in adapted form in all proposals for negotiated agreements:

The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be affored full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.

4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereron, or interest therein.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.

7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under *(Name of Appropriate Program)*; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under *(Name of Appropriate Program)*.

8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) 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 (b) the period during which the Recipient retains ownership or possession of the property.

9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transporta-tion under the *(Name of Appropriate Program)* and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the *(Name of Appropriate Program)*. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

Dated _____

_____
(Recipient)

by _____
(Signature of Authorized Official)

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potiential subcontactor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *(Recipient)* or the *(Name of Appropriate Administration)* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *(Recipient)*, or the *(Name of Appropriate Administration)* as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the *(Recipient)* shall impose such contract sanctions as it or the *(Name of Appropriate Administration)* may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorportation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the *(Recipient)* to enter into such litigation to protect the interests of the *(Recipient)*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B

A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the *(Name of Recipient)* will accept title to the lands and maintain the project constructed thereon, in accordance with *(Name of Appropriate Legislative Authority)*, the Regulations for the Administration of *(Name of Appropriate Program)* and the policies and procedures prescribed by *(Name of Appropriate Administration)* of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the *(Name of Recipient)* all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto *(Name of Recipient)* and its successors forever, subject, however, to the convenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the *(Name of Recipient)*, its successors and assigns.

The *(Name of Recipient)*, in consideration or the conveyance of said lands and interests in lands, does hereby convenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person 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 with regard to any facility located wholly or in part on over or under such lands hereby conveyed [,] [and]* (2) that the *(Name of Recipient)* shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation–Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.*

APPENDIX C

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the *(Name of Recipient)* pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permitee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permitee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

the Department of Transportation–Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by *(Name of Recipient)* pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permitee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permitee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation–Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

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* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC, INTERDISCIPLINARY APPROACH

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
STATE CERTIFICATIONS AND ASSURANCES

Failure to comply with applicable Federal statutes, regulations and directives may subject state officials to civil or criminal penalties and/or place the state in a high risk grantee status in accordance with 49 CFR §18.12.

Each fiscal year the State will sign this certification and assurance statement that the State complies with all applicable Federal statutes, regulations, and directives in effect with respect to the periods for which it receives grant funding. Applicable provisions include the following:

- 23 USC Chapter 4 - Highway Safety Act of 1966
- 49 CFR Part 18 - Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments
- 49 CFR Part 19 - Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations
- 23 CFR Chapter II - NHTSA & FHWA Procedures and General Provisions for State Highway Safety Programs
- 45 CFR Part 74 - Appendix E - Principles for Determining Costs Applicable toResearch and Development Under Grants and Contracts with Hospitals
- OMB Circular A-87 - Cost Principles for State, local and Indian Tribal Governments
- OMB Circular A-21 Cost Principles for Educational Institutions
- OMB Circular A-122 - Cost Principles for Nonprofit Organizations
- OMB Circular A-128 - Audit of State and Local Governments
- OMB Circular A-133 - Audits of Institutions of Higher Education and Nonprofit Institutions
- NHTSA Order 462-6C - Matching Rates for State and Community Highway Safety Programs
- Highway Safety Grant Funding Policy for NHTSA/FHWA Field-Administered

Grants (Effective 7/14/95)

- Pilot 402 Process (If state is participating in the pilot program)

Certification Statements

The Governor is responsible for the administration of the State highway safety program through a State highway safety agency which has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program in compliance with 23 USC 402(b) (1) (A);

The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation in compliance with 23 USC 402(b) (1) (B);

At least 40 per cent of all Federal funds apportioned to this State under 23 USC 402 for this fiscal year will be expended by or for the benefit of the political subdivision of the State in carrying out local highway safety programs authorized in accordance with 23 USC 402(b) (1) (C), unless this requirement is waived by the Secretary of Transportation;

This State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks in compliance with 23 USC 402(b) (1) (D);

This State's highway safety program provides for programs to encourage the use of safety belts by drivers of, and passengers in, motor vehicles, in compliance with 23 USC 402(b)(1)(E);

Cash drawdowns will be initiated only when actually needed for disbursement, cash disbursements and balances will be reported in a timely manner as required by NHTSA, and the same standards of timing and amount, including the reporting of cash disbursement and balances, will be imposed upon any secondary recipient organizations in accordance with 49 CFR 18.20, 18.21, and 18.40 (failure to adhere to these provisions may result in the termination of advance financing);

Arrangements have been made for the financial and compliance audit required by the Single Audit Act of 1984 (OMB Circular A-128)**,** which is to be conducted within the prescribed audit reporting cycle (failure to furnish an acceptable audit, as determined by the cognizant Federal agency, may result in denial or require return of Federal funds);

The State has submitted appropriate documentation for review to the single point of contact

designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs);

Equipment acquired under this agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the State; or the State, by formal agreement with appropriate officials of a political subdivision or State agency, shall cause such equipment to be used and kept in operation for highway safety purposes;

Each recipient of Section 402 funds has a financial management system that complies with the minimum requirements of 49 CFR Part 18.20;

Each recipient of Section 402 funds will comply with all applicable State procurement procedures;

The State is funding programs that are within the NHTSA/FHWA National Priority program areas;

The State highway safety agency will comply with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, as amended, as implemented by 49 CFR Parts 21 and 27, to ensure that no person in the United States shall, on the grounds of race, color, national origin, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this program.

The Drug-free Workplace Act of 1988(49 CFR Part 29 Sub-part F):

A. The State will provide a drug-free workplace by:

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b) Establishing a drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace.
2) The grantee's policy of maintaining a drug-free workplace.
3) Any available drug counseling, rehabilitation, and employee assistance programs.
4) The penalties that may be imposed upon employees for drug violations occurring in the workplace.

c) Making it a requirement that each employee engaged in the performance of the

grant be given a copy of the statement required by paragraph (a).

d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

1) Abide by the terms of the statement.

2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

e) Notifying the agency within ten days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction.

f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted --

1) Taking appropriate personnel action against such an employee, up to and including termination.

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f) above.

BUY AMERICA ACT

The State will comply with the provisions of the Buy America Act (23 USC 101 Note) which contains the following requirements:

Only steel, iron and manufactured items produced in the United States may be purchased with Federal funds unless the State can show that such domestic purchases would be inconsistent with the public interest; that such materials are not reasonably available and are of an unsatisfactory quality; or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

CERTIFICATION REGARDING LOBBYING:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

In accordance with the provisions of 49 CFR Part 29, the State agrees that it shall not knowingly enter into any agreement under its Highway Safety Plan with a person or entity that is barred, suspended, declared ineligible, or voluntarily excluded from participation in the Section 402 program, unless otherwise authorized by NHTSA. The State further agrees that it will include the following clause and accompanying instruction, without modification, in all lower tier covered transactions, as provided by 49 CFR Part 29, and in all solicitations for lower tier covered transactions.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies

available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that is it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

MINORITY BUSINESS ENTERPRISE REQUIREMENTS:

In accordance with the provisions of 49 CFR Part 23, the State agrees to abide by the following statements, and shall ensure that these statements are included in all subsequent agreements and/or contracts assisted by Section 402 funds:

It is the policy of the Department of Transportation that minority business enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

ENVIRONMENTAL IMPACT

The Governor's Representative for Highway Safety has reviewed the State's Fiscal Year _____ highway safety planning document and hereby declares that no significant environmental impact will result from implementing this highway safety plan. If, under a future revision, this Plan will be modified in such a manner that a project would be instituted that could affect environmental quality to the extent that a review and statement would be necessary, this office is prepared to take the action necessary to comply with the National Environmental Policy Act (42 USC 4321 et seg.).

_____

Governor's Representative for Highway Safety

_____

Date

Appendix C
Sample Nondiscrimination Agreement

SAMPLE NONDISCRIMINATION AGREEMENT
FEDERAL HIGHWAY ADMINISTRATION
REGIONAL OFFICE
CITY, STATE

NONDISCRIMINATION AGREEMENT

THE FEDERAL HIGHWAY **ADMINISTRATION**

REGIONAL ADMINISTRATOR

AND

(NAME OF RECIPIENT)

The (Name of Recipient), (hereinafter referred to as the "Recipient") hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964, as amended, provides that no person shall on the ground of race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds—whether schools and colleges, government entities, or private employers—must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the recipient and subrecipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA Notice N 4720.6, September 2, 1992).

ASSURANCES

49 CFR PART 21.7

The (Name of the Recipient), HEREBY GIVES ASSURANCES:

1. That no person shall on the grounds or 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 under any program or activity conducted by the recipient regardless of whether those programs and activities are Federally funded or not. Activities and programs which the recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:

   LIST ALL MAJOR PROGRAMS AND ACTIVITIES OF THE RECIPIENT

2. That it will promptly take any measures necessary to effectuate this agreement.

3. That each program, activity, and facility as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.

4. That these assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the recipient by the Federal Highway Administration under the Motor Carrier Safety Assistance Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Motor Carrier Safety Assistance Program. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.
5. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Motor Carrier Safety Assistance programs and, in adapted form all proposals for negotiated agreements:

   The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, handicap/disabled in consideration for an award.
6. That the Recipient shall insert the clauses of Appendix A of this agreement in every contract subject to the Act and the Regulations.
7. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this agreement.

IMPLEMENTATION PROCEDURES

23 CFR PART 200

This agreement shall serve as the recipient's Title VI plan pursuant to 23 CFR 200 and Region ___ Title VI Implementation Guide.

For the purpose of this agreement, "Federal Assistance" shall include:

1. grants and loans of Federal funds,
2. the grant or donation of Federal property and interest 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.

The recipient shall:

1. Issue a policy statement, signed by the head of the recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the recipient's organization and to the general public. Such information shall be published where appropriate in languages other than English.
2. Take affirmative action to correct any deficiencies found by the Federal Highway Administration within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the recipient shall be held responsible for implementing Title VI requirements.
3. 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 recipient. 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.
4. Adequately staff the civil rights unit to effectively implement the civil rights requirements.
5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigations. Identify each complainant by race, color, national origin, sex, age, handicap/disability; the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the recipient's report of investigation, will be forwarded to the Office of Motor Carrier Safety

within 60 days of the date the complaint was received by the recipient.

6. Collect statistical data (race, color, national origin, sex, age, handicap/disability) of participation in, and beneficiaries of the programs and activities conducted by the recipient.
7. Conduct Title VI reviews of the recipient and subrecipient contractor program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.
8. Conduct training programs on Title VI and related statutes.
9. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

   (a) *Accomplishment Report*

   List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the recipient.

   (b) *Annual Work Plan*

   Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.

DISCRIMINATION COMPLAINT PROCEDURE

1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, as amended, may file a complaint with the recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the recipient's Title VI Specialist for review and action.
2. In order to have the complaint considered under this procedure, the complainant must file the complaint no later than 180 days after:

   (a) The date of the alleged act of discrimination; or

   (b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

   In either case, the recipient or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the recipient, the person shall be interviewed by the Title VI Specialist. If necessary, the Title VI Specialist will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.
4. Within 10 days, the Title VI Specialist will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as the Federal Highway Administration and the Department of Transportation.
5. The recipient will advise the Office of Motor Carriers within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to the Office of Motors Carriers:

   (a) Name, address, and phone number of the complainant.

   (b) Name(s) and address(es) of alleged discriminating official(s).

   (c) Basis of complaint (i.e., race, color, national origin, sex, age, disability/handicap).

   (d) Date of alleged discriminatory act(s).

   (e) Date of complaint received by the recipient.

   (f) A statement of the complaint.

   (g) Other agencies (state, local or Federal) where the complaint has been filed.

   (h) An explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.

6. Within 60 days, the Title VI Specialist will conduct and complete an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the recipient. The

complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.

7. Within 90 days of receipt of the complaint, the head of the recipient will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with the Department of Transportation, or the Federal Highway Administration, if they are dissatisfied with the final decision rendered by the State. The Title VI Specialist will also provide the Office of Motor Carriers with a copy of this decision and summary of findings.

SANCTIONS

In the event the recipient fails or refuses to comply with the terms of this agreement, the Federal Highway Administration may take any or all of the following sanctions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

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

Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the recipient.

(d) Refer the case to the Department of Justice for appropriate legal proceedings.

SIGNED FOR THE FEDERAL HIGHWAY ADMINISTRATION:

_____ _____

Regional Administrator *Date*

SIGNED FOR THE RECIPIENT:

_____ _____

Authorized Signature *Date*

Appendix D

Selected Nondiscrimination Authorities

SELECTED NONDISCRIMINATION AUTHORITIES

- **Title VI of the 1964 Civil Rights Act**, 42 U.S.C. 2000, provides in section 601 that:

  "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (PROSCRIBES DISCRIMINATION IN IMPACTS, SERVICES, AND BENEFITS OF, ACCESS TO, PARTICIPATION IN, AND TREATMENT UNDER A FEDERAL-AID RECIPIENT'S PROGRAMS OR ACTIVITIES)

- **The Age Discrimination Act of 1975,** 42 U.S.C. 6101, provides:

  "No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." (PROHIBITS DISCRIMINATION BASED ON AGE.)

- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,** 42 U.S.C. 4601, provides:

  "For the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance." (PROVIDES FOR FAIR TREATMENT OF PERSONS DISPLACED BY FEDERAL AND FEDERAL-AID PROGRAMS AND PROJECTS)

- **23 U.S.C. 324,** provides:

  "No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title." PROHIBITS DISCRIMINATION ON THE BASIS OF SEX)

- **The Civil Rights Restoration Act of 1987,** P.L. 100-209, provides:

  Clarification of the original intent of Congress in Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. (RESTORES THE BROAD, INSTITUTION-WIDE SCOPE AND COVERAGE OF THE NON-DISCRIMINATION STATUTES TO INCLUDE **ALL** PROGRAMS AND ACTIVITIES OF FEDERAL-AID RECIPIENTS, SUBRECIPIENTS AND CONTRACTORS, WHETHER SUCH PROGRAMS AND ACTIVITIES ARE FEDERALLY ASSISTED OR NOT.)

- **The Uniform Relocation Act Amendments of 1987,** P.L. 101-246, provides:

  "For fair, uniform, and equitable treatment of all affected persons;...(and) minimizing the adverse impact of displacement...(to maintain)...the economic and social well-being of communities; and... to establish a lead agency and allow for State certification and implementation." (UPDATED THE 1970 ACT AND CLARIFIED THE INTENT OF CONGRESS IN PROGRAMS AND PROJECTS WHICH CAUSE DISPLACEMENT)

- **The Americans with Disabilities Act,** P.L. 101-336, provides:

  "No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government." (PROVIDES ENFORCEABLE STANDARDS TO ADDRESS DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES)

- **The Civil Rights Act of 1991,** in part, amended Section 1981 of 42 U.S.C. by adding two new sections which provided:

  "(b) For the purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

  (c) The rights protected by this section are protected against impairment by non-governmental discrimination and impairment under color of State law."

NONDISCRIMINATION EXECUTIVE ORDERS

- **E.O. 12250** DOJ Leadership and Coordination of Nondiscrimination Laws
- **E.O. 12898** Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

NONDISCRIMINATION REGULATIONS

- **28 CFR 41** Implementation of Executive Order 12250, Nondiscrimination on the basis of handicap in Federally assisted programs.
- **28 CFR 42, Subpart C** DOJ's regulation implementing Title VI of the Civil Rights Act of 1964.
- **49 CFR 21** DOT's Title VI regulation.
- **49 CFR 24** DOT's regulation implementing the Uniform Relocation and Real Property Acquisition Act for Federal and Federally-assisted programs requiring compliance with Nondiscrimination Statutes and Executive Orders.
- **49 CFR 27** DOT's regulation implementing Section 504 of the Rehabilitation Act of 1973.
- **23 CFR 200** FHWA's regulation implementing Title VI of the 1964 Civil Rights Act.

NONDISCRIMINATION DIRECTIVES

- **DOT ORDER 1000.12** Implementation of the DOT Title VI Program
- **DOT ORDER 1050.2** Standard Title VI Assurances
- **FHWA ORDER 4720.1A** Civil Rights Responsibilities of Motor Safety Assistance Program (MCSAP). July 16, 1993.

DISADVANTAGED BUSINESS ENTERPRISE STATUTES

- **The Surface Transportation Assistance Act of 1982** (Sec. 105 (f)) provided:

  That not less than 10 percent of funds apportioned to States would be contracted with firms owned and controlled by socially and economically disadvantaged individuals.

- **The Surface Transportation and Uniform Relocation Assistance Act of 1987** (Sec. 106 (c)):

  Extended the provisions of Section 105(f) of the STAA, included women as presumptively disadvantaged, and specified criteria to be relied upon in making certification decisions.

TITLE VI
OF THE
CIVIL RIGHTS ACT OF 1964

42 U.S.C.

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub.L. 88–352, Title VI, § 601, July 2, 1964, 78 Stat. 252.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News, p. 2355.

Coordination of Implementation and Enforcement of Provisions

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex.Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other 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, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub.L. 88–352, Title VI, § 602, July 2, 1964, 78 Stat. 252.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1964 Acts. Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News, p. 2355.

Delegation of Functions

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, is delegated to the Attorney General, see section 1–101 of Ex.Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under this section.

Equal Opportunity in Federal Employment

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex.Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319 and Ex.Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

§ 2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub.L. 88–352, Title VI, § 603, July 2, 1964, 78 Stat. 253.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News, p. 2355.

Codifications

"Chapter 7 of Title 5" and "that chapter" were substituted for "section 10 of the Administrative Procedure Act" and "that section", respectively, on authority of section 7(b) of Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub.L. 88–352, Title VI, § 604, July 2, 1964, 78 Stat. 253.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News, p. 2355.

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub.L. 88–352, Title VI, § 605, July 2, 1964, 78 Stat. 253.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1964 Acts. Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News, p. 2355.

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) 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)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) 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 (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub.L. 88–352, Title VI, § 606, as added Pub.L. 100–259, § 6, Mar. 22, 1988, 102 Stat. 31.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Acts. Senate Report No. 100–64, see 1988 U.S. Code Cong. and Adm. News, p. 3.

95–561, title I, § 101(a), Nov. 1, 1978, 92 Stat. 2198, which was classified to section 2854 of Title 20, Education, prior to the complete revision of Pub.L. 89–10 by Pub.L. 100–297, Apr. 28, 1988, 102 Stat. 140. For definitions, see section 2891 of Title 20.

Abortion Neutrality

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub.L. 100–259, set out as a note under section 1688 of Title 20, Education.

References in Text

Section 198(a)(10) of the Elementary and Secondary Education Act of 1965, referred to in par. (2)(B), is section 198 of Pub.L. 89–10, title I, as added by Pub.L.

Exclusion from Coverage

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub.L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

§ 2000d–5. Prohibited deferral of action on applications by local educational agencies seeking federal Funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 2701 et seq.], by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), [20 U.S.C.A. § 236 et seq.] by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C.A. § 631 et seq.], or by the Cooperative Research Act [20 U.S.C.A. § 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

(Pub.L. 89–750, Title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub.L. 90–247, Title I, § 112, Jan. 2, 1968, 81 Stat. 787; Pub.L. 96–88, Title III, § 301(a)(1), Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1966 Acts. House Report No. 1814, see 1966 U.S. Code Cong. and Adm. News, p. 3844.

1968 Acts. Senate Report No. 726 and Conference Report No. 1049, see 1967 U.S. Code Cong. and Adm. News, p. 2730.

1979 Acts. Senate Report No. 96–49 and House Conference Report No. 96–459, see 1979 U.S. Code Cong. and Adm. News, p. 1514.

References in Text

This Act, referred to in text, is Pub.L. 89–750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966

Amendment note set out under section 2701 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub.L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub.L. 100–297, Apr. 28, 1988, 102 Stat. 140, which is classified generally to chapter 47 (section 2701 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20 and Tables.

Act of September 30, 1950, referred to in text, is Act Sept. 30, 1950, c. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which is classified generally to chapter 13 (section 236 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 236 of Title 20 and Tables.

The Act of September 23, 1950, referred to in text, is Act Sept. 23, 1950, c. 995, as amended generally by Act Aug. 12, 1958, Pub.L. 85–620, Title I, 72 Stat. 548, which is classified generally to chapter 19 (section 631 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Tables.

The Cooperative Research Act, referred to in text, is Act July 26, 1954, c. 576, 68 Stat. 533, which was classified generally to chapter 15 (section 331 et seq.) of Title 20, Education, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub.L. 93–380, Title IV, Aug. 21, 1974, 88 Stat. 544. For complete classification of this Act to the Code, see Tables.

Codifications

Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, Pub.L. 89–750, and not as part of Pub.L. 88–352 July 2, 1964, 78 Stat. 252, known as the Civil Rights Act of 1964, Title VI of which enacted this subchapter.

Amendments

1968 Amendments. Pub.L. 90–247 added the proviso to this section.

Effective Dates

1966 Acts. Pub.L. 89–750, § 191, provided that: "The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241l, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise."

Transfer of Functions

"Secretary of Education" and "Secretary", were substituted for "Commissioner of Education" and "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub.L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of the Commissioner of Education of the Department of Health, Education, and Welfare, to the Secretary of Education.

§ 2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C.A. § 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally-assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub.L. 91–230, § 2, Apr. 13, 1970, 84 Stat. 121; Pub.L. 96–88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Acts. Senate Report No. 91–634 and Conference Report No. 91–937, see 1970 U.S. Code Cong. and Adm. News, p. 2768.

1979 Acts. Senate Report No. 96–49 and House Conference Report No. 96–459, see 1979 U.S. Code Cong. and Adm. News, p. 1514.

References in Text

The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub.L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (section 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Section 182 of the Elementary and Secondary Education Amendments of 1966, referred to in subsec. (a), is classified to section 2000d–5 of this title.

Codifications

Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, Pub.L. 91–230 and not as part of Pub.L. 88–352, July 2, 1964, 78 Stat. 252, known as the Civil Rights Act of 1964, Title VI of which enacted this subchapter.

Transfer of Functions

"Secretary of Education" was substituted for "Department of Health, Education, and Welfare" in subsec. (d) pursuant to sections 301 and 507 of Pub.L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of the Department and Secretary of Health, Education, and Welfare to the Secretary of Education.

§ 2000d–7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C.A. § 794], title IX of the Education Amendments of 1972 [20 U.S.C.A. § 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C.A. § 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub.L. 99–506, Title X, § 1003, Oct. 21, 1986, 100 Stat. 1845.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1986 Acts. House Report No. 99–571, House Conference Report No. 99–955, and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 3471.

References in Text

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub.L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of that Act is classified principally to chapter 38 (section 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendments note set out under section 1001 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is Pub.L. 94–135, Title III, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (section 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub.L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (section 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Codifications

Section was enacted as part of the Rehabilitation Act Amendments of 1986, Pub.L. 99–506, and not as part of Pub.L. 88–352, July 2, 1964, 78 Stat. 252, known as the Civil Rights Act of 1964, Title VI of which enacted this subchapter.

U.S. Department of Transportation
Federal Highway Administration

Notice

Subject

IMPACTS OF THE CIVIL RIGHTS RESTORATION ACT OF 1987 ON FHWA PROGRAMS

Classification Code	Date
N 4720.6	September 2, 1992

1. PURPOSE. To provide guidance to Federal Highway Administration (FHWA) field officials, State highway agencies (SHAs), their subrecipients, and contractors regarding the nondiscrimination requirements of the Civil Rights Restoration Act of 1987.

2. BACKGROUND

   a. The Supreme Court's decision in the case of Grove City College v. Bell, 465 U.S. 555 (1984), limited the reach of Federal agency nondiscrimination requirements to those parts of a recipient's operations which directly benefitted from Federal assistance. The Civil Rights Restoration Act of 1987 clarified the intent of Congress to include all programs and activities of Federal-aid recipients, subrecipients and contractors. This statute clarified the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes.

   b. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

   c. Authorities for nondiscrimination include but are not limited to: Title VI of the Civil Rights Act of 1964, the Age Discrimination Acts of 1967 and 1975, Section 504 of the Rehabilitation Acts of 1973, the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, and Title 23, United States Code, Section 324.

DISTRIBUTION: Level 2: Headquarters
Regions
Divisions
Level 3: SHA's(Through Divisions)

OPI HCR-10

3. GUIDANCE

a. The Civil Rights Restoration Act of 1987 amended each of the affected statutes by adding a section defining the word "program" to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives Federal financial assistance.

b. If a unit of a State or local government is extended Federal aid and distributes such aid to another governmental entity, all of the operations of the entity which distributes the funds and all of the operations of the department or agency to which the funds are distributed are covered.

c. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such an entity receives Federal financial assistance which is extended to it as a whole or if it is principally engaged in certain types of activities.

4. ACTION REQUIRED

a. FHWA field officials:

(1) Inform the States of the existence of the Civil Rights Restoration Act of 1987.

(2) Provide guidance and technical assistance to SHAs upon request.

(3) Inform States of the need to incorporate language in the next scheduled update of their Nondiscrimination ("Title VI") Plans indicating that they are aware of the scope of the nondiscrimination provisions and that they have incorporated a process to inform persons involved in or affected by all of their programs and activities of their rights under Title VI and related nondiscrimination statutes.

(4) Provide and/or coordinate training addressing nondiscrimination program requirements.

(5) Provide guidance on how nondiscrimination complaints will be handled.

(6) If a complaint of discrimination is received from a person who believes that he or she has been subjected to discrimination under any program or activity of a recipient, subrecipient, or contractors whether Federal-aid funds are involved in a particular program or activity or not, immediately transmit the complaint to the Director, Departmental Office of Civil Rights, and send a copy of the complaint to HCR-20.

b. State transportation agencies:

(1) Incorporate appropriate language in updates of Nondiscrimination ("Title VI") Plans to ensure that persons affected by or involved in all of a State's programs and activities are aware of their rights to not be subjected to discrimination based on race, color, sex, national origin, age, or handicap/disability.

(2) Ensure that persons who believe they have been subjected to discrimination are made aware of the avenues of redress available to them and that they are provided advice on the process.

(3) Monitor activities and investigate complaints filed against Federal-aid subrecipients and contractors. The SHAs are also responsible for preventing discrimination in all of their own programs and activities and attempting to informally resolve complaints filed against them throughout the complaint process.

(4) Where a complainant lodges a complaint against the SHA, the FHWA will conduct or contract for the investigation or, if a class action complaint, a review.

(5) In instances where the complaint is against a contractor, subcontractor, or subrecipient, the FHWA can defer to the appropriate SHA to schedule and conduct an investigation, although, initially, involvement by FHWA may be appropriate to ensure the adequacy of the investigation.

T. D. Larson
Federal Highway Administrator

Federal Register
Vol. 59, No. 32
Wednesday, February 16, 1994

Presidential Documents

Title 3—

The President

Executive Order 12898 of February 11, 1994

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1–1. IMPLEMENTATION.

1–101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1–102. *Creation of an Interagency Working Group on Environmental Justice* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1–103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3–3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5–502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1–103. *Development of Agency Strategies.* (a) Except as provided in section 6–605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)–(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1–104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1–103(e) of this order

Sec. 2–2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS. Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including popu-

lations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3–3. RESEARCH, DATA COLLECTION, AND ANALYSIS.

3–301. *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3–302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1–103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001–11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4–4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4–401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4–402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5–5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION. (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6–6. GENERAL PROVISIONS.

6–601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6–602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6–603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6–604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6–605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

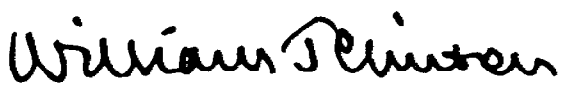
6–606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6–607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6–608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6–609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural,

enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.



THE WHITE HOUSE,
February 11, 1994.

[FR Doc. 94–3685
Filed 2–14–94; 3:07 pm]
Billing code 3195–01–P

Editorial note: For the memorandum that was concurrently issued on Federal environmental program reform, see issue No. 6 of the *Weekly Compilation of Presidential Documents.*

Appendix D-4

FEDERAL REGISTER
Vol. 62, No. 72

Notices

DEPARTMENT OF TRANSPORTATION (DOT)
Office of the Assistant Secretary for Transportation Policy
Departmental Office of Civil Rights

[OST Docket No. OST-95-141 (50125)]

Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations

62 FR 18377

DATE: Tuesday, April 15, 1997

ACTION: Notice of final DOT Order on environmental justice.

SUMMARY: The Department of Transportation is issuing its final DOT Order, which will be used by DOT to comply with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The Order generally describes the process that the Office of the Secretary and each Operating Administration will use to incorporate environmental justice principles (as embodied in the Executive Order) into existing programs, policies, and activities. The Order provides that the Office of the Secretary and each Operating Administration within DOT will develop specific procedures to incorporate the goals of the DOT Order and the Executive Order with the programs, policies and activities which they administer or implement.

FOR FURTHER INFORMATION CONTACT: Ira Laster Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, (202) 366-4859, or Marc Brenman, Departmental Office of Civil Rights, (202) 366-1119, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Executive Order 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs and activities on minority populations and low-income populations.

The DOT Environmental Justice Order is a key component of DOT's June 21, 1995 Environmental Justice Strategy (60 FR 33896). The Order sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into

their operations. This is to be done through a process developed within the framework of existing requirements, primarily the National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and other DOT applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; and public involvement. The Order is an internal directive to the various components of DOT and does not create any right to judicial review for compliance or noncompliance with its provisions.

In order to provide an opportunity for public input, a proposed version of this Order was published for comment on June 29, 1995 (60 FR 33899). A total of 30 written comments were received. Fifteen comments were received from state transportation or highway agencies, representing 20 state agencies (one letter was signed by ten state agencies, but four of those also sent individual comments). The other 15 comments included four from transit agencies, four from national organizations, two each from local governments, metropolitan planning organizations, and citizens objecting to one particular project, and one from a professional association.

Most of the comments from the state agencies suggested that the proposed Order would duplicate existing processes and impose additional burdens on the state agencies, and urged that greater flexibility be granted to states.

The DOT Order reinforces considerations already embodied in NEPA and Title VI, and the final version has been revised to make this clearer. It is intended to insure that a process for the assessment of environmental justice factors becomes common practice in the application of those, and related, statutes.

Many other comments suggested ways in which the Order might be clarified or simplified, or addressed specific details of individual agency implementation. As this Order is only intended to provide general guidance to all DOT components, detailed comments on each agency's implementation are premature, and should be made during opportunities for public input on agency implementation (para. 5 of the Order).

Several commenters suggested greater reliance on existing procedures, particularly those implementing NEPA.

One commenter noted, "Over the past number of years we have seen rules and laws initiated with laudable intent, only to be slowly transformed into bureaucratic mazes only dimly related to their original purpose."

The Department does not intend that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well being of minority populations and low-income populations are

considered and addressed during transportation decision making.

To further advance this objective, explanatory information has been provided in this preamble and several changes have been made in the Order. Most notably:

-Further clarification has been provided concerning the use of existing NEPA, Title VI, URA and ISTEA planning requirements and procedures to satisfy the objectives of Executive Order 12898.

-The application of the Order to ongoing activities is discussed in this preamble.

-The Order has been modified to further clarify the relationship and use of NEPA and Title VI in implementing the Executive Order.

Further, in developing and reviewing implementing procedures, described in paragraph 5a to comply with Executive Order 12898, the emphasis continues to be on the actual implementation of NEPA, Title VI, the URA and ISTEA planning requirements so as to prevent disproportionately high and adverse human health or environmental effects of DOT's programs, policies and activities on minority populations and low-income populations.

One of the primary issues raised in the proposed Order concerned the actions that would be taken if a disproportionately high and adverse human health or environmental effect on minority populations or low-income populations is identified. The proposed Order set forth three options. A variety of comments were received on this issue, both for and against the various options.

The final Order adopts a modified version of Option B from the proposed Order. While Option B implements a new process for addressing disproportionately high and adverse effects, the Department believes that Option B is consistent with existing law and best accomplishes the objectives of the Executive Order. Option B (now incorporated in paragraphs 8a, 8b and 8c of the final Order) provides that disproportionate impacts on low-income and minority populations are to be avoided, if practicable, that is, unless avoiding such disproportionate impacts would result in significant adverse impacts on other important social, economic, or environmental resources. Further, populations protected by Title VI are covered by the additional provisions of paragraph 8b. Three commenters expressed concern and uncertainty as to the implementation of paragraph 6b(1) of Option B as proposed, that provided for an agreement with populations protected by Title VI. DOT agreed with the comments and, accordingly, that paragraph has been deleted from the final Order.

Several commenters asked about the effective date of this Order. In particular they wanted to know whether it applies to ongoing projects. The effective date of the Order is the date of its issuance. However, to the extent that the Order clarifies existing requirements that ensure environmental justice principles are considered and addressed before final

transportation decisions are made, its purposes already should be reflected in actions relating to ongoing projects.

Several commenters recommended that insignificant or de minimis actions not be covered by this Order. It is noted that the definition of "programs, policies and/or activities" in Section 1f of the Appendix does not apply to those actions that do not affect human health or the environment. Other actions that have insignificant effects on human health or the environment can be excluded from coverage by a DOT component.

One commenter suggested that this Order might be inconsistent with the Supreme Court's decision in Adarand Constructors v. Pena. DOT has concluded that, since the purpose of this Order is unrelated to the types of programs which were the subject of Adarand, this Order is not affected by the Adarand decision.

Dated: February 3, 1997.

Federico F. Pena,

Secretary of Transportation.

Department of Transportation, Office of the Secretary, Washington, D.C.

Order

Subject: Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order establishes procedures for the Department of Transportation (DOT) to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898, this Order is limited to improving the internal management of the Department and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its operating administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers or any other person.

2. Scope

This Order applies to the Office of the Secretary, the United States Coast Guard, DOT's operating administrations, and all other DOT components.

3. Effective Date

This Order is effective upon its date of issuance.

4. Policy

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Integration With Existing Operations

a. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance. Within six months of the date of this Order each operating administration will provide a report to the Assistant Secretary for Transportation

Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations.

b. In undertaking the integration with existing operations described in paragraph 5a, DOT shall observe the following principles:

(1) Planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation which may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

6. Ongoing DOT Responsibility

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

7. Preventing Disproportionately High and Adverse Effects

a. Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial

assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin.

b. It is DOT policy to actively administer and monitor its operations and decision making to assure that nondiscrimination is an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, ISTEA and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

-Population served and/or affected by race, color or national origin, and income level;

-Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin;

-present and proposed membership by race, color, or national origin, in any planning or advisory body which is part of the program.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies and activities,

(2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies and activities, where permitted by law and consistent with the Executive Order,

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. Actions To Address Disproportionately High and Adverse Effects

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, and activities for which they are responsible will have an adverse impact on minority and low-income populations and whether that adverse impact will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. Operating Administrators and other responsible DOT officials will also ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on populations protected by Title VI ("protected populations") will only be carried out if:

(1) a substantial need for the program, policy or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph (1) above), either (i) would have other adverse social, economic, environmental or human health impacts that are more severe, or (ii) would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities. Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy or activity, or in other appropriate planning or program documentation.

Appendix

1. Definitions

The following terms where used in this Order shall have the following meanings*:

a. DOT means the Office of the Secretary, DOT operating administrations, and all other DOT components.

b. Low-Income means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. Minority means a person who is:

(1) Black (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
or

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

d. Low-Income Population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

e. Minority Population means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

f. Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment

effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

(1) is predominately borne by a minority population and/or a low-income population, or

(2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

h. Programs, policies, and/or activities means all projects, programs, policies, and activities that affect human health or the environment, and which are undertaken or approved by DOT. These include, but are not limited to, permits, licenses, and financial assistance provided by DOT. Interrelated projects within a system may be considered to be a single project, program, policy or activity for purposes of this Order.

I. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

*These definitions are intended to be consistent with the draft definitions for E.O. 12898 that have been issued by the Council on Environmental Quality and the Environmental Protection Agency. To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the DOT program.

Federico F. Pena,

Secretary of Transportation.

[FR Doc. 97-9684 Filed 4-14-97; 8:45 am]

BILLING CODE 4910-62-P

Order

U.S. DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Subject

FHWA ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

Classification Code

Date

December 2, 1998

Par.

1. PURPOSE AND AUTHORITY.

a. This Order establishes policies and procedures for the Federal Highway Administration (FHWA) to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), dated February 11, 1994.

b. EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health and environmental effects, including the interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United States. These requirements are to be carried out to the greatest extent practicable, consistent with applicable statutes and the National Performance Review. Compliance with this FHWA Order is a key element in the environmental justice strategy adopted by FHWA to implement EO 12898, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898 and the Department of Transportation Order on Environmental Justice (DOT Order 5610.2) dated April 15, 1997, this Order is limited to improving the internal management of the Agency and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Agency, its officers, or any person. Nor should this Order be

construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Agency, its operating administrations, its officers, or any other person.

2. **DEFINITIONS**

The following terms, where used in this Order, shall have the following meanings[1]:

a. **FHWA** means the Federal Highway Administration as a whole and one or more of its individual components;

b. **Low-Income** means a household income at or below the Department of Health and Human Services poverty guidelines;

c. **Minority** means a person who is:

(1) Black (having origins in any of the black racial groups of Africa);

(2) Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

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

d. **Low-Income Population** means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed FHWA program, policy, or activity.

e. **Minority Population** means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically

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[1]These definitions are intended to be consistent with the draft definitions for EO 12898 that have been issued by the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA). To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the FHWA program.

dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

f. **Adverse Effects** means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of FHWA programs, policies, or activities.

g. **Disproportionately High and Adverse Effect on Minority and Low-Income Populations** means an adverse effect that:

(1) is predominately borne by a minority population and/or a low-income population; or

(2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or nonlow-income population.

h. **Programs, Policies, and/or Activities** means all projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded, or approved by FHWA. These include, but are not limited to, permits, licenses, and financial assistance provided by FHWA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this Order.

i. **Regulations and Guidance** means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by FHWA.

3. POLICY

a. It is FHWA's longstanding policy to actively ensure nondiscrimination in Federally funded activities. Furthermore, it is FHWA's continuing policy to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decisionmaking process--from early planning through implementation.

Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.

b. EO 12898, DOT Order 5610.2, and this Order are primarily a reaffirmation of the principles of Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, the National Environmental Policy Act (NEPA), 23 U.S.C. 109(h) and other Federal environmental laws, emphasizing the incorporation of those provisions with the environmental and transportation decisionmaking processes. Under Title VI, each Federal agency is required to ensure that no person on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute applies to every program area in FHWA. Under EO 12898, each Federal agency must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

c. FHWA will implement the principles of the DOT Order 5610.2 and EO 12898 by incorporating Environmental Justice principles in all FHWA programs, policies, and activities within the framework of existing laws, regulations, and guidance.

d. In complying with this Order, FHWA will rely upon existing authorities to collect necessary data and conduct research associated with environmental justice concerns, including 49 CFR 21.9(b) and 23 CFR 200.9 (b)(4).

4. INTEGRATING ENVIRONMENTAL JUSTICE PRINCIPLES WITH EXISTING OPERATIONS

a. The principles outlined in this Order are required to be integrated in existing operations.

b. Future rulemaking activities undertaken, and the development of any future guidance or procedures for FHWA programs, policies, or activities that affect human health or the environment, shall explicitly address compliance with EO 12898 and this Order.

c. The formulation of future FHWA policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of EO 12898 and this Order.

5. PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

a. Under Title VI, FHWA managers and staff must administer their programs in a manner to ensure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination under any program or activity of

FHWA because of race, color, or national origin. Under EO 12898, FHWA managers and staff must administer their programs to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of FHWA programs, policies, and activities on minority populations and low-income populations.

b. FHWA currently administers policies, programs, and activities that are subject to the requirements of NEPA, Title VI, the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act), Title 23 of the United States Code and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered to identify the risk of discrimination, early in the development of FHWA's programs, policies, and activities so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate, and practical:

(1) population served and/or affected by race, or national origin, and income level;

(2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, or national origin; and,

(3) present and proposed membership by race, or national origin, in any planning or advisory body that is part of the program.

c. FHWA will administer its governing statutes so as to identify and avoid discrimination and disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of FHWA programs, policies, and activities; and

(2) proposing measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by FHWA programs, policies, and activities, where permitted by law and consistent with EO 12898; and

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with EO 12898; and

(4) providing public involvement opportunities and considering the results thereof, including providing meaningful access to public information

concerning the human health or environmental impacts and soliciting input from affected minority and low-income populations in considering alternatives during the planning and development of alternatives and decisions.

6. ACTIONS TO ADDRESS DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

a. Following the guidance set forth in this Order, FHWA managers and staff shall ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority or low-income populations.

b. When determining whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations, FHWA managers and staff should take into account mitigation and enhancements measures and potential offsetting benefits to the affected minority or low-income populations. Other factors that may be taken into account include design, comparative impacts, and the relevant number of similar existing system elements in nonminority and nonlow-income areas.

c. FHWA managers and staff will ensure that the programs, policies, and activities that will have disproportionately high and adverse effects on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. FHWA managers and staff will also ensure that any of their respective programs, policies or activities that have the potential for disproportionately high and adverse effects on populations protected by Title VI ("protected populations") will only be carried out if:

(1) a substantial need for the program, policy or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations have either:

(a) adverse social, economic, environmental, or human health impacts that are more severe; or

(b) would involve increased costs of an extraordinary magnitude.

e. Any relevant finding identified during the implementation of this Order must be included in the planning or NEPA documentation that is prepared for the appropriate program, policy, or activity.

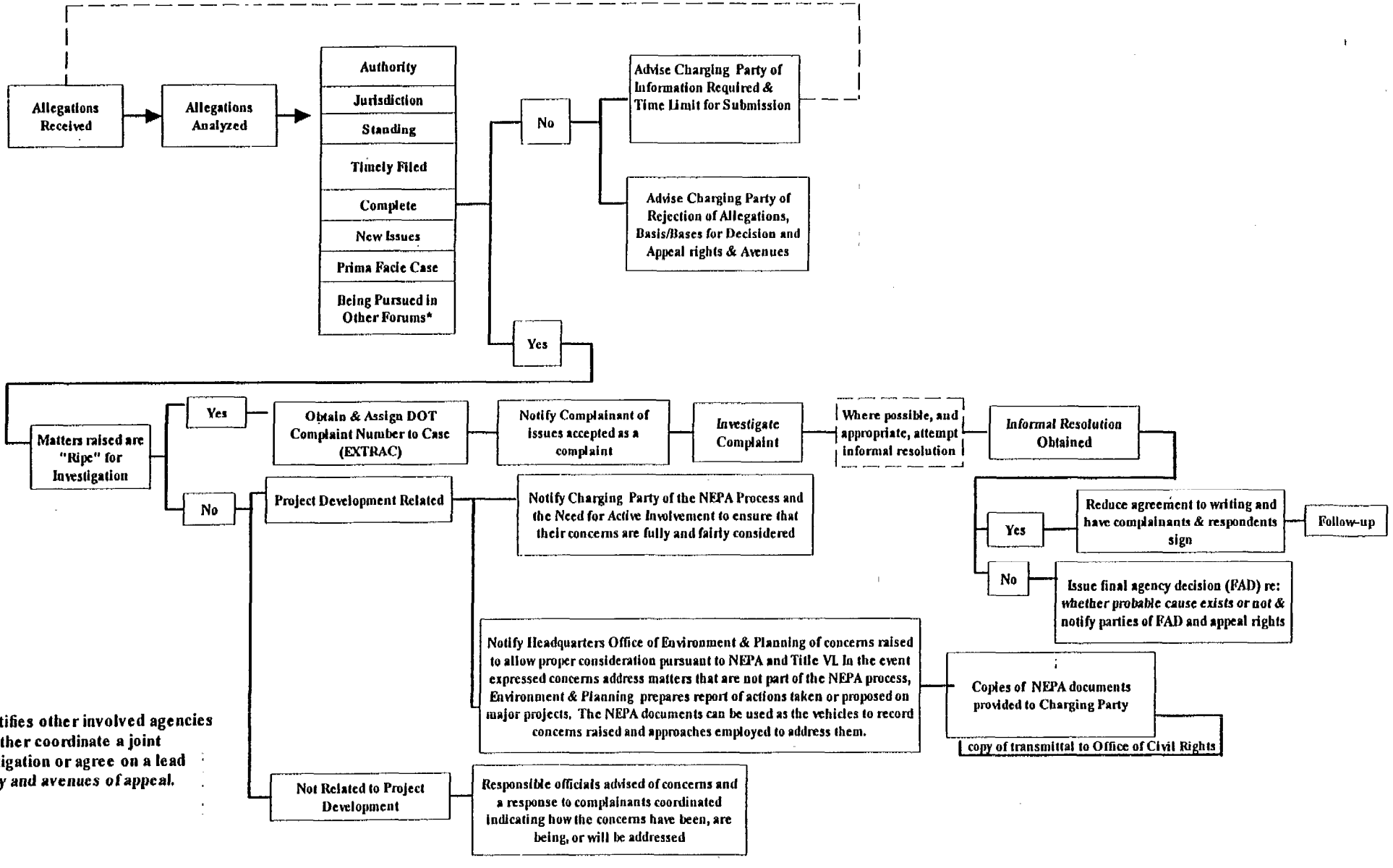
f. Environmental and civil rights statutes provide opportunities to address the environmental effects on minority populations and low-income populations. Under Title VI, each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination under any program or activity receiving Federal assistance. Therefore, any member of a protected class under Title VI may file a complaint with the FHWA Office of Civil Rights, Attention HCR-20, alleging that he or she was subjected to disproportionately high and adverse health or environmental effects. FHWA will then process the allegation in a manner consistent with the attached operations flowchart.

Kenneth R. Wykle
Federal Highway Administrator

Attachment

Attachment

PROCESSING ALLEGATIONS OF DISPROPORTIONATE EFFECTS AND DISCRIMINATION INVOLVING ENVIRONMENTAL JUSTICE CLAIMS



*Identifies other involved agencies and either coordinate a joint investigation or agree on a lead agency and avenues of appeal.

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AUTHORITY: Sec. 602, 42 U.S.C. 2000d–1.

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 federally assisted programs and activities listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that 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 under any such program 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 under any such program; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 21.5(c).

The fact that a program or activity is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs 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.

§ 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 under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

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

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

§ 21.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required

of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant 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.

§ 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 of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. 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 under 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]

§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 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;

(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 noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the 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.

§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

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, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs 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 affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any 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.

§ 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 under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part 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 action had been taken by the Secretary of this Department.

§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 for the purpose of carrying out a program.

(e) *Program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or

other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(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, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(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.

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 BY MINORITY BUSINESS ENTERPRISE IN DEPARTMENT OF TRANSPORTATION PROGRAMS

SUBPART A—GENERAL

SUBPART B—[RESERVED]

SUBPART C—DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

SUBPART D—IMPLEMENTATION OF SECTION 105(F) OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

SUBCHAPTER C—CIVIL RIGHTS

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

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 nondiscriminatory practices.

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

(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.

(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.

(13) Establishing procedures for pregrant and postgrant approval reviews of State programs and applicants for compliance with Title VI require-

ments; 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 noncurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

§ 200.13 Certification acceptance.

Title VI and related statutes requirements apply to all State highway agencies. States and FHWA divisions operating under certification acceptance shall monitor the Title VI aspects of the program by conducting annual reviews and submitting required reports in accordance with guidelines set forth in this document.

PART 230—EXTERNAL PROGRAMS

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

Sec.

APPENDICES TO SUBPART A

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

Appendix D-7

TITLE VI--PROGRAM--MINIMUM REQUIREMENTS

Regulations in 23 CFR 200 require that State highway agencies do at least the following:

Subject		Action Required	Citation
A. Assurances	1.	Submit nondiscrimination assurances.	23 CFR 200.9(a)(1)
	2.	Certify that discrimination based on sex will be proscribed in assurances.	23 CFR 200.9(a)(2)
B. Civil Rights Unit	1.	Establish an adequately staffed Civil Rights unit with a Title VI coordinator.	23 CFR 200.9(b)(1) and (2)
		General	
C. Title VI Coordinator's Responsibilities	1.	Have access to head of agency.	23 CFR 200.9(b)(1)
	2.	Monitor Title VI activities and prepare required reports.	23 CFR 200.9(b)(1)
	3.	Provide training.	23 CFR 200.9(b)(9)
	4.	Submit Implementing Plan to Regional FHWA Administrator.	23 CFR 200.9(b)(11)
	5.	Develop Title VI information for dissemination (where necessary; in other language).	23 CFR 200.9a(b)(12)
	6.	Prepare an annual accomplishment report.	23 CFR 200.9(b)(10)
		Establish Procedures	
	1.	To promptly investigate complaints.	23 CFR 200.9(a)(3)
	2.	To identify and eliminate discrimination.	23 CFR 200.9(b)(14)
	3.	To review programs and grant applications.	23 CFR 200.9(b)(13)
	4.	To resolve deficiencies within 90 days.	23 CFR 200.9(a)(3) and (b)(15)
	5.	To collect and analyze statistical data.	23 CFR 200.9(b)(4)
		Conduct Reviews	
	1.	Of programs--with program personnel.	23 CFR 200.9(a)(4)
	2.	Of grant applications.	23 CFR 200.9(b)(13)
	3.	Of special emphasis areas.	23 CFR 200.9(b)(6)
	4.	Of subrecipients, cities, counties, contractors, consultants, suppliers, universities, colleges, planning agencies and other recipients of Federal-aid highway funds.	23 CFR 200.9(b)(7)
	5.	Of state program directives.	23 CFR 200.9(b)(8)

Department of Transportation
Office of the Secretary
Washington, D.C.

ORDER

DOT 1000.12

1/19/77

SUBJECT: IMPLEMENTATION OF THE DEPARTMENT OF TRANSPORTATION TITLE VI PROGRAM

1. PURPOSE.

   a. The purpose of this Order is to implement Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); the regulations of this Department (49 C.F.R. Part 21); and the regulations of the Department of Justice (28 C.F.R. Part 42, Subpart F) issued pursuant to Executive Order 11764. This Order establishes the uniform minimum responsibilities of each operating element of this Department in implementing and enforcing the Title VI program, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from this Department.

   b. Nothing in this Order is intended to, nor shall it diminish or abrogate the requirements of section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 or section 30 of the Airport and Airway Development Act of 1970 as amended or the regulations, orders or directives established pursuant thereto, to the extent that such requirements are more stringent or contain higher standards.

2. REFERENCES.

   a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 et seq.;

   b. Regulations of the Department of Transportation, 49 C.F.R. Part 21;

   c. Executive Order 11764, dated January 21, 1974, 42 U.S.C. 2000d-1 (note) (Supp. 1976); and

   d. Regulations of the Department of Justice, 28 C.F.R. Part 42, Subpart F.

3. SCOPE. This Order applies to the Departmental Office of Civil Rights and all operating elements of the Department.

4. BACKGROUND. Executive Order 11764 delegated to the Attorney General authority to coordinate and assist agency enforcement of Title VI, to prescribe standards and procedures regarding such enforcement, and to issue necessary regulations and orders. On December 1, 1976, at 41 FR 52669, the

DISTRIBUTION: All Secretarial Offices
All Operating Elements

OPI: Office of Civil Rights

Department of Justice published regulations, effective January 3, 1977, which govern the respective obligations of Federal agencies regarding enforcement of Title VI. This Order sets forth Departmental instructions establishing explicit procedures for implementing and enforcing the Title VI program and the regulations of the Department of Justice.

William T. Coleman, Jr.
Secretary of Transportation

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CHAPTER I

GENERAL

1. PURPOSE. The purpose of the Title VI program of each operating element is to ensure (1) that each applicant for or recipient of Federal financial assistance is, and will continue to be, in compliance with Title VI, and (2) that the program or activity for which Federal financial assistance is sought is consistent with the operating element's Title VI program. In this latter regard, the objective is to ensure among other things that: (1) the benefits and services of the program or activity are made available to, and are fairly and adequately distributed among, beneficiaries without regard to race, color, or national origin; (2) the location of existing or proposed facilities and the provision of services involved in the program or activity will not deny access to any person on the basis of prohibited discrimination; and (3) persons in the affected community are not differentially or adversely impacted on the basis of race, color, or national origin.

2. DEFINITIONS.

   a. "Affected Community" means that person or persons served or likely to be directly or indirectly affected by a program or activity receiving Federal financial assistance from the Department.

   b. "Affirmative Action" means a positive program to eliminate discrimination and ensure nondiscriminatory practices in the future.

   c. "Compliance" means that condition existing when a recipient has implemented all of the Title VI requirements effectively and there is not any evidence of discrimination.

   d. "Department" and "DOT" mean the Department of Transportation.

   e. "Director" means the Director of the Office of Civil Rights of the Department.

   f. "Discrimination" means that act or failure to act, intentional or unintentional, the effect of which is that a person, because of race, color, or national origin, has been excluded from participation in, denied the benefits of, or has been otherwise subjected to unequal treatment under any program or activity receiving Federal financial assistance from the Department.

   g. "Minority Contractor" means a business, at least 50 percent of which is owned by or controlled by minority group members. For the purpose of this definition, "minority group members" include but are not limited to Blacks, Hispanics, American Indians, Eskimos, Alaskan Aleuts, and American Orientals.

h. "Noncompliance" means a failure to meet the requirements of Title VI and the regulations and orders of the Department issued thereunder or failure to implement an approved Title VI affirmative action program.

i. "Office" means the Department Office of Civil Rights.

j. "Respondent" means an applicant, recipient, subgrantee, or contractor alleged to be in noncompliance or probable noncompliance with the Title VI program.

k. "Title VI" means Title VI of the Civil Rights Act of 1964.

l. "Title VI Program" means the system of requirements, procedures, actions and sanctions through which the Department of Transportation enforces Title VI and the regulations effectuating it and ensures that discrimination does not occur in connection with programs and activities which receive Federal financial assistance from this Department.

m. Other terms used herein shall have the meaning as defined in 49 C.F.R. 21.23.

3. RESPONSIBILITIES.

a. Departmental Director of Civil Rights. The Director acts as the responsible Departmental official in matters relating to Title VI and assists the Secretary in carrying out the Title VI responsibilities of the Department. Specifically, the Director has the responsibility to:

(1) Recommend, develop, disseminate, monitor, and vigorously pursue Departmental policies on the implementation of Title VI and assist the operating elements in the establishment of Title VI programs.

(2) Prepare uniform Departmental Title VI regulations and issue guidelines and program directives.

(3) Advise the Secretary concerning significant developments in the implementation of the Department's Title VI program.

(4) Review, evaluate, and vigorously monitor operating elements' activities and programs relating to Title VI and effectuate changes to assure consistency and program effectiveness.

(5) Monitor compliance with DOT Order 1050.2, Standard DOT Title VI Assurances, including the review of any expansion or addenda to the Assurances by the operating elements.

(6) Provide leadership, guidance, and technical assistance to the operating elements in the carrying out of their Title VI responsibilities.

(7) Ensure that all complaints of discrimination alleging noncompliance with Title VI, this Order and the regulations of the Department implementing Title VI are processed, investigated and resolved in a fair and timely manner in accordance with Title VI and the regulations and orders of the Department.

(8) Take appropriate, fair and timely action with regard to all findings of noncompliance under Title VI, by initiating or participating inter alia in attempts at informal resolution, hearings, and reports to the Secretary for submission to Congress ordering the suspension or termination of Federal financial assistance.

(9) Provide primary coordination and liaison with other agencies, offices, and public and private organizations outside the Department and with the Department of Justice, in conjunction with the Office of General Counsel, to achieve program objectives.

(10) Disseminate information to and provide continuous and meaningful consultation with the public concerning the Department's Title VI program, including, in appropriate situations, the provision of material in languages other than English.

b. Operating Elements. Each operating element, with respect to the Federal financial assistance programs it administers, has the responsibility to ensure that the objectives of Title VI, the regulations of the Department at 49 C.F.R. Part 21, and the regulations of the Department of Justice at 28 C.F.R. Part 42, Subpart F, are achieved. The head of each operating element shall:

(1) Cause each application for Federal financial assistance:

(a) To be reviewed by its office of civil rights for a written determination as to whether the applicant is in compliance with Title VI, and whether the program, project, or activity which is funded in whole or in part by such Federal financial assistance is consistent with the operating element's Title VI program.

(b) To include the Standard DOT Title VI Assurances required by DOT Order 1050.2.

(2) Within 90 days from the date of this Order, develop and submit to the Director for review and approval:

(a) A Title VI program, in accordance with paragraph 4 of this chapter and the regulations of the Department of Justice at 28 C.F.R. 42, Subpart F, relating to each Federal financial assistance program it administers; and

(b) A draft of proposed procedures and requirements that will cause the applicants and recipients to take all actions necessary to implement the Title VI program;

(3) Within 30 days after approval by the Director, cause to be published in the Federal Register, procedures and requirements that will implement the operating element's Title VI program;

(4) Assign sufficient personnel to implement fully and to ensure compliance with its Title VI program;

(5) Cause to be included in each agreement pursuant to which Federal financial assistance is to be provided, a requirement that the recipient notify the operating element immediately in writing of:

(a) Any lawsuit or complaints filed against the recipient alleging discrimination on the basis of race, color, or national origin; and

(b) Any application it files with other Federal agencies for Federal financial assistance, including a brief description of the application; and

(6) Cause each environmental impact review made pursuant to DOT Order 5610.1B in connection with Federal financial assistance programs to be reviewed by its office of civil rights prior to approval in order to ascertain whether the environmental determinations are consistent with its Title VI program determinations.

4. REQUIREMENTS.

a. Program Examination. Each operating element shall, in developing its Title VI program, examine in detail the nature and structure of programs and activities for which it provides Federal financial assistance, require information of applicants and recipients to determine compliance, and establish requirements so as to ensure that the purpose of its Title VI program is achieved.

b. Title VI Program Development. In developing its Title VI program, each operating element shall, in addition to the requirements of 28 C.F.R. Part 42, Subpart F, be guided by the following considerations:

(1) Covered Employment. Under Title VI, the employment practices of an applicant or recipient can be considered where (1) a primary purpose of the program or activity is to provide employment [see 49 C.F.R. Part 21.5(c)(1)(2)]; or (2) discriminatory employment practices could cause discrimination with respect to beneficiaries. (See Chapter III for further guidance on covered employment.)

(2) Participation in Decision Making.

(a) Where the program or activity for which Federal financial assistance is sought involves nonelected boards, advisory councils, or committees which are an integral part of planning or implementing the program or activity, the Title VI program shall require appropriate action to insure that such boards, councils or committees reasonably reflect the racial/ethnic composition of the community affected by the program or activity.

(b) Where the program or activity requires public hearings, the Title VI program shall require appropriate action to ensure that notice of such hearings reaches all segments of the affected community. Notices shall be published in and announced over general and minority newspaper and broadcast media respectively. Such publications and broadcasts shall state that discrimination in the program is prohibited by Federal law. The Title VI program shall also require that direct contact shall be made with racial/ethnic community organizations and/or leaders in communities affected or served by the program or activity. The participation of such persons and organizations in the decision-making process shall be solicited.

(c) Where a significant number or proportion of the affected community needs information in a language other than English in order to be effectively informed of or to participate in the public hearings, the recipient shall publish and announce notices of public hearings in the other languages and shall take any other reasonable steps, including the furnishing of an interpreter, considering the scope of the program and the size and concentration of the non-English speaking population.

(3) Minority Contractor Participation. Requirements shall be established to ensure that business organizations are not excluded from participation in the program or activity on the grounds of race, color, or national origin. The Title VI program shall require every application for Federal financial assistance in which there will be contracts awarded to include an affirmative action program for minority contractor participation. (See Chapter II for further guidance on minority contractor participation.)

(4) Pre-award Reviews. As part of its Title VI program, each operating element shall cause each application for Federal financial assistance to be reviewed by its office of civil rights which shall make a written determination as to whether the applicant is in probable compliance or compliance with Title VI, and whether the program, project, or activity which is funded in whole or in part by such Federal financial assistance is consistent with the operating element's Title VI program. An application for Federal financial assistance shall not be approved unless the office of civil rights of the operating element has found in its written determination that the applicant is in probable compliance or compliance and that the project, program, or activity is consistent with the Title VI program. (See Chapter IV.)

(5) Post-Award Reviews. As part of its Title VI program, each operating element shall establish and maintain an effective program of post-award compliance reviews with respect to programs and activities which have been furnished Federal financial assistance. Such reviews are to include periodic submission of compliance reports by recipients and on-site reviews. (See Chapter IV.)

5. COMPLIANCE WITH TITLE VI. Each operating element shall refer all complaints alleging discrimination which is prohibited by Title VI, and all matters which, based on a compliance review, report or other information, indicate a possible failure to comply with Title VI, to the Director for investigation and handling in accordance with the regulations of this Department at 49 C.F.R. Part 21. Each operating element shall cooperate with the Director in handling all such compliance matters.

CHAPTER II

MINORITY CONTRACTOR PARTICIPATION

1. GENERAL. Each operating element shall develop and maintain procedures to:

   a. Ensure that an applicant or recipient does not discriminate against any business organization in the award of any contract because of the race, color, or national origin of its managers, employees, or owners; and

   b. Require applicants and recipients to take affirmative action to ensure that minority businesses are afforded a fair and representative opportunity to do business.

2. APPLICATION REVIEW.

   a. Reporting. Each operating element shall require every applicant for Federal financial assistance in which there will be contracts awarded to include information sufficient to make a determination as to minority contractor participation. As a minimum, each operating element shall require the following information in the TITLE VI ASSESSMENT required by Chapter IV, paragraph 2a, of this Order:

      (1) An analysis of awards of contracts to minority contractors during the previous year describing the nature of goods and services purchased and the dollar amount involved.

      (2) A comparison of the percentage of awards of contracts to minority contractors (by number of contracts and by total dollar amount involved) to the total procurement activity of applicant or recipient for the previous year.

      (3) Details of proposed contracts in excess of *$_____ to be awarded that would describe the services or products which will be sought, including estimated quantities; give the location where the services are to be provided; the manner in which proposals will be solicited and contracts will be awarded; and the description of bidding procedures.

* The amount to be established by the head of each operating element for the Federal financial assistance program he/she administers with the concurrence of the Director.

(4) Procedures to ensure that known minority contractors will have an equitable opportunity to compete for contracts and subcontracts shall include the:

(a) Ways in which the applicant plans to arrange solicitations, time for presentation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of minority contractors;

(b) Means by which the applicant could assist minority contractors in overcoming barriers to program participation in such areas as bonding, insurance and technical assistance;

(c) Kinds of information the applicant will use to make minority contractors aware of contracting opportunities in its program; where appropriate, information should be in languages other than English;

(d) Projected percentage goals or dollar values to be awarded to minority contractors; and

(e) Designation of a liaison officer who will administer the applicant's minority contract program.

(5) Procedures by which the applicant or recipient will seek affirmative action from its subgrantees and contractors to ensure minority contractor participation that include:

(a) In advertised and negotiated specifications for Federally-assisted contracts, requirements that (1) each bidder submit a minority contractor plan stating whether or not the bidder intends to subcontract a portion of the work and, if so, the type of affirmative action taken to seek out and consider minority contractors as potential subcontractors; and (2) each bidder intending to subcontract make contact with potential minority contractors to solicit affirmatively from minority contractors their interest, capability and prices, and document the results of such contacts.

(b) In Federally-assisted contract requirements, assurances that prime contractors requesting permission to subcontract part of the contract work take the action required in subparagraphs (4)(a) and (4)(e) of this chapter.

(c) In every subgrant, a requirement assuring that the subgrantee will take the action required in subparagraphs (4(a) through (4)(e) of this chapter and subparagraphs (a) and (b) of this paragraph.

b. Analysis. Based upon the information submitted by the applicant, and any additional information that the operating element may require, the operating element shall determine whether the applicant may be considered to be in compliance with regard to minority contractor participation, or whether, by means of a pre-award agreement, the applicant has been brought in compliance with Title VI. (See Chapter VI.)

CHAPTER III

COVERED EMPLOYMENT

1. DEFINITION. Employment discrimination includes: (1) consideration of a person's race, color, or national origin in weighing a person's qualifications for hire, discharge, promotion, demotion, transfer, layoff, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship; or (2) consideration of race, color, or national origin with respect to recruitment or recruitment advertising techniques. Actions that are required to be taken under an approved affirmative action plan do not constitute discrimination in employment.

2. TYPES OF COVERED EMPLOYMENT.

   a. Primary Objective is to Provide Employment. An operating element may take the actions specified in this Order against any applicant or recipient of Federal financial assistance that practices discrimination in employment, "where a primary objective of the Federal financial assistance is to provide employment." [See, 49 C.F.R. 21.5(c)(1), (2).]

      (1) Those programs for which the Department has determined that a primary objective is to provide employment are listed in Appendix B to 49 C.F.R. Part 21. In addition, with respect to any program providing financial assistance for construction, including alteration and repair, or for the purchase of transportation equipment, it shall be assumed that a primary purpose of the program is to provide employment, notwithstanding that the program is not listed in Appendix B.

      (2) Except with respect to those programs listed in Appendix B, each element should determine by examination of the legislative history and the language of each statute authorizing Federal financial assistance, whether a significant concern of Congress was the provision of employment, as well as the provision of any other services to the public. Congress may have had several primary objectives in enacting legislation which provides financial assistance. If providing employment was a substantial concern of Congress in enacting a statute, it shall be deemed to have been a "primary objective," and the employment practices of the applicant or recipient shall be treated under this chapter. Upon a determination of whether the program's primary objectives include or do not include employment, the opinion and information supporting it shall be forwarded to the Director by the operating element involved.

b. Primary Objective is Not to Provide Employment. Regardless of the objectives of the Federal financial assistance program, discrimination in employment practices by recipients of Federal financial assistance is prohibited where discrimination in employment causes discrimination to the beneficiaries. [See, 49 C.F.R. 21.5(c)(3).] In this regard, it shall be presumed, with respect to the employment practices of an applicant or recipient, that employees who engage in direct contact with interested beneficiaries, or who engage in the planning and implementation of a program or activity involving Federal financial assistance, have direct impact upon beneficiaries.

3. COMPLIANCE RESPONSIBILITIES.

a. Procedures. Each operating element shall develop and maintain procedures to:

(1) Analyze each of its programs and recipients to determine:

(a) Whether the recipient engages in discrimination in employment; and

(b) Whether the recipient's employment practices cause beneficiaries to be denied equal opportunity and nondiscriminatory treatment in connection with the recipient's Federally-assisted activities.

(2) Considerations to be taken into account by these provisions include but are not limited to:

(a) The nature and purpose of the program;

(b) The benefits of the program;

(c) The intended beneficiaries (care should be taken to distinguish incidental beneficiaries and intended beneficiaries); and

(d) The nature of the recipient's employment practices and the ways in which those practices may affect the benefits provided by the program.

b. Pre-award Information Required.

(1) Each operating element shall require that each applicant for Federal financial assistance submit the information necessary to permit the operating element to make the determinations regarding the

employment practices of the applicant necessary for a finding respecting probable compliance. At a minimum, the TITLE VI ASSESSMENT provided for in Chapter IV, paragraph 2a shall contain:

(a) A statistical breakdown by race, color, and national origin of that portion of the applicant's workforce that is or is likely to be involved in any manner, either directly or indirectly, in the preparation of the application for Federal financial assistance, the handling or use of such funds, or the work to be performed with the aid of such funds. The breakdown shall be by job titles, grouped as necessary for work of comparable difficulty and responsibility.

(b) A listing of the number and types of employment openings that are expected to be created in connection with the Federally-assisted work, including those that will not be reimbursed directly from Federal funds.

(c) A cumulative listing of employment actions, including hirings, firings, promotions, layoffs, training courses, etc., for the previous year in that portion of the applicant's workforce for which the breakdown in (1) is provided.

(d) An analysis of the available workforce in the area in which the applicant does or may reasonably recruit, expressed in terms of the race, color, or national origin characteristics of the workforce.

(e) A copy of any affirmative action plan pertaining to the applicant's employment practices.

4. PRE-AWARD AGREEMENTS. Whenever an operating element finds cause to believe that an applicant is in noncompliance or probable noncompliance with the employment requirements of Title VI, it may attempt to resolve the problem informally through the provisions set forth in Chapter VI of this Order. Any such informal resolution of an employment noncompliance problem will set forth in writing the terms and conditions relating to employment to which the applicant will be bound as a condition to receiving Federal financial assistance. Such terms and conditions may include the creation of and commitment to carry out affirmative action steps, including goals and timetables, that are designed to ensure that the purposes of Title VI are met during the period that Federal financial assistance is to be extended. Any such agreement shall be signed by all parties and shall be subject to approval by the Director.

CHAPTER IV

COMPLIANCE REVIEWS

1. GENERAL. Each operating element is responsible for reviewing each application for Federal financial assistance and for monitoring the performance of each recipient of Federal financial assistance from the Department to ensure that each applicant and recipient complies fully with Title VI. It is the policy of the Department to award and to continue to provide Federal financial assistance only to those applicants and recipients who comply fully with all the Title VI requirements.

2. APPLICATION REVIEW.

   a. Title VI Assessments. Each operating element shall require every applicant for Federal financial assistance to include in its application a section entitled "TITLE VI ASSESSMENT." This section shall contain information sufficient to permit an initial determination by DOT of whether the applicant will probably comply fully with the Title VI requirements. This section shall also contain the applicant's analysis of the effects of the proposed use of Federal financial assistance upon Title VI concerns.

      (1) Information Required. Within 90 days of the effective date of this Order, each operating element shall prepare application guidelines setting forth, in detail, the specific information to be required from applicants with respect to each of the operating element's Federal financial assistance programs. The Director shall review and approve, disapprove or amend these guidelines. A copy of these guidelines will be provided to each applicant requesting Federal financial assistance under the program concerned. While these guidelines should be tailored to the needs of each specific Federal financial assistance program, they shall call for the following information:

         (a) A statistical breakdown by race, color and national origin of:

            1 The population eligible or likely to be served or affected by the project;

            2 The projected users or beneficiaries of the project;

            3 The owners of property to be taken, and persons or businesses to be relocated or adversely affected, as a result of the project; and

4 The present or proposed membership of any planning or advisory body which is an integral part of the program or project.

(b) The information concerning employment required by Chapter III, paragraph 3b of this Order.

(c) The information relating to minority contractor participation required by Chapter II, paragraph 2a.

(d) The proposed location, and alternative locations, of any facilities to be constructed or used in connection with the project, together with data concerning the composition by race, color and national origin of the populations of the areas surrounding such facilities.

(e) A concise description of:

1 Any lawsuits or complaints alleging discrimination on the basis of race, color or national origin filed against the applicant or any of its proposed subgrantees within the five years next previous to the date of the application, together with a statement of the status or outcome of each such complaint or lawsuit;

2 Any pending application by the applicant or any of its proposed subgrantees for Federal financial assistance to any Federal agency; and

3 Any civil rights compliance review performed or being performed on the applicant or any of its proposed subgrantees by any State, local or Federal agency within the five years next previous to the date of the application, together with a statement of the status or outcome of such review.

(f) Any other information deemed necessary by the operating element office of civil rights or the Director.

(2) Analysis. Each operating element shall require every applicant for Federal financial assistance, as a part of its "TITLE VI ASSESSMENT," to analyze its probable Title VI performance. The precise components of this analysis shall be made part of the "application guidelines" to be prepared by the operating elements pursuant to this Order. The analysis in any case shall include the following items:

(a) The relative benefits, services, and adverse impacts of the proposed project and its alternatives on persons and businesses of majority and minority racial and national origin groups;

(b) A statement of any problems, potential as well as actual, that will or may occur with respect to any Title VI concern;

(c) A statement of what action the applicant agrees to take to correct any such problems;

(d) A statement of the affirmative action that the applicant will take to ensure full compliance with all Title VI requirements, including, but not limited to, such matters as provisions for communicating with persons whose primary language is not English, nondiscrimination in covered employment, outreach at all stages of the planning and implementation of the project to persons and communities affected thereby, equal access to services and benefits of the project, and minority contractor participation;

(e) A description of how the applicant will enforce the Title VI requirements of its subgrantees and contractors; and

(f) Any additional analysis deemed necessary by the operating element office of civil rights or the Director.

(3) Additional Information and Analysis. If the operating element office of civil rights determines that the "TITLE VI ASSESSMENT" is incomplete or that more information is needed to make a determination respecting probable compliance, the operating element shall require the applicant to provide such information within 60 days of the request. Failure by the applicant to provide such information in a timely fashion shall be a ground for a determination of probable noncompliance.

b. Initial Determination Respecting Probable Compliance. Based upon the TITLE VI ASSESSMENT, and within 30 days of receiving the application or additional information pursuant to paragraph 2a(3) of this chapter, the operating element office of civil rights shall make a determination respecting probable compliance. This determination shall be one of the following:

(1) The applicant will probably comply in all respects with the Title VI requirements;

(2) It cannot be determined without an on-site compliance review whether the applicant will comply in all respects with the Title VI requirements; or

(3) The applicant probably will not comply in all respects with the Title VI requirements.

c. Outcomes.

(1) In the event that a determination of probable compliance is made, no further pre-award civil rights review shall be necessary.

(2) In the event that an on-site compliance review is required, the applicant shall be found as a result of this review either to be in compliance or noncompliance with all aspects of the Title VI requirements.

(3) In the event that a determination of probable noncompliance is made, the applicant may, within 60 days of receiving notice of the determination, ask for reconsideration, submitting therewith any additional information or analysis it believes to be relevant. The operating element office of civil rights shall consider and decide any such request for reconsideration, within 30 days of receiving it. In response to a request for reconsideration, the operating element may make one of the findings in paragraph b(1) or paragraph b(2).

(4) In the event of a determination of probable compliance after an application review or of compliance as the result of a pre-award on-site compliance review, the operating element office of civil rights shall concur in any approval of the application. The operating element office of civil rights shall not concur in the approval of the application where there is a finding of probable noncompliance resulting from an application review or noncompliance resulting from a pre-award on-site compliance review. An operating element may not approve any application for Federal financial assistance without the concurrence of its office of civil rights pursuant to this subsection.

d. Review by the Director. Where a finding of probable noncompliance or noncompliance is made by the operating element, as the result of a complaint investigation, application review, or on-site review, the operating element shall notify the Director within five working days. The Director shall decide within five working days whether the Office or the operating element office of civil rights shall process the matter thereafter.

3. ON-SITE COMPLIANCE REVIEWS.

a. Responsibility for Conducting On-Site Compliance Reviews. On-site compliance reviews shall be conducted by the operating elements' office of civil rights. The Director may order that the Office perform a review rather than the operating element's office of civil rights.

b. Content.

(1) On-site compliance reviews shall include, in detail, all aspects of a recipient's performance relevant to Title VI compliance. The review shall include personal interviews with persons in the applicant's or recipient's organization and in the community likely to have relevant information or views. The reviewer shall also gather all statistical and documentary materials needed to make a determination of compliance or noncompliance. The findings, conclusions and recommendations, with supporting rationale, should be set forth in a report.

(2) Each operating element office of civil rights shall, within 120 days of the effective date of this Order, develop a manual prescribing in detail the procedures to be followed and the information to be gathered as part of its on-site compliance reviews and a uniform review format. The procedural and substantive requirements should be tailored to fit the needs of the particular programs through which each operating element provides Federal financial assistance. The manual shall also set forth standards for evaluating the Title VI performance of applicants and recipients examined by on-site compliance reviews. The Director shall review and approve, disapprove, or amend as necessary the operating elements' manuals.

c. When Required. On-site compliance reviews shall be required under the following circumstances:

(1) When it is determined, pursuant to paragraph 2b(2) of this chapter, that a determination respecting probable compliance cannot be made on the basis of the applicant's "TITLE VI ASSESSMENT."

(2) When a project for which a determination of probable compliance has been made on the basis of the applicant's TITLE VI ASSESSMENT, within one year of the approval of Federal financial assistance for the project, or at the estimated mid-point of a project expected to be completed within less than two years.

(3) When recipients have been found in partial noncompliance by a pre-award on-site compliance review and, as the result of informal resolution, have agreed to take corrective measures, within one year of the approval of Federal financial assistance for the project, or at the estimated mid-point of a project expected to be completed within less than two years. The operating element office of civil rights concerned has the discretion to limit such reviews to consideration of the deficiencies identified by the previous review and the corrective measures undertaken as a result of conciliation.

(4) When projects require or are expected to require at least three years from approval of Federal financial assistance to completion, and a total of at least *$_____ in Federal financial assistance has been or will be expended, recurrent reviews shall be conducted at two-year intervals. If, in the opinion of the operating element office of civil rights, less than one year remains before total completion of the project, this requirement may be waived.

(5) At any time when the Director believes that such a review is warranted with respect to any project. The staff of the Office shall perform all special on-site compliance reviews.

(6) When less than *$_____ in Federal financial assistance is provided by DOT with respect to any project, the operating element office of civil rights may waive any requirement for a post-award on-site compliance review.

d. Reports. The result of every compliance review shall be set forth in a written report to be completed within 30 days of the completion of the on-site visit. The report shall include a summary of the information obtained, specific findings of fact, a determination of compliance or noncompliance, and recommendations, if any. A copy of this report and the CRIS Data Entry form shall be sent to the Director and to the applicant or recipient within five (5) days of its approval by the operating element's office of civil rights.

e. Reconsideration. Within 60 days of being notified of a finding of noncompliance, the applicant or recipient may request reconsideration of the findings by submitting to the operating element's office of civil rights any additional information or analysis it considers relevant. The operating element's office of civil rights shall consider the request within 30 days.

* The amount to be established by the head of each operating element for the Federal financial assistance program he/she administers with the concurrence of the Director.

f. Notification of the Assistant Attorney General. The Director shall promptly notify the Assistant Attorney General, Civil Rights Division, of every finding of noncompliance resulting from an on-site compliance review.

4. PERIODIC COMPLIANCE REPORTS.

a. The operating elements shall require all recipients to submit semiannual compliance reports to the operating element's office of civil rights. The content of these reports shall be prescribed in detail by compliance report guidelines which the operating elements shall develop and submit to the Director for approval within 120 days of the effective date of this Order. These reports shall provide updated information in those categories of data required as part of the TITLE VI ASSESSMENT in the recipient's application and relate progress made with respect to the recipient's affirmative equal opportunity programs and agreements to correct any previously identified noncompliance problems.

b. In the event that the operating element office of civil rights involved believes that a compliance report indicates a possible noncompliance problem, he shall, within 30 days of receiving the report, advise the Director. Based upon the report and the operating element office civil rights' comments, the Director shall decide within 10 days whether a special compliance review pursuant to paragraph 3c(5) of this chapter is necessary.

CHAPTER V

COMPLAINT PROCEDURES

1. GENERAL.

Purpose. These procedures are intended to prescribe the responsibilities of the Department of Transportation to enforce Title VI of the Civil Rights Act of 1964 with respect to the filing, processing, investigating, and disposing of complaints of discrimination.

2. FILING OF COMPLAINTS.

a. Persons Eligible to File. Any person who believes that he or she, individually, as a member of any specific class of persons, or in connection with any minority contractor, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964 may file a complaint, as stated in 49 C.F.R. 21.11(b). A complaint may also be filed by a representative on behalf of such a person.

b. Time for Filing. In order to have the complaint considered under this chapter, the complainant must file the complaint no later than 180 days after:

(1) The date of an alleged act of discrimination; or

(2) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the Director or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

c. Officials Authorized to Receive Complaints. Complainants may submit their complaints to the Director, heads of operating elements, directors of civil rights of operating elements, heads of DOT field offices and installations, or the designees of any of these officials. Any other DOT officer or employee receiving a complaint shall immediately forward it to the nearest such official. All complaints received by officials other than the Director shall immediately be forwarded to the Director, date-stamped and marked "Attention: Complaints Division."

d. Form of Complaints. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimintion to a DOT officer or employee, the person shall be interviewed by a DOT official authorized to receive complaints or the official's designee. If necessary, the official will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.

e. Responsibility of Operating Elements. Operating elements shall require their applicants for and recipients of Federal financial assistance to forward any complaint of discrimination made to them about their own actions or actions of subgrantees or contractors to a DOT official authorized to receive the complaint.

3. PROCESSING OF COMPLAINTS.

a. Acknowledgement. The Complaints Division of the Office shall acknowledge in writing the receipt of every complaint within five (5) days of receiving it. At the same time, the Complaints Division shall notify the party charged (and the primary recipient, if the primary recipient is not the party charged) that a complaint has been filed.

b. Information for Operating Elements. Immediately upon receiving a complaint, the Complaints Division shall request the following information from the operating element(s) concerned, which shall furnish the information requested within ten (10) days of receiving the request:

(1) Project and file number(s);

(2) Location and brief description of project;

(3) Status of funding for the project;

(4) Copies of any compliance reviews of the recipient with respect to the project;

(5) Copies of the TITLE VI ASSESSMENT and other nondiscrimination assurances signed with respect to the project; and

(6) A statement of whether a compliance review with respect to the project has been scheduled or is contemplated within the time allowed for processing of the complaint.

c. Information from Other Agencies. The Complaints Division shall contact the Equal Employment Opportunity Commission (EEOC), state or local civil rights offices, other Federal agencies providing Federal financial assistance to the respondent, and community organizations to determine whether any other allegations of noncompliance against the respondent exist. The existence of a pattern of such allegations may be ground for the Director to initiate a special on-site compliance review pursuant to paragraph 3c(5) of Chapter IV.

d. Determination of Jurisdiction and Investigative Merit. Based upon the information in the complaint and the information provided by the operating element, the Complaints Division shall determine whether the Department has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant investigation. These determinations shall be made within 15 days of the receipt by the Complaints Division of the information requested from the operating element.

(1) Jurisdiction. The Department has jurisdiction to investigate a complaint if:

(a) The complaint involves a program or activity for which DOT has furnished or agreed to furnish Federal financial assistance, or for which such assistance has been requested by an applicant;

(b) The complaint alleges any of the specific actions prohibited by 49 C.F.R. 21.5 or any other action which discriminates against any person, class, or minority contractor on the basis of race, color, or national origin; or

(c) The complaint alleges discrimination with respect to covered employment (see Chapter III).

(2) Investigative Merit. A complaint shall be regarded as meriting investigation unless:

(a) It clearly appears on its face to be frivolous or trivial;

(b) Within the time allotted for making the determination of jurisdiction and investigative merit, the party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action;

(c) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or

(d) Other good cause for not investigating the complaint exists.

(3) Request for Additional Information from Complainant. In the event that the complaint does not contain sufficient information to permit a determination of jurisdiction and investigative merit to be made, the Complaints Division shall request the complainant to provide specific additional information. Such a request shall be made within fifteen (15) days of the receipt by the Complaints Division of the complaint, and shall require the complainant to furnish the information within 60 days. Failure of the complainant to do so may be considered good cause for a determination of no investigative merit.

(4) Concurrence of Director. The Director must personally review and concur with any determination that a complaint should not be investigated for lack of jurisdiction or investigative merit. The Director will approve or disapprove the determination of the Complaints Division within five (5) days of receiving it.

(5) Notification of Disposition. Within five (5) days of the Director's decision concerning the disposition of the complaint, the Director shall notify by registered letter the complainant, party charged, and primary recipient (if not the respondent) of the disposition.

(a) In the event of a decision not to investigate the complaint, the notification shall specifically state the reason for the decision.

(b) In the event the complaint is to be investigated, the notification shall state the grounds of DOT jurisdiction, inform the parties that an on-site investigation will take place and request any additional information needed to assist the investigator in preparing for the investigation.

(6) Referral to Other Agencies. When DOT lacks jurisdiction, the Director shall, when possible, refer the complaint to other state or Federal agencies, informing the parties of his action. For example, the Director could refer complaints regarding noncovered employment to the EEOC or the state anti-discrimination agency.

(7) Priority Complaints. All incoming complaints shall be examined to determine whether the discrimination alleged would be irremediable if not dealt with promptly; e.g., complaint of a minority contractor when the contract is to be awarded in a short time. If such a determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated so as to advance significantly the normal completion date of the process.

4. INVESTIGATIONS.

a. Assignment. The Chief of the Complaints Division shall assign all complaints to an investigator within the division, except where the Director determines that because of workload in the Office:

(1) The matter would be expedited if handled by an operating element's office of civil rights and that such handling is appropriate in the case; or

(2) The complaint shall be referred to the primary recipient for action pursuant to paragraph 6 of this chapter.

The responsibilities of an operating element's office of civil rights to investigate the complaint may not be delegated to any regional field office. When an operating element's office of civil rights makes the investigation and prepares the investigation report, the Director shall review and approve the recommended disposition of the matter in the same manner provided in paragraph 5h of this chapter.

b. Investigator's Preparation. Before beginning the field investigation, the investigator shall become familiar with all factual and legal aspects of the case, send a letter of introduction, prepare an investigation plan and establish the dates and times for visits and interviews. This preparation shall be completed within thirty (30) days of the assignment of the case to the investigator.

(1) Letter of Introduction. This letter shall inform the party charged with discrimination of the identity of the investigator, request any specific information or documents which the party will be asked to produce, and propose a time and place for a visit (at least two weeks subsequent to the date of the letter). A copy of the letter will also be sent to the complainant (and the complainant's authorized representative, if applicable) and to the primary recipient (if different from the respondent).

(2) Rescheduling of Visit. The investigator shall contact the head of the party charged with discrimination to confirm the time and date of the scheduled visit. If necessary, the visit may be rescheduled for any time within ten (10) days of the original date.

(3) Investigation Plan. Prior to contacting the recipient to schedule the complaint investigation, the investigator shall prepare an investigation plan, in order to focus on relevant issues; diminish the possibility of inadvertent gaps in the investigation, and note areas in which additional information will be required. In the event that an office, other than the Complaints Division, is conducting the investigation, the investigation plan shall be submitted to the Complaints Division for review and approval.

5. CONDUCT OF INVESTIGATIONS.

a. Scope. Investigations shall be confined to issues and facts relevant to the allegations of the complaint. Investigators who are concurrently conducting a compliance review shall gather all information relevant to both purposes.

b. Confidentiality. Complainant shall be offered a pledge of confidentiality as to his or her identity. This offer, if accepted by the complainant, shall be binding on the investigator. Complainants shall be interviewed at times and places which will not create a risk of violating or vitiating this pledge. Except where essential to the investigation (e.g., in an individual employment discrimination case), the investigator shall not reveal the identity of the complainant to the respondent or to any third party. If the investigator in such a case determines that he must reveal the complainant's identity, he shall first secure the complainant's permission to do so. In no case may any DOT officer or employee provide a copy of the complaint to the respondent or to any third party unless the prior written consent of the complainant is obtained.

c. Cooperation of Recipients. The operating elements shall require that their recipients and applicants (and, through primary recipients, subgrantees and contractors as well) cooperate fully in the conduct of investigations. Such cooperation shall include, but not be limited to, the following:

(1) Question Responses. Officials and employees of the respondent shall answer fully all questions proposed to them by the investigator.

(2) Compliance Data. The respondent shall furnish to the investigator all relevant compliance data required to be compiled by the operating element pursuant to 49 C.F.R. Section 21.9(b).

(3) Access to Sources of Information. The respondent shall permit access to such books, records, accounts, and other sources of information as may be pertinent to the investigation.

(4) Records in Possession of Third Party. In the event that any information requested of a respondent is in the exclusive possession of any other agency, institution, or person, which refuses or fails to furnish this information to the respondent, the respondent shall so certify and set forth the efforts it has made to obtain the information.

d. Failure to Cooperate. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of DOT Title VI regulations. In the event that a respondent fails or refuses to furnish information to an investigator, the investigator shall inform the head of the respondent organization that such failure may result in the imposition of sanctions, or termination or refusal to grant or to continue to grant pursuant to 49 C.F.R. section 21.13. The investigator shall indicate in the investigation report that the respondent refused to provide pertinent information, and shall set forth efforts to obtain the information.

e. Interview with Respondent.

(1) Purpose Explained. After presenting his/her credentials, the investigator shall explain the right secured by Title VI and indicate the purpose of the visit to be: (1) a complaint investigation or (2) a combined complaint investigation and compliance review.

(2) Allegations Explained. The investigator shall provide a complete summary of the allegations made in the complaint and provide the respondent an opportunity to rebute or refute information on allegation provided or made by the complainant.

(3) Request for Compliance Records. The investigator shall request copies of all records and other material requested in the letter of introduction which have not been received.

(4) Written Statements. The investigator may, with the consent of an interviewee, take a written statement which shall be reviewed by the interviewee, signed and filed with the investigator's report.

f. Other Interviews. The investigator shall interview the complainant and any third parties having or likely to have information relevant to the subject matter of the complaint during this interview or at an appropriate later time, the complainant shall have an opportunity to refute information or allegations provided by the respondent.

g. Investigation Report. Within ten (10) days after the conclusion of the investigation, the investigator shall prepare an investigation report, setting forth all relevant information, findings, and recommendations for submission to the Director. This report shall include a summary of the complaint; citation of all relevant Federal, state and local laws, rules, regulations, and formal procedures; a concise summary of the issues raised by the complaint; a description of the investigation; findings (of compliance or noncompliance) and recommendations. The report shall include as attachments all correspondence, reports, data, written statements, and other information collected and/or received during the course of the investigative process. The report shall be submitted to the Director for review and approval.

Approval and Notice of Finding. The Director shall approve or disapprove the findings and recommendations of the investigation report within ten (10) days of the submission of the report to the Director. The consequent disposition of the complaint shall be communicated to the complainant, respondent, and primary recipient (if not the respondent) by registered letter within five (5) days of the Director's decision. A summary of the rationale supporting the disposition made and any recommendations to any party shall be included in this letter.

i. Request for Reconsideration. Within 30 days of being notified of a finding of noncompliance, pursuant to a complaint, the respondent may file a request for reconsideration, submitting any additional information or analysis it considers relevant. The Director shall decide such requests within 30 days of receiving them.

6. INVESTIGATIONS BY PRIMARY RECIPIENTS.

a. Authorization of Primary Recipients to Process Complaints. The Director may authorize primary recipients to investigate and make findings and recommendations with respect to Title VI complaints, subject to the provisions of subparagraph b of this section. The Director may authorize

such action only by those primary recipients who have submitted to the Office a complaint handling procedure substantially complying with this chapter and which the Director has approved. Before approving any such procedure, the Director must be convinced that the primary recipient has the staff and resources to deal effectively, thoroughly and promptly with Title VI complaints.

b. Scope of Primary Recipients' Authority. The role in processing Title VI complaints granted to primary recipients under this section is regulated as follows:

(1) The primary recipient may process complaints against its subgrantees or contractors; it may not process any such complaint, however, if the complaint directly or indirectly implicates the primary recipient itself, or any of its officers or employees, in the alleged discrimination;

(2) When a complaint is made to the recipient about the conduct of one of its contractors or subgrantees, the recipient shall forward a copy to the Director within five (5) days. The Director shall decide within ten (10) days of receiving the complaint from the primary recipient whether to permit the primary recipient to process the complaint or to assign the complaint to the Complaints Division for action.

(3) When the Director receives a complaint against a primary recipient's subgrantee or contractor which was not first filed with the primary recipient, the Director may, at his/her discretion, refer the complaint to the primary recipient for action or assign the matter to the Complaints Division.

(4) The Director may withdraw the recipient's authority to investigate a complaint at any time prior to the forwarding of the report, findings and recommendations.

(5) In any case in which the primary recipient processes the complaint, the primary recipient shall forward the investigation report, findings and recommendations to the Director. The Director shall review and approve or disapprove the findings and recommendations and notify the parties of the decision as provided in paragraph 5h of this chapter.

7. RECORD-KEEPING AND REPORT REQUIREMENTS.

a. Records. The Director shall maintain a log of Title VI complaints filed with it and with its recipients,identifying each complainant by race, color, 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 disposition; and other pertinent information. Each recipient processing Title VI complaints shall be required to maintain a similar log.

b. Reports to the Assistant Attorney General Civil Rights Division. The Director shall prepare the semiannual reports to the Assistant Attorney General, Civil Rights Division, concerning Title VI complaints required by 28 C.F.R. section 42.408(d).

CHAPTER VI

INFORMAL RESOLUTION

1. GENERAL. Informal resolution means the voluntary agreement by the respondent to take steps, approved by the Department, to correct noncompliance or probable noncompliance identified by complaint investigations, on-site compliance reviews or application reviews. The purpose of resolving the matter by informal means is not to alter or review findings of noncompliance. Rather, the purpose is to create a plan agreeable to the respondent and the Department that will correct noncompliance which the Department has found to exist and assure continued compliance.

2. PROCEDURE.

   a. Invitation to Informal Resolution. In every case in which a complaint investigation, application review, or on-site compliance review results in a finding that respondent is in noncompliance or probable noncompliance, the Director shall in the notification of this finding invite the respondent to participate in informal resolution. The invitation shall summarize the steps in the informal resolution process and inform the respondent that it must submit its proposal for correcting noncompliance or probable noncompliance within 30 days.

   b. Respondent's Submission. Within 30 days of the receipt of the invitation, any respondent desiring to participate in informal resolution shall submit to the Director its proposal for correcting the noncompliance problems identified by the complaint investigation, application review, or field compliance review involved.

   c. Informal Resolution.

      (1) Within 5 days of receiving the respondent's submission, the Director shall assign action on the matter to the staff of the Office or the office of civil rights of the concerned operating element. The operating element office of civil rights may, with the concurrence of the Director, reassign action to regional or field offices in cases of relatively narrow scope which can be handled appropriately at that level. The Director or his/her designee may be present at and participate in any meeting to resolve informally the matter.

(2) The action office shall set a date for a meeting agreeable to the respondent which shall be no later than 30 days from the date on which action is assigned.

(3) Meetings to resolve informally the matter shall be on-the-record, with the verbatim record kept either by stenographic reporter or tape recording. Tapes or transcripts of the meeting shall be available to all participants for a reasonable fee.

(4) The subject matter of the meetings shall be limited to means of correcting noncompliance problems identified by complaint investigations, application reviews, or field compliance reviews. The validity or correctness of findings of noncompliance or probable noncompliance shall be presumed and shall not be discussed or negotiated at meetings.

(5) In the event that the parties are able to agree on a plan to bring the respondent into compliance, the action office shall within ten days of the meeting submit the written agreement to the Director for his/her review. The Director will approve or disapprove the agreement within 20 days of receiving it. If the Director approves the agreement, it will be forwarded to the respondent for signature. If the Director disapproves the agreement, the reasons therefor shall be specific in writing and amendments to the agreement shall be proposed to meet his/her objections. The Director shall submit the proposed amendments to the respondent, requiring the respondent to notify him/her of its agreement or disagreement with the amendments within 20 days.

(6) In the event that no agreement is reached at the meeting to resolve informally the matter, but it appears to the action office that further meetings may produce agreement, the action office may schedule further meetings with the respondent for any dates within 60 days from the date of which action was assigned. If no agreement can be reached by that time, the negotiations shall be terminated unless the action office, with the concurrence of the Director, determines that negotiations should continue for a specified additional period of time. In any case in which the Director has decided to permit negotiations to continue beyond 60 days from the date action is assigned, the Director shall promptly notify the Assistant Attorney General, Civil Rights Division, stating the reasons for the length of the negotiations.

d. Effect of Agreement. In the event that there is an approved agreement pursuant to this chapter, the existence of the finding of noncompliance or probable noncompliance shall not act as a bar to the provision of Federal financial assistance. When Federal financial assistance is provided as a result of such an agreement, an on-site compliance review shall be conducted to ascertain whether the agreement has been fully implemented (see Chapter IV).

e. Failure to Effect an Agreement. Failure to reach an informal resolution will result in the initiation of action pursuant to 49 C.F.R. 21.13.

Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation

Subject: Interim Procedures for Processing External Civil Rights Complaints

Date: MAR 22 1995

From: Antonio J. Califa, Director
Departmental Office of Civil Rights

Reply to Attn of:

To: Civil Rights Directors,
Operating Administrations

Thank you for your review, comments, and recommendations on the interim procedures for processing external civil rights complaints (Interim Procedures).

We have made revisions in the procedures in response to your comments and clarify other matters in this memorandum. In addition, where appropriate, I will be responding to some of your comments individually.

As noted in the February 16, 1995, draft procedures, a primary purpose of the Interim Procedures is to identify the division of responsibilities between the Departmental Office of Civil Rights (DOCR) and the Operating Administrations (OAs). [1] The Interim Procedures supersede all existing procedures which pertain to the processing of external civil rights complaints in the Department to the extent that they conflict. These include DOT Order 1000.12, Chapter V, Complaint Procedures, Section 3, (Processing of Complaints) and Section 4, (Investigation), and the October 21, 1993, memorandum, "Handling of Americans with Disabilities Act Complaints," signed by Joseph Canny. However, the Interim Procedures do not impose new legal or regulatory

[1] For purposes of these procedures, "Operating Administration" is defined to include any entity within the Department which investigates or decides external civil rights complaints under any of the statutes or regulations listed in Attachment A of the Interim Procedures.

requirements or negate existing ones.

These procedures do not address interactions between OA civil rights staff and their attorneys.

Another objective of the Interim Procedures is to improve the tracking of external complaints to enable all of us to ascertain their status. We agree with those of you who noted that this process would be much more efficient and effective if we had a universally accessible automated tracking system. As I have discussed with you, we are exploring various options for developing this capability. In the interim, OAs are free to submit their reports on computer disk or via cc:mail. In addition:

* We recognize that some OAs have their own complaint numbering systems. The requirement to secure a DOT complaint number is not intended to mandate that you abandon your system. Rather, the purpose is to provide an efficient system for identifying and locating complaints throughout the Department.

* Some OAs have indicated that their complaint information systems are not compatible with the reporting form we have developed. In this event, you may provide the requested information in the reporting format most convenient to your OA.

The Interim Procedures are effective immediately. We request that status of complaint reports be submitted not later than the tenth work day of each month and cover the period ending the prior month. Please begin to submit these reports in May.

You may contact Alyce Boyd-Stewart, Acting Chief, External Policy and Program Development Division, DOCR, if there are any questions about the procedures or reporting requirements. She may be reached at 69366.

cc: Lindy Knapp, C-2
Roberta Gabel, C-10
Samuel Podberesky, C-70
Joseph Canny, P-4

Attachment

DEPARTMENTAL OFFICE OF CIVIL RIGHTS

INTERIM PROCEDURES FOR PROCESSING EXTERNAL CIVIL RIGHTS COMPLAINTS -- EFFECTIVE MARCH 23, 1995

Introduction

This document sets forth procedures for processing civil rights complaints under external civil rights statutes for which authority has been delegated to the Director, Departmental Office of Civil Rights (DOCR), as stated in 49 CFR 1.70. (Attachment A contains a list of statutes and other authorities to which these procedures apply.)

The procedures identify the division of responsibilities between DOCR and the Operating Administrations (OAs)[1]. Their underlying goal is to ensure that all civil rights laws, regulations, and executive orders for which the Department is responsible are implemented and enforced consistently, correctly, and expeditiously. The procedures provide increased authority and responsibility to the OAs; eliminate duplication in the processing of complaints; and improve the Department's capability to identify the status and disposition of these complaints.

In general, OAs are responsible for all phases of the complaint process including acceptance or rejection, investigation, making and issuing compliance findings, and obtaining voluntary compliance. Specific procedures follow.

Interim Procedures:

I. Receipt of Complaints

A. Complete Complaint: A complete complaint must contain the name, address, and signature of the complainant. It generally must describe or identify the person or group allegedly injured by the discrimination where such person/group differs from the party filing the complaint.

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[1] For purposes of these procedures, "Operating Administration" is defined to include any entity within the Department which investigates or decides external civil rights complaints under any of the statutes or regulations listed in Attachment A.

The injured parties need not be identified by name. The complaint must contain the name and address of the affected entity (or otherwise sufficiently identify the respondent), and describe the alleged discrimination in sufficient detail to inform the Department of what occurred and when it occurred.[2]

1. DOCR Receives a Complete Complaint: If DOCR receives a complaint, it will determine which OA is responsible for the complaint; send a letter of acknowledgement to the complainant indicating the OA to which the complaint is being sent, assign a DOCR number to the complaint; and forward it to the appropriate civil rights director or other appropriate official. In the event the complaint applies to more than one OA, DOCR may facilitate the coordination of its investigation or investigate the complaint directly. In the event DOCR proposes to do the latter, it will do so in consultation with the OAs.

2) OA Receives a Complete Complaint: If an OA receives a complaint, it will notify the Chief, External Policy and Program Development Division (EPPD), DOCR, to request a DOCR number. The OA may commence processing the complaint prior to receipt of this number. The OA will send a letter of acknowledgement to the complainant and send a copy of the complaint to the Chief, EPPD, DOCR.

B. Incomplete Complaint: If DOCR receives an incomplete complaint, it may provide guidance to the OA when it refers the complaint as to what additional information is needed. If an OA receives an incomplete complaint, it will notify DOCR and request a DOCR number. The OA should obtain the information necessary to complete the complaint and send a copy of the complaint to the Chief, EPPD, DOCR.

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[2] Definition of "complete complaint" under the Department of Justice Americans with Disabilities Act Title II regulations at 28 CFR 35.104. This definition is to be applied except where necessary to meet applicable statutory or regulatory requirements.

C. Inquiry/Technical Assistance: If the communication is limited to a request for information or assistance that would lead to or ensure compliance with the Department's civil rights authorities, DOCR may answer the question directly or send it to the appropriate OA. If DOCR does the former, it will send a copy of the inquiry and response to the OA. The OA does not need to request a DOCR number for inquiries received directly.

II. Complaint Investigations

In general, the OAs will conduct complaint investigations. In the event the complaint presents a novel issue(s), the OA will consult with DOCR to agree on an appropriate course of action prior to initiating an investigation. "Novel issues" are those which raise substantive legal or policy questions which are not addressed in Departmental or OA regulations or guidelines. In addition, OA staff are encouraged to consult with DOCR about issues with which they are unfamiliar.

In determining whether to investigate a complaint, OAs will continue to use established procedures, e.g., determining jurisdiction, etc. Questions about whether it is appropriate to initiate an investigation or how an investigation should be conducted may be directed to the Chief, EPPD, DOCR. However, the OA will continue to be responsible for the proper resolution of these complaints.

III. Making and Issuing Compliance Findings

In cases where the application of pertinent law and policy is clear, the OA Civil Rights Director will make compliance findings, issue letters of findings (LOF) and send a copy of the LOF to the Chief, EPPD, DOCR. However, if the complaint investigation raises questions which are not answered by existing law, regulations or policy, the OA will consult with the Chief, EPPD, DOCR, prior to issuing an LOF. In such cases the OA will be expected to propose a finding and present the basis for its position.

In addition, when investigating a case in which there is media or political interest, OAs should inform the Director, DOCR, as soon as possible.

A copy of all LOFs or other official case closure document

should be sent to the Chief, EPPD, DOCR, upon issuance.

IV. Obtaining Compliance

If an OA makes a finding of noncompliance and cannot obtain voluntary compliance **or** if there is a question as to whether the corrective action is adequate, it should inform the Director, DOCR, and seek guidance on how to proceed. The initiation of administrative enforcement proceedings or referral to the Department of Justice (DOJ) must be made with the concurrence of the Director, DOCR.

V. Reporting Status of Complaints

A. Status Reports[3]: Every 30 days, the OAs will submit a report on their external civil rights complaints to DOCR. This report will indicate the status of all complaints as of the end of the prior month and the date on which the status occurred. The status of each case is to be reported as one of the following: received, acknowledged, backlogged, open, rejected, resolved, investigated closure, administrative closure, negotiated closure, referral, referral to DOCR, technical assistance, non-compliance, and unknown. (Please see Attachment B for definitions of these terms.) Reports should be sent to the Chief, EPPD, DOCR, on the tenth work day of the month and may be transmitted on computer disk or via cc:Mail; hard copy will be accepted if necessary. If the reporting format specified in Attachment B is not compatible with an OAs current reporting system, the required information may be submitted in another format.

B. DOJ Communication: The Director, DOCR will be responsible for reporting the status of complaints to the Department of Justice. DOJ referred complaints for which an OA has made a "no jurisdiction" determination should be returned to DOCR.

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[3] The initial report sent to DOCR should reflect every case for which the OA has responsibility at the time these procedures take effect. Thereafter, the monthly report need reflect only those cases for which the status has changed.

VI. Maintaining Official Files

The official investigative file will be maintained by the organization which conducted the investigation. As indicated above, in most all cases this will be the OA.

VII. Other Activities

OAs should provide copies of any complaint-related policies or procedures they develop to the Chief, EPPD, DOCR. In addition, they should inform the Chief, EPPD, in advance of any staff training concerning complaint processing and provide copies of related materials prior to their use.

Attachment A

EXTERNAL CIVIL RIGHTS RELATED STATUTES AND OTHER AUTHORITIES

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., and the implementing regulations at:

23 CFR Part 200 - Title VI Program and Related Statutes - Implementation and Review Procedures

23 CFR Part 230 - External Programs

49 CFR Part 21 - Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964

Section 504 of the Rehabilitation Act of 1973, as amended, U.S.C. 794 and 794a, and the implementing regulations at:

49 CFR Part 27 - Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance.

The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101.

The Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. 12101-2213), and the implementing regulations at:

28 CFR Part 35 - Nondiscrimination on the Basis of Disability in State and Local Government Services

29 CFR Part 1630 - Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act (Joint Department of Justice and Equal Employment Opportunity Commission Regulations)

49 CFR Part 27 - Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance.

49 CFR Part 37 - Transportation Services for Individuals with Disabilities (ADA)

49 CFR Part 38 - Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles

49 U.S.C. 47113, 47107, and 47123 (formerly sections 505(f), 511(a)(17), and 520 of the Airport and Airway Improvement Act of 1982, as amended)

49 U.S.C. 41705 (formerly, the Air Carrier Access Act of 1986, as amended)

The Federal-Aid Highway Act, as amended, 23 U.S.C. 140 and 324

49 U.S.C. 5310, 5332 (formerly, sections 16 and 19 of the Federal Transit Act, as amended)

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 476.

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 et seq. (fair housing provisions)

Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1981[1]

Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 1919, section 103

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., and the implementing regulations at:

29 CFR Parts 1629 and 1691 (Joint Department of Justice and Equal Employment Opportunity Commission Regulations)

Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. 290dd(b)

Department of Transportation General Duties and Powers, 49 U.S.C. 306

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[1] Complaints alleging violations of Title IX are to be referred to the Office for Civil Rights, U.S. Department of Education

Attachment B

Explanations of Complaint Status

Received - The complaint has been received.

Acknowledged - A letter acknowledging the receipt of the complaint has been sent to the complainant.

Backlogged - The complaint has been received and acknowledged, but no disposition regarding acceptance or rejection has been made.

Open - The complaint has been accepted and investigation has begun.

Resolved - The complaint was accepted and the respondent has been asked to investigate and reply directly to the complainant. The respondent's letter has been reviewed, deemed appropriate, and the file has been closed.

Investigated Closure - The merits of the complaint were investigated, a letter of findings was issued, and appropriate corrective action(s) was taken or agreed to.

Administrative Closure - The complaint was closed for procedural reasons (e.g., complaint not timely filed, factual information not provided by complainant).

Negotiated Closure - The merits of the complaint were investigated but the respondent indicated a willingness to settle prior to the issuance of a letter of findings. A letter of agreement was issued.

Rejected - The complaint was rejected because of a lack of authority or other legitimate reason/basis.

Referral - The Department does not have the regulatory authority to investigate the complaint and it has been referred to another agency.

Returned to DOCR - The complaint was referred to DOT by the Department of Justice (DOJ). A determination has been made that the Department does not have the regulatory authority to investigate the complaint and it has been returned to DOCR.

Technical Assistance - The complaint has been acknowledged and a determination has been made that the issues are more readily resolved by technical assistance.

Non-Compliance - A finding of non-compliance has been made and the respondent has not taken the actions necessary to achieve compliance.

Attachment C

DEPARTMENT OF TRANSPORTATION
MONTHLY REPORT - EXTERNAL CIVIL RIGHTS COMPLAINTS

Report Date: _____
For time period ending: _____

Reporting OA: _____
Contact Person _____
Telephone No. _____

DOJ#	DOT#	Complainant	Recipient	State	Date of Compl't	Date Rec'd	Status	Date of Status	Authority

TO BE COMPLETED BY FHWA	U.S. Department of Transportation Federal Highway Administration **FEDERAL-AID PROJECT AGREEMENT**	STATE COUNTY PROJECT NO.

The State, through its Highway Agency, having complied, or hereby agreeing to comply, with the applicable terms and conditions set forth in (1) Title 23, U.S. Code, Highways, (2) the Regulations issued pursuant thereto and, (3) the policies and procedures promulgated by the Federal Highway Administrator relative to the above designated project, and the Federal Highway Administration having authorized certain work to proceed as evidenced by the date entered opposite the specific item of work, Federal funds are obligated for the project not to exceed the amount shown herein, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the Federal Highway Administration authorization to proceed with the project involving such costs.

PROJECT TERMINI

PROJECT CLASSIFICATION OR PHASE OF WORK	EFFECTIVE DATE OF AUTHORIZATION	APPROXIMATE LENGTH *(Miles)*
HIGHWAY PLANNING AND RESEARCH (HP & R)		
PRELIMINARY ENGINEERING		
RIGHTS-OF-WAY		
CONSTRUCTION		

OTHER *(Specify)*

FUNDS	
ESTIMATED TOTAL COST OF PROJECT	FEDERAL FUNDS
$	$

The State further stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth on the following pages.

_____
(Official name of Highway Agency)

By _____

_____
(Title)

By _____

_____
(Title)

By _____

_____
(Title)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
(Division Administrator)

Date executed by
Division Administrator _____

AGREEMENT PROVISIONS

1. RESPONSIBILITY FOR WORK

a. Except for projects constructed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in compliance with the approved plans and specifications or project proposal which, by reference, are made a part hereof.

b. With regard to projects performed under Certification Acceptance procedures, the State highway agency will perform the work, or cause it to be performed, in accordance with the terms of its approved Certification, or exceptions thereto as may have been approved by the Federal Highway Administration.

2. HIGHWAY PLANNING AND RESEARCH (HP&R) PROJECT. The State highway agency will (a) conduct or cause to be conducted, under its direct control, engineering and economic investigations of projects for future construction, together with highway research necessary in connection therewith, pursuant to the work program approved by the Federal Highway Administration and (b) prepare reports suitable for publication of the result of such investigations and research, but no report will be published without the prior approval of the Federal Highway Administration.

3. PROJECT FOR ACQUISITION OF RIGHTS-OF-WAY. In the event that actual construction of a road on this right-of-way is not undertaken by the close of the tenth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

4. PRELIMINARY ENGINEERING PROJECTS. In the event that right-of-way acquisition for, or actual construction of the road for which this preliminary engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed, the State highway agency will repay to the Federal Highway Administration the sum or sums of Federal funds paid to the highway agency under the terms of this agreement.

5. INTERSTATE SYSTEM PROJECT.

a. The State highway agency will not add or permit to be added, without the prior approval of the Federal Highway Administration any points of access to, or exit from, the project in addition to those approved in the plans and specifications for the project.

b. The State highway agency will not permit automotive service stations, or other commercial establishments for serving motor vehicle users, to be constructed or located on the right-of-way of the interstate system.

c. The State highway agency will not after June 30, 1968, permit the construction of any portion of the Interstate Route on which this project is located, including spurs and loops, as a toll road without the written concurrence of the Secretary of Transportation or his officially designated representative. The term 'toll road' does not include toll bridges or toll tunnels.

6. PROJECT FOR CONSTRUCTION IN ADVANCE OF APPORTIONMENT.

a. This project authorized pursuant to 23 U.S.C. 115 as amended, will be subject to all procedures and requirements, and conform to the standards applicable to projects on the system on which located, financed with the aid of Federal funds.

b. No present or immediate obligation of Federal funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway agency, and approval thereof by the Federal Highway Administration, any Federal-aid funds of the class designated by the project number prefix, apportioned or allocated to the State under 23 U.S.C. 103(e)(4), 104, or 144 subsequent to the date of this agreement, may be used to reimburse the State for the Federal share of the cost of work done on the project.

7. STAGE CONSTRUCTION. The State highway agency agrees that all stages of construction necessary to provide the initially planned complete facility, within the limits of this project, will conform to at least the minimum values set by approved AASHTO design standards applicable to this class of highways, even though such additional work is financed without Federal-aid participation..

8. BOND ISSUE PROJECT. Construction, inspection and maintenance of the project will be accomplished in the same manner as for regular Federal-aid projects. No present or immediate obligation is created by this Agreement against Federal funds, its purpose and intent being to provide aid to the State, as authorized by 23 U.S.C. 122, for retiring maturities of the principal indebtedness of the bonds referred to below. When the State requests Federal reimbursement to aid in the retirement of such bonds, the request will be supported by the appropriate certification required by 23 CFR Part 140, Subpart F, and Volume 1, Chapter 4, Section 8 of the Federal-Aid Highway Program Manual, and payment of the authorized Federal share will be made from appropriate funds available. If in any year there is no obligated balance of any apportioned Federal funds available from which payments hereunder may be made, there will be no obligation on the part of the Federal Government on account of bond maturities for that year. Funds available to the highway agency for this project are the proceeds of bonds issued by the governmental unit indicated on the attached tabulation, pursuant to the authority and in the amounts by date of issue and beginning date of maturities set forth therein.

9. SPECIAL HIGHWAY PLANNING AND RESEARCH PROJECT. The State highway agency hereby authorizes the Federal Highway Administration to charge the State's pro rata share of costs incurred against funds apportioned to the State under 23 U.S.C. 307 (c), as amended. In the event a project is financed with both Federal-aid funds and State matching funds, the State agrees to advance to The Federal Highway Administration the State matching funds for its share of the estimated cost. For a National Pooled Fund study, the State hereby assigns its responsibility for the work to the Federal Highway Administration. For an Intra-Regional Cooperative Study, the State hereby assigns its responsibility for the work to the lead State for the study.

10. PARKING REGULATION AND TRAFFIC CONTROL. The State highway agency will not permit any changes to be made in the provisions for parking regulations and traffic control as contained in the agreement between the State and the local unit of Government referred to in the paragraph on "Additional Provisions," without the prior approval of the Federal Highway Administration, unless the State determines, and the Division Administrator concurs, that the local unit of Government has a functioning traffic engineering unit with the demonstrated ability to apply and maintain sound traffic operations and control.

11. SIGNING AND MARKING. The State highway agency will not install, or permit to be installed, any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administrator pursuant to 23 U.S.C. 109(d) or the State's Certificate as applicable.

12. MAINTENANCE. The State highway agency will maintain, or by formal agreement with appropriate officials of a county or municipal government cause to be maintained, the project covered by this agreement.

13. LIQUIDATED DAMAGES. The State highway agency agrees that on Federal-aid highway construction projects not under Certification Acceptance the provisions of 23 CFR Part 630, Subpart C and Volume 6, Chapter 3, Section 1 of the Federal-Aid Highway Program Manual, as supplemented, relative to the basis of Federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

14. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (APPLICABLE TO CONTRACTS AND SUBCONTRACTS WHICH EXCEED $100,000).

a. The State highway agency stipulates that any facility to be utilized in performance under or to benefit from this agreement is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

b. The State highway agency agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

c. The State highway agency stipulates that as a condition of Federal aid pursuant to this agreement it shall notify the Federal Highway Administration of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this agreement is under consideration to be listed on the EPA List of Violating Facilities.

d. The State highway department agrees that it will include or cause to be included in any Federal-aid to highways agreement with a political subdivision of the State which exceeds $100,000 the criteria and requirements in these subparagraphs a. through d.

15. EQUAL OPPORTUNITY. The State highway agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

"During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway agency setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway agency advising the said labor union or workers' representative of the contractor's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 202 of Executive Order 11246 of September 24, 1965, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway agency or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; *Provided, however,* that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Administration, the contractor may request the United States to enter in such litigation to protect the interests of the United States."

The State highway agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The State highway agency also agrees:
(1) To assist and cooperate actively with the Federal Highway Administration and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.
(2) To furnish the Federal Highway Administration and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Federal Highway Administration in the discharge of its primary responsibility for securing compliance.
(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order.
(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Federal Highway Administration or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.
In addition, the State highway agency agrees that if it fails or refuses to comply with these undertakings, the Federal Highway Administration may take any or all of the following actions:
(a) Cancel, terminate, or suspend this agreement in whole or in part;
(b) Refrain from extending any further assistance to the State highway agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the State highway agency; and
(c) Refer the case to the Department of Justice for appropriate legal proceedings.

16. NONDISCRIMINATION. The State highway agency (SHA) hereby agrees that it will comply with Title VI of the 1964 Civil Rights Act and related statutes and implementing regulations to the end that no person shall on the grounds of race, color, national origin, handicap, age, sex, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the project covered by this agreement and, further, the SHA agrees that:
a. It will insert the nondiscrimination notice required by the Standard Department of Transportation (DOT) Title VI Assurance (DOT Order 1050.2) in all solicitations for bids for work or material, and, in adapted form, in all proposals for negotiated agreements.
b. It will insert the clauses in Appendixes A, B, or C of DOT Order 1050.2, as appropriate, in all contracts, deeds transferring real property, structures, or improvements thereon or interest therein (as a covenant running with the land) and in future deeds, leases, permits, licenses, and similar agreements, related to this project, entered into by the SHA with other parties.
c. It will comply with, and cooperate with, FHWA in ensuring compliance with the terms of the standard Title VI Assurance, the act and related statutes, and implementing regulations.

17. MINORITY BUSINESS ENTERPRISES (MBE's)
a. The State highway agency hereby agrees to the following statements and agrees that these statements shall be included in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor:
(1) **"Policy.** It is the policy of the Department of Transportation that minority business enterprises (MBE's), as they are defined in 49 CFR Part 23 [for the purposes of 49 CFR Part 23, Subpart D, MBE's refer to disadvantaged business enterprises (DBE's); for the purposes of other subparts of Part 23, MBE's include women's business enterprises (WBE's)], shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, all applicable requirements of 49 CFR Part 23 apply to this agreement.
(2) **"Obligation.** The recipient or its contractor agrees to ensure that MBE's, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with the applicable section of 49 CFR Part 23 to ensure that MBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, handicap, religion, age, or sex, as provided in Federal and State law, in the award and performance of DOT-assisted contracts."
b. If, as a condition of assistance, the recipient has submitted and the Department has approved an MBE affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the Department shall impose such sanctions as are noted in 49 CFR Part 23, Subparts D or E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance.

18. BICYCLE TRANSPORTATION AND PEDESTRIAN WALKWAYS. No motorized vehicles shall be permitted on bikeways or walkways authorized under this project except for maintenance purposes and, when snow conditions and State or local regulations permit, snowmobiles.

19. MODIFIED OR TERMINATED HIGHWAY PROJECTS. For certain projects described in 23 CFR Part 480 or as prescribed in other parts of Title 23, Code of Federal Regulations, the payback provisions found in these parts shall supersede provisions 3 and 4 of this agreement.

20. ENVIRONMENTAL IMPACT MITIGATION FEATURES. The State highway agency shall ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: Information: Project Authorization/Project Agreement
Section 1305 of the TEA-21 Implementing Guidance

Date: October 29, 1998

From: Chief, Federal-Aid and Design Division

Reply to Attn. of: HNG-12

To: Division Administrators

Section 1305 of the Transportation Equity Act for the 21st Century (TEA-21) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action.

Prior to passage of TEA-21, the FHWA's approval of the plans, specifications and estimates submitted by a State for a Federal-aid highway project was considered a contractual obligation by the Federal Government to pay its proportional share of project costs (23 U.S.C. 106(a) prior to TEA-21). This step was referred to as project authorization and the FHWA's approval action was documented in written form commonly referred to as a letter of authorization. This first step was then followed by a second step in which a formal project agreement was executed between the FHWA and a State for the Federal-aid project (23 U.S.C. 110(a) prior to TEA-21). It was common for States to process Federal-aid projects with project authorization and project agreement being done as separate steps although the FHWA regulations (23 CFR 630.303(c)) did allow these two steps to be combined into a single action.

The TEA-21 has eliminated the project agreement requirements from 23 U.S.C. 110 and incorporated these requirements into amended 23 U.S.C. 106. Specifically, 23 U.S.C. 106(a) now establishes FHWA's execution of the project agreement as being the Federal Government's contractual obligation to pay the Federal share of a project. In other words, project authorization, project agreement, and obligation of funds have now, by statute, become a combined action.

GENERAL REQUIREMENT

The State and FHWA division office should begin handling all project authorizations/project agreements as a single action through execution of the project agreement. This single action must incorporate the requirements for a project authorization set forth in 23 CFR 630, Subpart A, and the requirements for a project agreement set forth in 23 U.S.C. 630, Subject C. The FHWA approval of a project's plans, specifications and estimates, authorization to proceed with work, and obligation of Federal-aid funds (for an exception, see discussion on advanced constructed projects) all occur with execution of the project agreement.

PROJECT AGREEMENT FORMAT

The Division Administrator and the State should agree on a format for the "Project Agreement" document. Generally, the project agreement format previously being used should be adequate provided it is revised to include information on the Federal share of eligible project costs.

For illustrative purposes, a sample "Project Agreement" is attached. The State may also use an electronic version of the project agreement. Questions concerning use of an electronic format should be directed to Minnie Baskerville, Finance Division, HFS-20, (202-366-2924).

ESTABLISHMENT OF FEDERAL SHARE

When the FHWA acts on the project agreement, the Federal share of eligible project costs must be established, either as a pro rata or lump sum amount, following the requirements in 23 CFR 630.106(f).

There are instances when States may increase the effective Federal share of projects based on other provisions in Title 23, such as application of toll credits approved under 23 U.S.C. 120(j). When this occurs, it is suggested a comment to this regard be included on the project agreement, for example, under the "Other" section of the attached sample project agreement.

Likewise, if other arrangements effecting Federal funding or non-Federal matching provisions, including tapered share or donations or use of other Federal agency funds as permitted under Title 23 are known at the time the project agreement is executed, it is suggested these also be noted on the agreement.

ADVANCE CONSTRUCTION

An advance construction project should be processed in the same manner as a regular Federal-aid project, with a project agreement being executed at the time the State is authorized to proceed with the advance construction project. The only exception is that the FHWA authorization does not constitute a commitment of Federal funds on the project, and this should appropriately be stated on the project agreement.

MODIFICATION OF PROJECT AGREEMENT

Modification of project agreements should continue to be processed in accordance with the requirements in 23 CFR 630, Subpart C. A sample Modification of Federal-Aid

Project Agreement form is contained in the Federal-Aid Policy Guide (NS 23 CFR 630C). A State may use an electronic modification of project agreement format.

At some future point, FHWA Headquarters will initiate the rulemaking process to combine the requirements for project authorizations and project agreements found in 23 CFR 630, Subpart A and C. In the interim, the above guidance should be followed.

Questions on this memorandum may be directed to Jack Wasley (202-366-4658) or Jim Overton (202-366-4653) of my office.

Dwight A. Horne

Attachment

Federal Highway Administration
HNG-12:JMOverton:cad:64653:10/15/98
cc: G:\HNG12\98JMO_12.209
HNG-1 HNG-10 HNG-12 HFS-20 HFS-40
Official File, 3134 Reader HNG-12

Appendix F

Required Contract Provisions Federal-Aid Construction Contracts

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions 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 these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;

Section IV, paragraphs 1, 2, 3, 4, and 7;

Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportu nity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"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, national origin, age or disability. 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."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** 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 EEO policy and contractual responsibilities to provide EEO 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:

a. 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 EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO 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.

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

a. 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. To meet this requirement, the contractor will 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.

b. 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 EEO contract provisions. (The DOL 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. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **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, national origin, age or disability. 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.

6. **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 a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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.

7. **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 EEO 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, national origin, age or disability.

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 SHA 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, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL 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 SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall 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 SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and nonminority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(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 DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA 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 FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

a. *Apprentices:*

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a con-

tractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. *Trainees:*

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. *Helpers:*

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by

the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of

the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowl-

edge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification–Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or Agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * * * *

2. Instructions for Certification - Lower Tier Covered Transactions: (Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participants is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A–EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

U.S. Department of Transportation
Federal Highway Administration

Order

Subject

CIVIL RIGHTS RESPONSIBILITIES OF MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP)

Classification Code 4720.1A Date July 16, 1993

Par. 1. Purpose
2. Cancellation
3. Authorities
4. Scope
5. Policy
6. Background
7. Functions and Responsibilities
8. Technical Assistance
9. Sanctions

1. PURPOSE. To clarify roles and responsibilities and prescribe procedures by which the Federal Highway Administration (FHWA) may assist Motor Carrier Safety Assistance Program (MCSAP) recipients in meeting applicable civil rights requirements.

2. CANCELLATION. FHWA Order 4720.1, Civil Rights Responsibilities of Motor Carrier Safety Assistance Program (MCSAP) and Commercial Driver's License Program (CDL) Recipients, dated September 13, 1991, is canceled.

3. AUTHORITIES

a. Civil Rights

(1) Age Discrimination in Employment Act (ADA) of 1967.

(2) Americans with Disabilities Act of 1990.

(3) Executive Order 11246, as amended.

(4) Rehabilitation Act of 1973.

(5) Titles VI and VII of the Civil Rights Act of 1964.

(6) Title 23, Code of Federal Regulations (CFR), Part 1, Subpart 36; Part 200; and Part 230, Subpart C.

(7) Title 29, CFR, Parts 1607 and 1608.

(8) Title 49, CFR, Parts 21 and 27.

(9) Department of Transportation (DOT) Orders 1000.12 and 1050.2.

b. Motor Carriers

(1) Commercial Motor Vehicle Safety Act of 1986.

(2) Surface Transportation Assistance Act of 1982.

(3) Title IV of the Intermodal Surface Transportation Efficiency Act of 1991, subtitled the Motor Carrier Safety Act of 1991.

(4) Title 49, CFR, Part 350.

4. SCOPE. This Order applies to the Washington Headquarters and Regional Civil Rights Offices and Motor Carriers staffs at the Washington Headquarters, regional office, and field division levels responsible for conducting civil rights compliance reviews and providing technical assistance to grant recipients. A listing of the MCSAP lead agencies is contained in Attachment 1.

5. POLICY. It is the policy of the FHWA that no person be subjected to discrimination based on race, color, religion, sex, national origin, handicap/disability, or age with regard to the impacts, services or benefits, access, participation or treatment, or employment in connection with any program or activity of a Federal-aid recipient.

6. BACKGROUND

a. The MCSAP grant agreements were modified to incorporate applicable civil rights assurances and to inform recipients about nondiscrimination and equal employment opportunity (EEO) requirements inherent in receiving Federal funds. These revised agreements are Attachments 2, 3 and 4.

b. Pursuant to the grant application, Attachment 2, paragraph 5(c), each recipient with a work force of 15 or more is required to have an Affirmative Action Plan that is effective in preventing discrimination and ensuring EEO through affirmative action where the need is identified. The

Uniform Guidelines on Employee Selection Procedures (29 CFR Part 1607), the Affirmative Action Guidelines (29 CFR Part 1608), and FHWA regulations "State Highway Agency Equal Employment Opportunity Programs" (23 CFR Part 230, Subpart C) provide recipients with guidance on Affirmative Action Plan development.

c. As a condition of receiving Federal financial assistance (Attachment 3, paragraph 11), recipients must comply with the Department of Transportation's (DOT) nondiscrimination requirements codified at 49 CFR Part 21.

7. FUNCTIONS AND RESPONSIBILITIES

a. Washington Headquarters Office of Civil Rights

(1) The Policy and Program Development Division is responsible for the following:

(a) developing civil rights policy as it relates to motor carriers,

(b) coordinating policy development with the staff of the Associate Administrator for Motor Carriers, and

(c) ensuring the proper administration of the civil rights programs affecting MCSAP with the Associate Administrator for Motor Carriers and staff, the DOT, other DOT Modal Administrations, the Equal Employment Opportunity Commission, and other Federal agencies, as necessary.

(2) The Program Operations Division is responsible for the following:

(a) providing technical assistance and training to the regional civil rights staffs and to the Motor Carriers staffs at the Washington Headquarters, regional, and field division levels,

(b) receiving and processing complaints of discrimination in accordance with existing regulations and guidance, and

(c) advising the Associate Administrator for Motor Carriers and staff of the acceptance of complaints of discrimination against the MCSAP recipients.

b. The Regional Civil Rights Offices are responsible for:

(1) reviewing and recommending (a) approval, (b) approval with conditions, or (c) disapproval of Affirmative Action Plans developed or adopted by MCSAP recipients;

(2) approving the Title VI and Rehabilitation Act/ADA Transition Plans developed or adopted by MCSAP recipients;

(3) developing the on-site review schedule in coordination with the Regional Office of Motor Carriers;

(4) conducting periodic on-site reviews of the recipients' administration of their civil rights programs to determine compliance with applicable statutes and regulations;

(5) assisting the motor carrier recipient found in noncompliance with the development of a Corrective Action Plan;

(6) assisting the Motor Carriers staff at the field division level with the monitoring of the commitments made in the recipients' Corrective Action Plans;

(7) receiving and processing complaints of discrimination in accordance with existing regulations and guidance, and forwarding the complaints to the Program Operations Division, Office of Civil Rights;

(8) providing information on and mediating informal resolution meetings to resolve complaints of discrimination;

(9) notifying the Regional Office of Motor Carriers of filed complaints of discrimination;

(10) reviewing and analyzing Equal Employment Opportunity Commission's (EEOC) Form 164

(Attachment 5) employment data for conformance to the guidelines, reviewing the assessments or recommendations of the Motor Carriers staff at the field division level for any suggested corrective action or on-site review, and forwarding this form to the Program Operations Division, Office of Civil Rights, within 10 days of receipt of Form 164; and

(11) providing technical assistance and in-service training on EEO, equal opportunity, and nondiscrimination to the Motor Carriers staffs at the regional office and field division levels.

c. The Regional Offices of Motor Carriers are responsible for the following:

(1) approving the recipient's Affirmative Action Plan, and

(2) assisting the Regional Civil Rights Office with the development of the on-site review schedules.

d. Motor Carriers Staff at the Field Division Level. The Motor Carrier State Director or Officer-in-Charge is responsible for the following:

(1) forwarding the Affirmative Action Plan or Affirmative Action Plan Update to the Regional Civil Rights Office for review and recommendation of approval/disapproval,

(2) with guidance from the Regional Civil Rights staff, providing technical assistance to MCSAP recipients regarding employment patterns, EEO, and nondiscrimination,

(3) notifying the MCSAP recipients of civil rights training or conferences sponsored by the FHWA or by the State highway or transportation agencies and encouraging the recipients to attend,

(4) accompanying the Regional Civil Rights staff when conducting on-site reviews or discrimination complaint investigations of MCSAP recipients,

(5) notifying the recipients that a copy of the required EEOC Form 164 or a breakdown of the data using the EEOC Form 164 format shall be submitted Motor Carriers staff at the field division level annually as part of the State Enforcement Plan, and

(6) reviewing the EEOC Form 164 data and making assessments or recommendations to the Regional Civil Rights Office about the recipient's employment data; forwarding the Form 164 and the assessments or recommendations of the Motor Carriers staff at the field division level to the Regional Civil Rights Office within 15 days of receipt of EEOC Form 164.

8. TECHNICAL ASSISTANCE. Examples of technical assistance guidance are listed below:

a. Assurances

(1) Title VI. The grant application/agreement requires that each applicant/recipient provides a Title VI assurance to prevent discrimination and provide EEO and equal opportunity (Attachments 2 and 3, paragraph 11).

(2) Rehabilitation Act/ADA. The grant application/agreement requires that each applicant/recipient provides an assurance to prevent discrimination against persons with disabilities and provide EEO and equal opportunity for persons with disabilities (Title 49, CFR, Part 27, Subpart 9).

b. Plans

(1) Affirmative Action Plan (OMB NO. 2125-0536)

(a) Each applicant/recipient should submit an Affirmative Action Plan with the grant application/agreement or commit to a specific date by which the Plan will be submitted (Attachments 2 and 3, paragraph 5(c)).

(b) An Affirmative Action Plan that is consistent with the guidance contained in Title 29, CFR,

Parts 1607 or 1608 or Title 23, CFR, Part 230, Subpart C, will meet this requirement. The plan must contain a critical self-analysis; a reasonable basis for determining that action is appropriate (i.e., employment practices that have or tend to have an adverse impact on employment for previously excluded groups or result in disparate treatment); and reasonable action, including goals and timetables, to overcome identified problems.

(c) A reasonable Affirmative Action Plan should span 5 years with annual goals and timetables for achieving the plan within the specified time.

(2) Affirmative Action Plan Update. The update of the Affirmative Action Plan, with goals, shall be submitted annually with the recipient's State Enforcement Plan or as otherwise required to the Motor Carriers staff at the field division level (Title 23, CFR, Part 230, Subpart C).

(3) Title VI Plan. The Title VI Plan that is consistent with the guidance contained in Title 23, CFR, Part 200 will meet the requirements of Attachments 2 and 3, paragraph 11.

(4) Rehabilitation Act/ADA Transition Plan. The Transition Plan that is consistent with the guidance contained in Title 49, CFR, Part 27 will meet the requirements of the grant application/agreement. The plan is required of recipients with 50 or more employees.

c. Recipients

(1) State Highway or Transportation Agency. Recipients that are part of a State highway or transportation agency that receives Federal-aid highway program funds are covered by the State's Title VI, Rehabilitation/ADA Transition, and Affirmative Action Plans which meet the requirements of the grant application or agreement and applicable statutes and regulations.

(2) Independent Recipients. A recipient that is not a part of a State highway or transportation agency must develop or adopt an Affirmative Action Plan, ADA Transition Plan, and a Title VI Plan that satisfies the provisions of the grant application/ agreement and applicable statutes and regulations.

d. Reports

(1) The EEOC requires that all recipients with 15 or more employees receiving Federal funds, must complete EEOC Form 164 entitled "State and Local Government Information (EEO-4)," (Attachment 5) and submit this form to EEOC by July 31 biennially.

(2) This information shall be collected annually for FHWA; and a copy of this form shall be submitted to the Motor Carriers staff at the field division level with the State Enforcement Plan.

e. Compliance Reviews. The regional civil rights staff will conduct periodic compliance reviews of a recipient's civil rights programs; i.e., non-discrimination, equal opportunity, ADA, EEO, etc. These reviews should be coordinated with the Motor Carriers staff at the field division level as required by Title 49, CFR, Part 21, Subpart 11, and Title 23, CFR, Part 200, Subpart 9b(7).

f. Finding of Noncompliance. If a compliance review or a discrimination complaint investigation of a MCSAP recipient results in a finding of discrimination or in a finding of noncompliance with the approved plans, applicable statutes, or regulations, the Regional Civil Rights Director shall require the recipient to submit a Corrective Action Plan outlining the efforts taken or proposed to address the cited deficiencies.

9. SANCTIONS. Prior to initiating the formal sanction procedures outlined in Title 49, CFR, Part 21, Subpart 13, the instances of noncompliance shall be addressed

informally as required by Title 49, CFR, Part 21, Subpart 11, and Part 350. If the attempts at resolution are not successful, the Federal Highway Administrator may take action in accordance with Title 49, CFR, Part 21, Subpart 13; Part 350; or Title 23, CFR, Part 1, Subpart 36.

Rodney E. Slater
Federal Highway
Administrator

Attachments

MCSAP LEAD AGENCIES

STATE	LEAD AGENCY	CONTACT
Alabama	Dept. of Public Safety Highway Patrol Division 500 Dexter Avenue Montgomery, AL 36104 205-242-4395	Capt. W. R. Applin Lt. T. E. Mesaris
Alaska	Dept. of Public Safety Div. of AK State Troopers 5700 E. Tudor Road Anchorage, AK 99507 907-269-5552	Corp. Brad Brown MCSAP Coordinator
American Samoa	Dept. of Public Safety P.O. Box 186 Pago Pago, AQ 96799 684-699-9199	Mr. Po'oai A. Ripley MCSAP Coordinator
Arizona	Dept. of Public Safety P.O. Box 6638 Phoenix, AZ 85005 602-223-2044	Ms. Ursula B. Miller MCSAP Coordinator
Arkansas	State Highway & Transportation Dept. P.O. Box 2779 Little Rock, AR 72203 501-569-2365	Lt. Paul Claunch Arkansas Highway Police
California	Dept. of California Highway Patrol Enforcement Services Div. 444 N. Third Avenue P. O. Box 942898 Sacramento, CA 94298-0001 916-445-1865	Asst. Chief T. W. Ross MCSAP Program Coordinator
Colorado	State Patrol 700 Kipling Street Denver, CO 80215 303-232-5602	Capt. Joe Mikita
Connecticut	Dept. of Motor Vehicles 60 State Street Wethersfield, CT 06109 203-566-5589	Mr. William R. Schaefer MCSAP Coordinator

Delaware	State Police P. O. Box 430 Dover, DE 19901 302-736-5933	Sgt. John Chadick
District of Columbia	Metropolitan Police Dept. Room 3148 300 Indiana Avenue, NW. Washington, D.C. 20001-2188 202-727-4453	Mr. Roy J. Burton Planning & Development
Florida*	Dept. of Transportation Office of Motor Carrier Compliance 2540 Executive Center Circle W. Douglas Building, Room 208 Tallahassee, FL 32399- 0450 904-488-7920	Col. Chuck Bradshaw Major Robert W. Ball
Georgia	Public Service Commission 1007 Virginia Avenue Suite 310 Hapeville, GA 30354 404-559-6602	Ms. Lucie A. Ramey Director of Compliance & Safety Mr. Al Hatcher Director, Transportation Division
Guam	Dept. of Revenue & Taxation 855 West Marine Drive Agana, GQ 96910 671-646-6796	Mr. Frank C. Benavente MCSAP Coordinator
Hawaii	Dept. of Transportation Motor Vehicle Safety Office 79 S. Nimitz Highway Honolulu, HI 96813 808-548-5486	Mr. Alexander K. Kaonoki Motor Carrier Safety Manager
Idaho	Dept. of Law Enforcement Idaho State Police P.O. Box 55 Boise, ID 83707 208-334-2130	Capt. David C. Rich
Illinois	Dept. of Transportation P.O. Box 19212 Springfield, IL 62764-9212 217-782-4974	Mr. Larry F. Wort Chief, Bureau of Safety Programs

Indiana	State Police 1810 S. Lynnhurst Suite Q Indianapolis, IN 46241 317-241-5069	Major John H. Hill Commander, Motor Carrier Division
Iowa	Dept. of Transportation Motor Vehicle Enforcement 5268 N.W. 2nd Avenue Des Moines, IA 50313 515-237-3218	Ms. Valerie Hunter
Kansas	Highway Patrol Motor Vehicle Enforcement Troop 700 Jackson, Suite 500 Topeka, KS 66603 913-296-7900	Capt. Michael Kuhn
Kentucky	Division of Motor Vehicle Enforcement New State Office Building Room 804 Frankfort, KY 40622 502-564-3276	Major Steve Anders Assistant Director Capt. Steven Maffett Principal Assistant
Louisiana	Dept. of Public Safety & Corrections Office of State Police P. O. Box 66614 Baton Rouge, LA 70896 504-925-6113	Capt. Louis Cook
Maine	State Police Traffic Division State House Station 20 Augusta, ME 04333 207-289-1057	Lt. Harlan Pierson Size/Weight Supervisor
Maryland	Dept. of Transportation State Highway Administration P. O. Box 8755 BWI Airport, MD 21240-0755 410-859-7362	Mr. Mati Koiva
Massachusetts	Dept. of Public Safety State Police Division Traffic Unit Elm Street Concord, MA 01742 508-369-1004	Lt. Gary Burns

Michigan	Dept. of State Police Motor Carrier Division 300 North Clippert Lansing, MI 48913 517-336-6195	Capt. James A. Carter
Minnesota	State Patrol Division Dept. of Public Safety Commercial Vehicle Section District 4700 100 Stockyard Road Room 252 South St. Paul, MN 55075 612-296-5949	Lt. Brian D. Erickson
Mississippi	Public Service Commission P. O. Box 1174 Jackson, MS 39215-1174 601-961-5443	Mr. Don Bennett Program Manager Mr. Neilson Cochran Chairman Mr. James "Mac" Mohead Chief Enforcement Officer
Missouri	Dept. of Public Safety 301 W. High Street P. O. Box 749 Jefferson City, MO 65102 314-751-4905	Ms. Diane Roods State Program Manager
Montana	Highway Patrol 303 Roberts Street Helena, MT 59620 406-444-3300	LTC James Stotts
Nebraska	State Patrol 3920 NW 39th Street Lincoln, NE 68524 402-471-0105	Mr. Doug Donscheski MCSAP Coordinator
Nevada	Dept. of Motor Vehicles & Public Safety Nevada Highway Patrol 555 Wright Way Carson City, NV 89711 702-687-5337	Ms. Barbara R. Urbani MCSAP Coordinator
New Hampshire	Dept. of Safety Hazen Drive Concord, NH 03305 603-271-1026	Mr. E. James Daley Director of Enforcement

New Jersey	Dept. of Transportation 1035 Parkway Ave., CN 600 Trenton, NJ 08625 609-530-8026	Mr. Theadore Matthews Director, Office of Freight Services
New Mexico.	Motor Transportation Div. Taxation & Revenue Dept. P. O. Box 1028 Santa Fe. NM 87504-1028 505-827-2266	Ms. Holly J. Kinley
New York	Dept. of Transportation State Campus, Bldg. 5 Room 312 Albany, NY 12232 518-457-3406	Mr. Matthew J. Ryan Chief, Hazardous Materials Transportation & Commercial Vehicle Safety
North Carolina	Div. of Motor Vehicles 1100 New Bern Avenue Raleigh, NC 27697 919-733-7872	Mr. T. R. (Randy) Powers Administrative Director Mr. Paul C. Richardson Director, Enforcement Section Mr. F. L. Letterman Administrative Assistant
North Dakota	Highway Patrol Capital Building Bismarck, ND 58505 701-224-2455	Major Arden J. Johnson
Northern Marianas*	Dept. of Public Safety Commonwealth of the Northern Marian Islands Saipan, TQ 96950	Mr. Felix B. Cabrera Director of Public Safety
Ohio	Public Utilities Commission Transportation Department 180 East Broad St. 5th Floor Columbus, OH 43266-0573 614-466-3682	Mr. Thomas L. Yager Chief, Enforcement Division
Oklahoma	Dept. of Public Safety P. O. Box 11415 Oklahoma City, OK 73136-0415 405-521-6104	Lt. Gary Thomas Troop S

Oregon	Public Utilities Commission Labor & Industries Building Salem, OR 97310 503-378-6736	Mr. Paul Henry
Pennsylvania	Dept. of Transportation Center for Highway Safety 214 Transportation & Safety Building Harrisburg, PA 17120 717-787-7445	Mr. Daniel R. Smyser
Puerto Rico	Public Service Commission P. O. Box CP San Juan, PQ 00919-3806 809-763-0687	Mr. Edgardo Diaz
Rhode Island	Dept. of Transportation Div. of Motor Vehicles 106 State Office Building Providence, RI 02903 401-277-3410	Mr. John DiTomasso Coordinator, State & Local Highway Programs
South Carolina	Public Service Commission Transportation Division P. O. Drawer 11649 Columbia, SC 29211 803-737-5194	Mr. William Metcalfe Commercial Motor Vehicle Coordinator Mr. A. R. (Randy) Griffin Director
South Dakota*	Dept. of Commerce	Mr. Jeff Stingley 605-773-3178
Tennessee	Public Service Commission 460 James Robertson Parkway Nashville, TN 37219-5477 615-741-2974	Mr. Paul Melander Manager Mr. Gordon Smith Director of Transportation Mr. Benny Lapin, Manager
Texas	Dept. of Public Safety Traffic Law Enforcement P. O. Box 4087 Austin, TX 78773 512-465-2116	Capt. Lester Mills
Utah	Dept. of Transportation Division of Safety 4501 S. 2700 West Salt Lake City, UT 84119 801-965-4266	Mr. David L. Alder

Vermont	Agency of Transportation 120 State Street Montpelier, VT 05603 802-828-2087	Mr. Lloyd Harvey Manager, Field Services Administration
Virginia	State Police P. O. Box 27472 Richmond, VA 23261-7472 804-674-2018	Lt. Herbert B. Bridges
Virgin Islands*	U.S. Virgin Islands Police Force P. O. Box 210 Charlotte Amale, VI 00801	Mr. Al M. Donastorg
Washington	State Patrol Commercial Vehicle Division 515 - 15th Avenue, KA-12 Olympia, WA 98504 206-586-2229	Capt. LaVere E. Klewin
West Virginia	Public Service Commission P. O. Box 812 Charleston, WV 25323 304-340-0453	Mr. Bob R. Brooks
Wisconsin	Dept. of Transportation Division of State Patrol 4802 Sheboygan Avenue P. O. Box 7912 Madison, WI 53707-7912 608-266-0305	Lt. Lyle T. Walheim
Wyoming	Highway Patrol P. O. Box 1708 Cheyenne, WY 82002-9019 307-777-4317	Lt. Steve Gerard

* Denotes States Not Participating

period of 3 years at the central office of the political jurisdiction and shall be made available if requested by an officer, agent, or employee of the Commission under Section 710 of Title VII, as amended. Although agency data are aggregated by functions for purposes of reporting, separate data for each agency must be maintained either by the agency itself or by the office of the political jurisdiction responsible for preparing the EEO-4 form. It is the responsibility of every political jurisdiction to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

§ 1602.31 Preservation of records made or kept.

(a) Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection of training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under Title VII, the respondent political jurisdiction shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of final disposition of the charge or the action means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court, or where an action is brought against a political jurisdiction either by a person claiming to be aggrieved or by the Attorney General, the date on which such litigation is terminated.

(b) The requirements of this section shall not apply to application forms and other preemployment records of applicants for positions known to applicants to be of a temporary or seasonal nature.

Supart J—State and Local Government Information Report

§ 1602.32 Requirement for filing and preserving copy of report.

(a) On or before September 30, 1974 and *annually* thereafter, certain political jurisdictions subject to Title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate executed copies of "State and Local Government Information Report EEO-4" in conformity with the directions set forth in the form and accompanying instructions. The political jurisdictions covered by this regulation are (1) those which have 100 or more employees, and (2) those other political jurisdictions which have 15 or more employees from whom the Commission requests the filing of reports. Every such political jurisdiction shall retain at all times a copy of the most recently filed EEO-4 at the central office of the political jurisdiction for a period of 3 years and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of Section 710 of Title VII, as amended.

(b) For calendar year 1973, the requirements of paragraph (a) of this section shall be carried out on or before October 31, 1973.

§ 1602.33 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO-4, is a violation of the United States Code, Title 18, Section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.34 Commission's remedy for political jurisdiction's failure to file report.

Any political jurisdiction failing or refusing to file report EEO-4 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Attorney General.

§ 1602.35 Political jurisdiction's exemption from reporting requirements.

If it is claimed the preparation or filing of the report would create undue hardship, the political jurisdiction may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

§ 1602.36 Schools exemption.

The recordkeeping and report-filing requirements of subparts I and J shall not apply to State or local educational institutions or to school districts or school systems or any other educational functions. The previous sentence of this section shall not act to bar jurisdiction which otherwise would attach under §1602.30.

§ 1602.37 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the "State and Local Government Information Report EEO-4," about the employment practices of individual political jurisdictions or group of political jurisdictions whenever, in its judgment, special supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart K—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.38 Applicability of State or Local Law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts I and J, supersede any provisions of State or local law which may conflict with them.

PROJECT NO._____

GRANT AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION
AND

The_____
(State Lead Agency)

is entered into in accordance with Title IV of the Surface Transportation Assistance Act of 1982 and its subsequent amendments referred to as the "STAA." In accordance with Sections 402-404 of the STAA, the Federal Highway Administrator hereby approves the applications of the **State Lead Agency** (here-in-after known as the **State**) for **Federal** grant funding assistance for the implementation of a Motor Carrier Safety Assistance Program as described in the application.

The total participating cost of the program consisting of the **Federal** share and the **State** share is projected to be $_____. The **Federal** share will be $_____. The **State** share will be $_____. The **Federal** share of the approved costs incurred by the **State** shall not exceed 80 percent unless otherwise authorized.

The **State** hereby agrees to: (1) carry out the provisions of the Motor Carrier Safety Assistance Program as described in the application in a manner acceptable to the FHWA, (2) submit to the FHWA quarterly reports covering the process of the project and describing the results and the impact of the project in reducing the commercial motor carrier accident rate, (3) maintain accurate and auditable records to support the costs incurred, (4) submit the final claim within 90 days after the project is completed, and (5) comply with the provisions set forth on the reverse hereof.

This agreement is subject to termination by the withdrawal of approval of the **State Plan** in accordance with Section 402 of the STAA. The **State** agrees to give the Federal Highway Administrator at least 90 days notice of its intention to terminate this agreement.

This agreement is effective_____ and expires_____.

_____
Name of Authorized Representative

TITLE_____Date_____

STATE
SEAL

FEDERAL HIGHWAY ADMINISTRATION

ADVANCE
COPY

_____
Name of Authorized Representative

TITLE_____Date_____

GENERAL PROVISIONS FOR MCSAP AGREEMENT

. **General Provisions:** The State will comply with all requirements imposed by FHWA concerning special requirements of law, program requirements, and other administrative requirements.

. **Regulation Requirements:** The State hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR, Part 350, and applicable OMB Circulars No. A-102 and A-87 as they relate to the application, acceptance and use of Federal funds for this federally-assisted project.

. **Modifications:** This agreement may be amended at any time by a written modification properly executed by both the FHWA and the State.

. **Retention and Custodial for Records:**

(a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of three years, with the following exception:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property, if any, required with Federal funds shall be retained for three years after its final disposition.

(3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.

(b) The retention period starts from the date of the submission of the final expenditure report.

(c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.

5. **Equal Employment Opportunity:**

(a) The application/recipient agrees to incorporate in all contracts having a value of over $10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

(b) The applicant/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contractors and/or issuing purchase orders for material, supplies, or equipment over $10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

(c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FHWA by _____ an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.

6. **Copeland Act:** All contracts in excess of $2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he or otherwise entitled. The recipient shall report all suspected or reported violations to FHWA.

7. **Davis-Bacon Act:** When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.

8. **Contract Work Hours and Safety Standards Act:** Where applicable, all contracts awarded by recipient in excess of $2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less then 1-½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek Section 107 of the Act if applicable to construction work provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. **Access to Records:** All negotiated contracts (except those of $10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

10. **Civil Rights Act:** The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied that benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:

(a) The primary purpose of and instrument is to provide employment, or

(b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

11. **Nondiscrimination:** The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.

12. **Rehabilitation Act:** The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81, and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

13. **Government Rights (Unlimited):** FHWA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FHWA.

U.S. Department of Transportation
Federal Highway Administration

Motor Carrier Safety Assistance Program

The _____
(State Lead Agency)

hereby applies to the Federal Highway Administration for a Federal grant authorized in Title IV of the Surface Transportation Assistance Act of 1982 (P. L. 97-424) and subsequent amendments thereto to enhance a Commercial Motor Carrier Safety program as described in this application.

☐ The State Agency plans to carry out the implementation of a Motor Carrier Safety Assistance Program during Federal fiscal year (FY) _____ as described in the State Enforcement Plan.

☐ The State Agency plans to carry out special projects of the Motor Carrier Safety Assistance Program not contained in the Basic/Supplemental grant during Federal fiscal year (FY) _____ as described in the attached plan.

The Federal share will not exceed 80 percent of the total participating costs, unless otherwise indicated herein, incurred in performing the effort described in the attached State Plan. The State agrees to submit vouchers for the reimbursement of funds expended.

_____ *(Typed Name)*	_____ *(Organizational Unit)*
_____ *(Signature)*	_____ *(Address or P.O. Box)*
_____ *(Title)*	_____ *(City, State & Zip Code)*
_____ *(Date)*	_____ *(Phone Number)*

GENERAL PROVISIONS FOR MCSAP AGREEMENT

1. **General Provisions:** The State will comply with all requirements imposed by FHWA concerning special requirements of law, program requirements, and other administrative requirements.

2. **Regulation Requirements:** The State hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR, Part 350, and applicable OMB Circulars No. A-102 and A-87 as they relate to the application, acceptance and use of Federal funds for this federally-assisted project.

3. **Modifications:** This agreement may be amended at any time by a written modification properly executed by both the FHWA and the State.

4. **Retention and Custodial for Records:**
   (a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of three years, with the following exception:

   (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.

   (2) Records for nonexpendable property, if any, required with Federal funds shall be retained for three years after its final disposition.

   (3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.

   (b) The retention period starts from the date of the submission of the final expenditure report.

   (c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.

5. **Equal Employment Opportunity:**
   (a) The application/recipient agrees to incorporate in all contracts having a value of over $10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

   (b) The applicant/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contractors and/or issuing purchase orders for material, supplies, or equipment over $10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

   (c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FHWA by _____ an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.

6. **Copeland Act:** All contracts in excess of $2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he or otherwise entitled. The recipient shall report all suspected or reported violations to FHWA.

7. **Davis-Bacon Act:** When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.

8. **Contract Work Hours and Safety Standards Act:** Where applicable, all contracts awarded by recipient in excess of $2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less then 1-½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek Section 107 of the Act if applicable to construction work provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. **Access to Records:** All negotiated contracts (except those of $10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly partinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

10. **Civil Rights Act:** The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied that benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:
    (a) The primary purpose of and instrument is to provide employment, or
    (b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

11. **Nondiscrimination:** The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.

12. **Rehabilitation Act:** The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81, and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

13. **Government Rights (Unlimited):** FHWA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FHWA.

work without ad...

PROJECT NO._____

PROJECT AMENDMENT NUMBER_____

GRANT AGREEMENT FOR FISCAL YEAR 19____
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION
AND

THE_____
(STATE LEAD AGENCY)

dated_____, is entered into in accordance with Title IV of the Surface Transportation Assistance Act of 1982 and subsequent amendments thereto. This amendment shall be attached to and become a part of the referenced grant agreement. This agreement is hereby revised for the purpose described:

This amendment ( ) **increases** ( ) **decreases** ( ) **does not change** Federal Funding.

The prior total cost of this MOTOR CARRIER SAFETY ASSISTANCE PROGRAM was projected to be $_____ with a Federal share not to exceed $_____.

The revised total program cost is now projected to be: $_____

The Federal share is ( ) **increased** ( ) **decreased** ( ) **unchanged** in the amount of $_____

providing for a revised total Federal share not to exceed $_____

All other terms and conditions of this grant remain unchanged.

This amendment is effective _____ and expires on September 30, 19____.

_____
Name of Authorized Representative

STATE
SEAL

Title:_____

Date:_____

ADVANCE COPY

FEDERAL HIGHWAY ADMINISTRATION

_____
Name of Authorized Representative

Title:_____

Date:_____

RDER 4720.1A
6, 1993
MENT 4

GENERAL PROVISIONS FOR MCSAP AGREEMENT

eral Provisions: The State will comply with all requirements imposed FHWA concerning special requirements of law, program requirements, and other administrative requirements.

gulation Requirements: The State hereby assures and certifies that will comply with the regulations, policies, guidelines, and requirents, including 49 CFR, Part 350, and applicable OMB Circulars No. -102 and A-87 as they relate to the application, acceptance and use Federal funds for this federally-assisted project.

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(a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of three years, with the following exception:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property, if any, required with Federal funds shall be retained for three years after its final disposition.

(3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.

(b) The retention period starts from the date of the submission of the final expenditure report.

(c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.

. **Equal Employment Opportunity:**

(a) The application/recipient agrees to incorporate in all contracts having a value of over $10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.

(b) The applicant/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contractors and/or issuing purchase orders for material, supplies, or equipment over $10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.

(c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FHWA by _____ an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.

6. **Copeland Act:** All contracts in excess of $2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he or otherwise entitled. The recipient shall report all suspected or reported violations to FHWA.

7. **Davis-Bacon Act:** When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.

8. **Contract Work Hours and Safety Standards Act:** Where applicable, all contracts awarded by recipient in excess of $2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less then 1-½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek Section 107 of the Act if applicable to construction work provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. **Access to Records:** All negotiated contracts (except those of $10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

10. **Civil Rights Act:** The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied that benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:

    (a) The primary purpose of and instrument is to provide employment, or

    (b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

11. **Nondiscrimination:** The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.

12. **Rehabilitation Act:** The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81, and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

13. **Government Rights (Unlimited):** FHWA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FHWA.

Approved by OMB
No. 3046-0006
Expires 12/31/91

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C.

State and Local Reporting Committee
1801 L Street, N.W.
Washington, D.C. 20507

EEOC FORM 164, STATE AND LOCAL GOVERNMENT INFORMATION (EEO-4)

INSTRUCTION BOOKLET

[Please Read This Booklet Before Completing Enclosed Report]

Under Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, all State and local governments that have 15 or more employees are required to keep records and to make such reports to the Equal Employment Opportunity Commission as are specified in the regulations of the Commission. The applicable provisions of the law, Section 709(c) of Title VII, and the regulations issued by the Commission are printed in full in the Appendix (4) of these instructions. School systems and educational institutions are covered by other employment surveys and are excluded from EEO-4.

In the interests of consistency, uniformity and economy, State and Local Government Report EEO-4 is being utilized by Federal government agencies that have responsibilities with respect to equal employment opportunity. A joint State and Local Reporting Committee, with which this report must be filed, represents these various Federal agencies. In addition, this report should bring about uniformity in State and local government recordkeeping and reporting and should serve as a valuable tool for use by the political jurisdictions in evaluating their own internal programs for insuring equal employment opportunity.

As stated above, the filing of Report EEO-4 is required by law; it *is not voluntary*. Under Section 709(c) of Title VII, the Attorney General of the United States may compel a jurisdiction to file this report by obtaining an order from a United States District Court.

1. WHO MUST FILE

Those who must file this report include: (1) all States; (2) all other political jurisdictions which have 100 or more employees; and (3) an annual sample of those political jurisdictions which have 15-99 employees. The sample is rotated annually, so that none of the smaller jurisdictions will be required to file in consecutive years, but all will be required to file in their turn. Sampled jurisdictions will be informed by receipt of the forms that they have been selected to report in a particular year.

2. WHO MUST KEEP RECORDS

Every political jurisdiction with 15 or more employees must make and keep records and statistics which would be necessary for the completion of Report EEO-4, as set forth in these instructions. Records must be kept for a period of 3 years. See regulations 1602.30 and 1602.31 in the Appendix (4).

Although the EEO-4 report requires the combining of agency data to complete the report, separate data for each agency must be maintained either by the agency itself or by the office responsible for preparing the EEO-4 report, and should be available upon request to representatives of Federal agencies.

3. HOW TO FILE

State and local governments must file EEO-4 reports according to the number of full-time employees on the payroll as follows:

A. FEWER THAN 250 FULL-TIME EMPLOYEES

(1) File *one* (1) report for all functions performed which includes all employees.
(2) Check each box in Section C which represents a function performed by the jurisdiction.
(3) Include a list of *any* agencies not included in the report with the complete address for any agencies listed.

B. MORE THAN 249 FULL-TIME EMPLOYEES

File one form for each function listed on page 1 of the form (if that function is performed), for a maximum of 15 forms. Jurisdictions should report only persons on the jurisdiction's payroll.

Blank forms will be sent to a central office for the political jurisdiction. In those jurisdictions were all data are available at a single location, forms may be completed by the central office. Where data are not available centrally, figures should be obtained by the central office from all agencies and aggregated onto the proper forms by functions.

If you file forms for more than one function, a **Summary Sheet** will be included with your forms. On the **Summary Sheet** you are requested to check those functions for which you are submitting completed reports; functions for which you are not reporting; and functions for which you will be reporting at a later date. This will facilitate our own record-keeping, and minimize unnecessary follow-up correspondence. Full-time employment must also be reported on the **Summary Sheet.**

The **Summary Sheet** provides for one certification statement as to the accuracy and completeness of the entire report from the jurisdiction. If such certification can be and is made by one official, a separate signature on every form will not be required.

The fact that a branch or agency of a government has separately elected officials, or is autonomous or semi-autonomous in its operations does not affect the legal status of the jurisdiction, nor the requirement that EEO-4 cover the entire jurisdiction. To the extent feasible, the report should cover all branches of the government. In any cases where that is not feasible, and data are not available to the central office of the government, *a list of agencies and addresses not included should accompany the report.*

Where interstate, intercounty, etc., boards, agencies, commissions, or other type special district governments exist, **ONE FORM** should be submitted by the headquarters of the special district.

In conclusion, the submitted report must contain the following submitted in one (1) package:

(1) One (1) SUMMARY SHEET.
(2) The original and one (1) copy of up to 15 reports based on the number of functions performed.
(3) A list of agencies not included in the report but which should have been included in the report, with the complete address for any agency listed.

4. WHEN TO FILE

This annual report must be filed with the Equal Employment Opportunity Commission no later than the date printed in the accompanying cover letter. Full-time and part-time employment figures should cover the payroll period which includes June 30 of the survey year. New hires data is for the entire fiscal year which ends on June 30.

5. WHERE TO FILE

The completed reports (in duplicate) should be forwarded to the P.O. Box indicated on the EEO-4 form. All requests for additional information and report forms should also be directed to that address.

6. SPECIAL REPORTING PROCEDURES

An employer who claims that preparation or the filing of Report EEO-4 would create undue hardships may apply to the Commission for a special reporting procedure. In such cases, the employer must submit in writing a proposal for compiling and reporting information to:

The EEO-4 Coordinator
EEOC—Surveys
1801 L Street, N.W.
Washington, D.C. 20507

Only those special procedures approved in writing by the Commission are authorized. Such authorizations remain in effect until notification of cancellation is given or EEOC publishes a change to the survey form.

A **computer printout** is also a special reporting procedure. Only the print format designed and approved by EEOC will be accepted. A copy of that format with an explanatory memorandum may be acquired from the EEO-4 Coordinator at the above address.

7. ELECTED AND APPOINTED OFFICIALS

Section 701(f) of the Equal Employment Opportunity Act of 1972 contains an exemption for elected and certain appointed officials that is set forth in the definition of "employee" in Appendix (1). Based on the legislative history of Section 701(f), the General Counsel of the Commission has ruled that this exemption was intended by the Congress to be construed narrowly. This ruling concluded that only the following persons would be included in the exemption:

(1) State and local elected officials.
(2) Such official's immediate secretary, administrative, legislative, or other immediate or first-line aide.
(3) Such official's legal advisor.
(4) Appointed cabinet officials in the case of a Governor, or heads of executive departments in the case of a Mayor or County Council.

No other persons appointed by an elected official are exempt under this interpretation. In no case is any person exempt who is appointed by an appointed official, whether or not the latter is exempt. Furthermore, as specified in Section 701(f), the exemption does not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

8. CONFIDENTIALITY

All reports and information from individual reports are subject to the confidentiality provisions of Section

709(e) of Title VII, and may not be made public by EEOC prior to the institution of any proceeding under Title VII. However, aggregate data may be made public in a manner so as not to reveal any particular jurisdiction's statistics. Barring prohibitive State or local legislation, a political jurisdiction may make its EEO-4 Report public at any time.

9. ESTIMATE OF BURDEN

Public reporting burden for this collection of information is estimated to vary from five (5) to six (6) hours per response, with an average of five and two-tenths (5.2) hours including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. A response is defined as one survey form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

The EEOC Clearance Officer
Office of Management—Room 2220
1801 L Street, N.W.
Washington, D.C. 20507

AND

Paperwork Reduction Project (3046-0008)
Office of Management and Budget
Washington, D.C. 20503

The full text of the new OMB regulations may be found at 5 CFR Part 1320, or *Federal Register*, vol. 53, no. 90, Tuesday, May 10, 1988, page 16618.

PLEASE DO NOT SEND YOUR COMPLETED REPORT TO EITHER OF THESE ADDRESSES.

INSTRUCTIONS ON HOW TO PREPARE INFORMATION REPORTS

Definitions of Terms and Categories are Located in the Appendix

SECTION A—TYPE OF GOVERNMENT

Check one box indicating type of government.

SECTION B—IDENTIFICATION

Indicate the name and central mailing address of the governmental jurisdiction if different from address label in top margin.

SECTION C—FUNCTION

1. Jurisdictions with fewer than 250 full-time employees are mailed only one form. Report all jurisdiction employees on this form. Indicate in Section C of the form which functions are performed by your jurisdiction.
2. Jurisdictions with more than 249 full-time employees are mailed up to 15 forms. Please use a separate form for each function for which you are reporting.

The data should be aggregated for all agencies performing a particular function. This also applies to unspecified functions which are to be combined in one report for Function 15, "Other". State education agencies, both agencies covering elementary and secondary schools and those covering higher education, should be included in Function 15.

If an agency's activities cover more than one of the form's specified functions, those activities should be separated and reported under separate functions, where it is feasible to do so. Where the political jurisdiction is unable to make such separation of data, the agency should be reported under the function that represents its dominant activity. For example, if a transportation department includes among other functions streets and highways, and two-thirds of the employees of the department are engaged in street-and-highway activities, those employees should be separated out and reported separately if feasible. If not, the entire department should be reported in Function 2, Streets and Highways.

On page 4 of each function report, list the departments or agencies included in this function. For instance, Function 1 might include: Office of the Tax Collector, Office of the Mayor, Office of the District Attorney, etc.

SECTION D—EMPLOYMENT DATA AS OF JUNE 30

For purposes of this report, a person is an employee of a political jurisdiction if he or she is on the payroll of that jurisdiction, regardless of the source of the funds by which the person is paid.

1. FULL-TIME EMPLOYEES

(For detailed explanation of job categories and race/ethnic identification, see Appendix.)

Employment data should include total full-time employment except those elected and appointed officials specified in Section 7 above of these instructions. Where employees receive separate salaries or payments from two or more jurisdictions, but work full-time for one jurisdiction, they should be counted as full-time employees by that jurisdiction, and to the extent possible their annual salary should reflect their total earnings from all jurisdictions from which they are paid. Also, where a person is a full-time employee

of a jurisdiction, but is employed in more than one function, he or she should be reported for the function which accounts for most of the worktime. Trainees should be counted in appropriate columns by job, salary, race/ethnic group, and sex. Every employee must be accounted for in one and only one of the categories. Definitions are included in the Appendix (2).

a. Race/Sex Data—Columns B through K must reflect employment for the categories indicated. The line totals for columns B through K are entered in Column A.

b. Occupational Data—Employment data should be reported by annual salary within job category. Report each employee in *only one* job/salary category. In order to simplify and standardize the method of reporting, all jobs are considered as belonging in one of the broad occupations shown in the table. To assist you in determining how to place your jobs within the occupational groups, a description of job categories with examples follows in the Appendix (3). The list of exampless is in no way exhaustive.
*Total Lines—Report *total employment for this matrix*, as well as row totals.

c. Annual Salary—Where employees are paid on an other than annual basis, their regular earnings in the payroll period which includes June 30 should be expanded and expressed in terms of an annual income. All special increments of an employee's annual earnings which are regular and recurrent should be included. Overtime pay should not be included.

2. *OTHER THAN FULL-TIME EMPLOYEES*

Employment data should include all employees not included in a full-time matrix, except those specifically exempted (see Section 7, Elected and Appointed Officials.) Where employees are working part-time for different jurisdictions, and are on separate payrolls of different jurisdictions, they should be reported as part-time employees of the separate jurisdictions. Persons on the payroll of the jurisdiction for a specified temporary appointment, such as a public employment program, should be included in this category.
*Total Lines—Report *total employment for this matrix*, as well as row totals.

3. *NEW HIRES DURING FISCAL YEAR (A FISCAL YEAR COVERS THE PERIOD JULY 1-JUNE 30)*

Include those employees who were hired during the fiscal year into permanent full-time positions whether or not they terminated employment prior to the end of the fiscal year. New Hires are included in Section D-1 if they were full-time employees at the end of the fiscal year. Total Lines—Report *total employment for this matrix*, as well as row totals.

REMARKS

Include in this section: (1) the list of your government agencies included in this report, and (2) any remarks, explanations, or other pertinent information regarding this report.

NOTE: List here the National Crime Information Center (NCIC) numbers assigned by the U.S. Department of Justice to any criminal justice agencies whose data are included.

CERTIFICATION

Each form must be certified and signed by an official responsible for the information, unless a Summary Sheet has been certified and signed and submitted with the completed forms.

APPENDIX

1. DEFINITION APPLICABLE TO ALL EMPLOYERS

a. "Commission" refers to the Equal Employment Opportunity Commission established under Title VII of the Civil Rights Act of 1964.

b. "Employee" means an individual employed by a political jurisdiction, who is on the payroll of that jurisdiction, regardless of the source of the funds by which the worker is paid. The following is an exception from the definition, subject to the interpretation in Section 7 above of these instructions. The term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exception set forth in the preceding sentence shall *not* include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

c. "Full-time Employees"—Persons employed during this pay period to work the number of hours per week that represent regular full-time employment (excluding temporaries and intermittents).

d. "Other Than Full-time Employees"—Persons employed during this pay period on a part-time basis. Include those daily or hourly employees usually engaged for less than the regular full-time work week, temporaries working on a seasonal basis (whether part-time or full-time) or hired for the duration of a particular job or operation, including public employment programs, and intermittents.

e. "New Hires During Fiscal Year"—Persons both with and without previous experience and transfers who were hired for the first time in this jurisdiction or rehired after a break in service for permanent full-time employment.

2. RACE/ETHNIC IDENTIFICATION

An employer may acquire the race/ethnic information necessary for this section either by visual surveys of the work force, or from post-employment records as to the identity of employees. Since visual surveys are permitted, and the

fact that race/ethnic identifications are not present on agency records is not an excuse for failure to provide the data called for. However, although the Commission does not encourage direct inquiry as a method of determining racial or ethnic identity, this method is not prohibited in cases where it has been used in the past, or where other methods are not practical, provided it is not used for purposes of discrimination.

Moreover, the fact that employees may be located at different addresses does not provide an acceptable reason for failure to comply with the reporting requirements. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are responsible for the work of the employees or to whom the employees report for instruction or otherwise.

Please note that the General Counsel of the Commission has ruled, on the basis of court decisions, that the Commission has the authority to require the racial and ethnic identification of employees, regardless of any possible conflicting state or local laws.

The concept of race as used by the Equal Employment Opportunity Commission does *not* denote clearcut scientific definitions of anthropological origins. For the purposes of this report, 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 may be counted in more than *one* race/ethnic category.

NOTE: The category "HISPANIC", while not a race identification, is included as a separate race/ethnic category because of the employment discrimination often encountered by this group; for this reason do not include HISPANIC under either "white" or "black".

For the purposes of the report, the following race/ethnic categories will be used:

a. **White (not of Hispanic origin):** All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
b. **Black (not of Hispanic origin):** All persons having origins in any of the Black racial groups of Africa.
c. **Hispanic:** All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
d. **Asian or Pacific Islander:** All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.
e. **American Indian or Alaskan Native:** All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

3. DESCRIPTION OF JOB CATEGORIES

a. Officials and Administrators: Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, wardens, superintendents, sheriffs, police and fire chiefs and inspectors, examiners (bank, hearing, motor vehicle, warehouse), inspectors (construction, building, safety, rent-and-housing, fire, A.B.C. Board, license, dairy, livestock, transportation), assessors, tax appraisers and investigators, coroners, farm managers, and kindred workers.

b. Professionals: Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dieticians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, police and fire captains and lieutenants, librarians, management analysts, airplane pilots and navigators, surveyors and mapping scientists, and kindred workers.

c. Technicians: Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers, drafters, survey and mapping technicians, licensed practical nurses, photographers, radio operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences), police and fire sergeants, inspectors (production or processing inspectors, testers and weighers), and kindred workers.

d. Protective Service Workers: Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, game and fish wardens, park rangers (except maintenance), and kindred workers.

e. Paraprofessionals: Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of staff development and promotion under a "New Careers" concept. Included: research assistants, medical aids, child support workers, policy auxiliary welfare

ce aids, recreation assistants, nomemakers aides, home h aides, library assistants and clerks, ambulance drivers attendants, and kindred workers.

Administrative Support (Including Clerical and Sales): ipations in which workers are responsible for internal external communication, recording and retrieval of data or information and other paperwork required in an of- Includes: bookkeepers, messengers, clerk-typists, ographers, court transcribers, hearing reporters, stical clerks, dispatchers, license distributors, payroll s, office machine and computer operators, telephone ators, legal assistants, sales workers, cashiers, toll col- rs, and kindred workers.

. **Skilled Craft Workers:** Occupations in which workers orm jobs which require special manual skill and a ough and comprehensive knowledge of the processes in- ed in the work which is acquired through on-the-job ning and experience or through apprenticeship or other nal training programs. Includes: mechanics and irers, electricians, heavy equipment operators, sta- ary engineers, skilled machining occupations, carpenters, ipositors and typesetters, power plant operators, water sewage treatment plant operators, and kindred workers.

. **Service-Maintenance:** Occupations in which workers form duties which result in or contribute to the comfort, venience, hygiene or safety of the general public or which tribute to the upkeep and care of buildings, facilities or unds of public property. Workers in this group may rate machinery. Includes: chauffeurs, laundry and dry ning operatives, truck drivers, bus drivers, garage orers, custodial employees, gardeners and groundkeepers, use collectors, construction laborers, park rangers intenance), farm workers (except managers), craft ap- ntices/trainees/helpers, and kindred workers.

LEGAL BASIS FOR REQUIREMENTS

tion 709(c), Title VII, Civil Rights Act of 1964

(As Amended by the Equal Employment Opportunity Act of 1972)

cordkeeping: reports

Every employer, employment agency, and labor organiza- n subject to this title shall (1) make and keep such records evant to the determinations of whether unlawful employ- nt practices have been or are being committed, (2) serve such records for such periods, and (3) make such orts therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including, but not limited to, a list of applicants who wish to participate in such programs, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

Title 29, Chapter XIV, Code of Federal Regulations

Subpart I—State and Local Governments Recordkeeping

§ 1602.30 Records to be made or kept.

On or before September 30, 1974, and annually thereafter, every political jurisdiction with 15 or more employees is required to make or keep records and the information there from which are or would be necessary for the completion of report EEO-4 under the circumstances set forth in the instructions thereto, whether or not the political jurisdiction is required to file such report under § 1602.32 of the regulations in this part. The instructions are specifically incorporated therein by reference and have the same force and effect as other sections of this part.[1] Such records and the information therefrom shall be retained at all times for a

[1]Note.—Instructions were published as an appendix to the proposed regulations on Mar. 2, 1973 (38 FR 5662).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

STATE AND LOCAL GOVERNMENT INFORMATION (EEO-4)

EXCLUDE SCHOOL SYSTEMS AND EDUCATIONAL INSTITUTIONS

(Read attached instructions prior to completing this form)

APPROVED BY OMB 3046-0008

EXPIRES 12/31/91

DO NOT ALTER INFORMATION PRINTED IN THIS BOX

MAIL COMPLETED FORM TO:

A. TYPE OF GOVERNMENT (Check one box only)

☐ 1. State ☐ 2. County ☐ 3. City ☐ 4. Township ☐ 5. Special District

☐ 6. Other (Specify) _____

B. IDENTIFICATION

1. NAME OF POLITICAL JURISDICTION (If same as label, skip to item C)

EEOC USE ONLY A

2. Address—Number and Street	CITY/TOWN	COUNTY	STATE/ZIP

B

C. FUNCTION

(Check one box to indicate the function(s) for which this form is being submitted. Data should be reported for all departments and agencies in your government covered by the function(s) indicated. If you cannot supply the data for every agency within the function(s), please attach a list showing name and address of agencies whose data are not included.)

☐ 1. FINANCIAL ADMINISTRATION. Tax assessing, tax billing and collection, budgeting, purchasing, central accounting and similar financial administration carried on by a treasurer's, auditor's or comptroller's office and

GENERAL CONTROL. Duties usually performed by boards of supervisors or commissioners, central administrative offices and agencies, central personnel or planning agencies, all judicial offices and employees (judges, magistrates, bailiffs, etc.)

☐ 2. STREETS AND HIGHWAYS. Maintenance, repair, construction and administration of streets, alleys, sidewalks, roads, highways and bridges.

☐ 3. PUBLIC WELFARE. Maintenance of homes and other institutions for the needy; administration of public assistance. (Hospitals and sanatoriums should be reported as item 7.)

☐ 4. POLICE PROTECTION. Duties of a police department sheriff's, constable's, coroner's office, etc., including technical and clerical employees engaged in police activities.

☐ 5. FIRE PROTECTION. Duties of the uniformed fire force and clerical employees. (Report any forest fire protection activities as item 6.)

☐ 6. NATURAL RESOURCES. Agriculture, forestry, forest fire protection, irrigation drainage, flood control, etc., and

PARKS AND RECREATION. Provision, maintenance and operation of parks, playgrounds, swimming pools, auditoriums, museums, marinas, zoo, etc.

☐ 7. HOSPITALS AND SANATORIUMS. Operation and maintenance of institutions for inpatient medical care.

☐ 8. HEALTH. Provision of public health services, out-patient clinics, visiting nurses, food and sanitary inspections, mental health, alcohol rehabilitation service, etc.

☐ 9. HOUSING. Code enforcement, low rent public housing, fair housing ordinance enforcement, housing for elderly, housing rehabilitation, rent control.

☐ 10. COMMUNITY DEVELOPMENT. Planning, zoning, land development, open space, beautification, preservation.

☐ 11. CORRECTIONS. Jails, reformatories, detention homes, half-way houses, prisons, parole and probation activities.

☐ 12. UTILITIES AND TRANSPORTATION. Includes water supply, electric power, transit, gas, airports, water transportation and terminals.

☐ 13. SANITATION AND SEWAGE. Street cleaning, garbage and refuse collection and disposal. Provision, maintenance and operation of sanitary and storm sewer systems and sewage disposal plants.

☐ 14. EMPLOYMENT SECURITY

☐ 15. OTHER (Specify on Page Four)

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PAGE 1

☆ U.S. GOVERNMENT PRINTING OFFICE: 1989-626-028

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 B	BLACK C	D	E	F	WHITE G	BLACK H	I	J	K
SKILLED CRAFT	49. $ 0.1-7.9											
	50. 8.0-11.9											
	51. 12.0-15.9											
	52. 16.0-19.9											
	53. 20.0-24.9											
	54. 25.0-32.9											
	55. 33.0-42.9											
	56. 43.0 PLUS											
SERVICE/ MAINTENANCE	57. 0.1-7.9											
	58. 8.0-11.9											
	59. 12.0-15.9											
	60. 16.0-19.9											
	61. 20.0-24.9											
	62. 25.0-32.9											
	63. 33.0-42.9											
	64. 43.0 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. ADMIN. SUPPORT											
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. ADMIN. SUPPORT											
81. SKILLED CRAFT											
82. SERV./MAINT.											
83. TOTAL NEW HIRES (LINES 75-82)											

EEOC FORM JUL. 88 (Previous Editions are Obsolete)

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 CATEGORY	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 B	BLACK C	D	E	F	WHITE G	BLACK H	I	J	K
OFFICIALS/ ADMINISTRATORS	1 $ 0.1-7.9											
	2. 8.0-11.9											
	3. 12.0-15.9											
	4. 16.0-19.9											
	5. 20.0-24.9											
	6. 25.0-32.9											
	7. 33.0-42.9											
	8. 43.0 PLUS											
PROFESSIONALS	9. 0.1-7.9											
	10. 8.0-11.9											
	11. 12.0-15.9											
	12. 16.0-19.9											
	13. 20.0-24.9											
	14. 25.0-32.9											
	15. 33.0-42.9											
	16. 43.0 PLUS											
TECHNICIANS	17. 0.1-7.9											
	18. 8.0-11.9											
	19. 12.0-15.9											
	20. 16.0-19.9											
	21. 20.0-24.9											
	22. 25.0-32.9											
	23. 33.0-42.9											
	24. 43.0 PLUS											
PROTECTIVE SERVICE	25. 0.1-7.9											
	26. 8.0-11.9											
	27. 12.0-15.9											
	28. 16.0-19.9											
	29. 20.0-24.9											
	30. 25.0-32.9											
	31. 33.0-42.9											
	32. 43.0 PLUS											
PARA-PROFESSIONALS	33. 0.1-7.9											
	34. 8.0-11.9											
	35. 12.0-15.9											
	36. 16.0-19.9											
	37. 20.0-24.9											
	38. 25.0-32.9											
	39. 33.0-42.9											
	40. 43.0 PLUS											
ADMINISTRATIVE SUPPORT	41. 0.1-7.9											
	42. 8.0-11.9											
	43. 12.0-15.9											
	44. 16.0-19.9											
	45. 20.0-24.9											
	46. 25.0-32.9											
	47. 33.0-42.9											
	48. 43.0 PLUS											

PAGE 2

REMARKS (List National Crime Information Center (NCIC) numbers assigned to any Criminal Justice Agencies whose data are included in this report.)

***** INCLUDE LIST OF AGENCIES IN THIS FUNCTION *****

CERTIFICATION. I certify that the information given in this report is correct and true to the best of my knowledge and was reported in accordance with accompanying instructions. (Willfully false statements on this report are punishable by law, U.S. Code, Title 18, Section 1001.)

NAME OF PERSON TO CONTACT REGARDING THIS FORM	TITLE
ADDRESS (Number and Street, City, State, Zip Code)	TELEPHONE NUMBER AREA CODE

DATE	TYPED NAME/TITLE OF AUTHORIZED OFFICIAL	SIGNATURE

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PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 6

Handouts

U.S. Commission on Civil Rights – 624 Ninth Street, N.W. – Washington, D.C. 20425—(202) 376-8582

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." [1]

"The policy underlying the enactment of Title VI is so fundamentally correct that there is little need for an additional statement." [2]

FACT SHEET

FOR

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Department of Justice, through its Coordination and Review Section, is the Federal agency charged with providing oversight, monitoring, and coordination of all Federal agencies and other parties for enforcement of Title VI of the Civil Rights Act of 1964. The section provides:

- Coordination and liaison with the Federal agencies, State and local government recipients, non-governmental recipients, community groups, and general public
- Technical assistance to public and private agencies, and to citizens
- Education outreach and civil rights training
- Clearinghouse and information resources
- Guidance on, and review of, Title VI implementation plans
- Monitoring of Federal and State agencies' compliance with, and enforcement of, Title VI
- Legal interpretation and assistance to Federal agencies
- Litigation support to Federal agencies

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[1] 42 U.S.C. § 2000d (1988)

[2] H.R. Rep. No. 914, 88th Cong., 1st Sess., pt. 2,24 (1964) (hereafter cited as House Report), reprinted in 110 U.S.C.C.A.N. 2510. See also 110 Cong. Rec. 7064 (1964) (statement of Sen. Ribicoff) "of all the provisions of this civil rights bill, none rests on so simple and so sound a principle as does this [T]itle VI. That principle is taxpayers' money, which is collected without discrimination, shall be spent without discrimination.... It is based on simple justice. It is based on ordinary decency."

WHAT TITLE VI IS

Title VI is a civil rights law that prohibits discrimination because of race, color, or national origin in programs and activities that receive Federal financial assistance.

WHAT TITLE VI DOES

- Prohibits entities from discriminatorily denying a protected individual any service, financial aid, or other benefit under the covered programs and activities.
- Prohibits entities from providing services or benefits to some individuals that are different from or inferior (in either quantity or quality) to those provided to others.
- Prohibits segregation or separate treatment in any manner related to the receiving of program services or benefits.
- Prohibits entities from imposing different standards or conditions as prerequisites for serving of individuals.
- Encourages outreach for the participation of minorities as members of planning or advisory bodies for programs receiving Federal funds.
- Prohibits discriminatory activity in a facility built in whole or part with Federal funds.
- Requires information and services to be provided in languages other than English when significant numbers of potential beneficiaries have limited English speaking ability.
- Requires entities to notify the entire eligible population about programs.
- Prohibits locating facilities in a way that would limit or impede access to a Federally funded service or benefit.
- Requires assurance of nondiscrimination in purchasing of services.

WHAT TITLE VI DOES NOT

- Does not apply to Federal assistance provided through insurance or guaranty contracts (e.g., FHA loan insurance).
- Does not apply to employment, except where employment practices result in discrimination against program beneficiaries or where the purpose of the Federal assistance is to provide employment.
- Does not provide relief for discrimination based on age, sex, disability, religion, geographical locale, or means.
- Does not apply to direct benefit programs such as Social Security.
- In short, it applies only to contracts and set-aside programs.

WHAT TITLE VI COVERS*

- Ship and airline subsidies
- Job training programs
- Department of Veterans Affairs educational benefits and equipment and building loans
- Farm price supports
- Health care (i.e., Medicare, Medicaid)
- Public health services
- Parks and recreation
- Housing
- Contracting
- Location of facilities
- Law enforcement such as police training
- Welfare services such as foster care
- School educational programs
- Hiring
- Tax benefits enjoyed by private agencies and fraternal and non-profit organizations (i.e., 501 c3)
- Urban renewal
- Distribution of benefits and services
- Community development block grants
- Transportation
- Construction
- Social services
- Employee or student recruitment
- Program effects on people in communities

*This is not an exhaustive list

PEOPLE COVERED BY TITLE VI

There are different "players" in the programs and activities that use Federal money or services. Knowing them will assist in understanding the specific activities prohibited by Title VI and the rights and duties of those covered by the law. The players include the applicant, the recipient, the sub-recipient, the program participant, and the beneficiary.

A. APPLICANT

The applicant is an individual, public or private organization, or State or local government that applies for Federal money or services.

For example, a person who applies for Social Security benefits is an applicant. An elementary school that applies for Federal money to support special education programs is an applicant. A State government that applies for Federal disaster relief also is an applicant.

Although the person who applies for Social Security benefits is not covered by this civil rights law because the program that provides the Federal money is a direct assistance program, the school and the State government are covered by this law. Students attending the special education programs and families assisted by the disaster relief will obtain the Federal assistance through the school or the State government. They will not receive the money or services directly from the Federal Government.

B. RECIPIENT

The recipient is the individual, public or private organization, or State or local government that receives the Federal assistance after applying for it. The individual, organization, or State or local government who applies for and receives the Federal money is both the applicant and the recipient of the Federal program. The school receiving Federal money and the State government obtaining disaster relief are recipients.

In using the Federal money to create programs or provide aid to individuals, the school and the State government have a duty under Title VI not to discriminate against students receiving educational services or families receiving disaster relief.

C. SUB-RECIPIENT

In some cases, a State or local government or an organization will apply for Federal money or services. It then will distribute the money based on applications submitted to it. In this situation the State or local government or the organization is the applicant and the recipient. The individual who applies to the State government, the local government, or the organization for money becomes a sub-recipient when the money is received.

For example, States apply to the U.S. Department of Education for Federal money under a grant program for special education. The States are both the applicants and the recipients of the program. The States then provide some of the money to local school districts in their States for special education. The school districts are sub-recipients of the State grant program for special education.

The States as recipients and the school districts as sub-recipients are covered by Title VI. All have a responsibility not to violate Title VI.

D. PARTICIPANT

The participant is the individual or organization participating in a program that comes under Title VI.

For example, a college applies to the Small Business Administration and receives Federal money. The money pays for the creation of a seminar that offers small businesses advice on improving their operations. The college is the applicant and the recipient of the Federal program. Small businesses who send representatives to attend the seminar are program participants.

As another example, a State applies to the U.S. Department of Education under the Title I program, which provides Federal money to pay for educational programs for children in low-income families. The State receives the money. An elementary school applies to the State for some of this Title I money and obtains it. With the money, the school creates a reading program for students from low-income families. The State is the applicant and the

recipient of the Title I program; the school is the sub-recipient of the Title I program; and the students in the program are the program participants.

Program participants are covered under Title VI. In addition, individuals who are eligible to participate in the program are also covered under Title VI if they are not allowed to participate because of race, color, or national origin.

E. BENEFICIARY

A beneficiary is an individual who benefits from a program or activity that uses Federal money or services.

The benefits can be money provided through benefit checks or Federal loans. (If the individual has applied for the benefits and received the check or loan, he or she is the applicant, recipient, and beneficiary of the Federal program.)

The benefits also may be services, such as the medical care provided in a hospital constructed with Federal money or the training provided in job training programs. For example, a local government applies to the U.S. Department of Health and Human Services for money to build a community hospital, and it receives the money. The local government is the applicant and the recipient of the Federal program. Patients served by the hospital are the beneficiaries of the Federal program.

As another example, a State applies to the U.S. Department of Labor for Federal money to support job training programs for the unemployed. The State receives this money. A local government applies to the State for money to develop a job training program, and obtains the money. The local government develops the job training program for the unemployed, and individuals receive job training. The State is the applicant and the recipient of the Federal program; the local government is the sub-recipient; and the individuals attending the programs are the beneficiaries.

There could be other beneficiaries to the program, such as the employers and family members of those individuals attending the job training program. Employers will benefit by the hiring of skilled workers. Family members will benefit if the training leads to an increase in family income. The employers and family members, however, are not the individuals that the job training program was intended to benefit. The program was intended to benefit those individuals who attend the training programs. Title VI applies only to those individuals intended to benefit from the programs receiving Federal money or services. In the current example, this civil rights law applies to those individuals who attend the job training program or who wish to attend but are excluded because of race, color, or national origin. The law does not protect the employers and family members if an individual is excluded from the job training program because of race, color, or national origin.

EFFECTS TITLE VI HAVE FOR THE INDIVIDUAL

Title VI gives an individual protection from discrimination because of race, color, or national origin in a program or activity that receives Federal financial assistance. This means that the State and local governments, public or private organizations, or individuals that receive Federal money or services have a duty not to engage in activities that discriminate against a person because of race, color, or national origin. An individual who has been discriminated against under Title VI can file a complaint with the Federal agency that provided the money or services or in a court of law.

WHAT FEDERAL FINANCIAL ASSISTANCE IS

- Federal financial assistance means more than just money. Aid that enhances the ability to improve, or expand allocation of, a recipient's resources constitutes assistance. Examples include:
  - ◊ Student aid (releases recipient's funds for other uses)
  - ◊ Training of employees (permits better use of the employer's resources)
  - ◊ Grants and loans
  - ◊ Property
  - ◊ Loan of personnel
  - ◊ Tax incentives
  - ◊ Technical assistance
- Title VI applies to discrimination throughout an agency or organization, not just to actions involving the Federally assisted program. Therefore, if an agency or organization receives Federal financial assistance for any program or activity; the entire agency or organization is required to comply with Title VI, not merely the particular program or activity.[3]

WHO MUST COMPLY OR BE FOUND IN VIOLATION?

Recipients and other parties that substantially affect program outcomes:

- State or local government agency distributing Federal assistance, and entity distributing Federal assistance to the State or local government agency.
- College, university, or other post-secondary institution.
- Local educational agency or system of vocational education, or other school system.
- Entire corporation, partnership, or other private organization, or a sole proprietorship.
- Entire private organization in education, housing, health care, etc.
- Entire plant or private corporation or other organization that is a geographically separate facility to which federal financial assistance is extended.

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[3] The 1987 Civil Rights Restoration Act restored the broad coverage.

HOW YOU CAN PROTECT YOUR RIGHTS

A. FILING A COMPLAINT

If you believe there has been an act of discrimination against any person or group because of race, color, or national origin in a program or activity that receives Federal money or services, you may file a complaint with the Federal agency involved. You do not have to be the victim of the alleged discrimination in order to file a complaint. You may file a complaint on behalf of another person or group. In most cases, a complaint must be filed within 180 days of the date of the alleged discrimination unless you are granted an extension by the Federal agency.

Your complaint should give:

1. Your name, address, and telephone number
2. Who is the subject of the discrimination
3. What person, institution, or agency committed the discrimination
4. When the discrimination took place
5. Who was harmed by the discrimination (including name, address, and telephone number), and
6. As much background information as possible about the discrimination.

B. REQUESTS FOR INFORMATION

You may learn more about the Title VI civil rights law by contacting the Federal agency that runs programs of interest or concern to you. Most Federal agencies have a regional office outside Washington, D.C. that will handle the issues in your State. Addresses and phone number of regional Federal offices are available in telephone directories or yellow pages. Some Federal agencies also provide a toll-free telephone number to answer your questions and concerns.

You also may contact the U.S. Commission on Civil Rights in Washington, D.C. or in a regional office. The U.S. Commission on Civil Rights can refer you to the right agency for your questions and concerns.

U.S. Commission on Civil Rights
Office of Civil Rights Evaluation
624 Ninth Street, N.W.
Washington, D.C. 20425

1-800-552-6843

This fact sheet was modeled after the Tennessee Human Rights Commission's Fact Sheet "Title VI".

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Handout 4-2

Data Collection/Analysis For Addressing Title VI/Environmental Justice In The Long Range Planning Process

- Why is data collection important?

  Data collection is key to ensuring that transportation programs, services, facilities and projects effectively meet the needs of "all persons" *equally* and *equitably*. Timely and accurate data allows for better decision making and provides support and defensibility to the decisions made. Objective data is necessary to identify:

  - Transportation needs of all persons within boundaries of plans.
  - **Impacts** and **persons** impacted.
  - Persons to include in the decision making process.
  - "Champion(s)" for various modes and transportation options.
  - Strategies to address impacts.
  - Alternatives to modes and locations and types of facilities (transit, light rail, van and car pooling, HOV lanes, etc.).
  - Priorities for investments.
  - Sources for financing investments.
  - Strategies to disseminate information.

- Who are "all persons?"

  - Low income
  - High income
  - Transit dependent - rail, bus, other (i.e., demand response, shared ride, etc.)
  - Automobile dependent
  - Bicycle/Pedestrian users
  - Minorities
  - Elderly
  - Disabled
  - Retired
  - Inner city residents
  - Business owners

- What do *equitably* and *equally* mean?

  Equitably describes the function of a transportation system in serving the transportation and/or mobility needs of "all persons."

  Equally describes the function of a transportation system in serving the transportation and/or mobility needs of "all persons," without discrimination (i.e., disproportionately benefitting or harming one group over another -- a violation of Title VI of the Civil Rights Act of 1964).

- **Types of data/analysis helpful in determining compliance with Title VI and Environmental Justice considerations:**

  Population

  - Regional population and growth rates.
  - Regional ethnic composition.
  - Age distribution by race.
  - Number of households by income group.
  - Median household income.
  - Percent of persons below poverty line.
  - Percent of persons by age group with mobility limitations.

  Mode Choice

  - Number of trips per capita.
  - Percent of households with no automobiles.
  - Percent by households by income groups using various modes of transportation (e.g., bus, car pool, commuter rail, urban rail, automobile)
  - Percent of persons by ethnic group using various modes of transportation (e.g., bus, car pool, commuter rail, urban rail, automobile)

  Transportation System

  - Transportation system congested.
  - Travel time.
  - Delay as a percentage of travel time.
  - Access to jobs, churches, medical care, schools, emergency services, grocery stores, family.
  - Exposure to transportation hazards (Environmental, safety, crime).

  Employment

  - Present and future location of jobs
  - Present and future location of housing.
  - Present and future location of low income communities.

  Other

  - Public investment per capita (Federal, State and Local).

- **Types of analyses or questions to address compliance with Title VI/EJ.**

  - Percent of benefits allocated to persons below poverty line vs. persons above poverty line.
  - Distribution of benefits (dollars, facilities, systems, projects) by groups and communities.
  - Impact of investments on income, race, gender and age groups.
  - Allocation of funds by mode (highway, bus, commuter rail, urban rail).
  - Projected population increases vs. planned facilities and types of facilities.

- **Potential Sources of Data and Analysis Tools:**

  - Census Data
  - School Districts
  - Transit Ridership Surveys
  - Management Systems (Pavement and Congestion)
  - Land Use Plans
  - Geographic Information Systems
  - Transportation Models
  - Metropolitan Planning Organization Committees (e.g., Citizen Advisory Committees)

- **Performance Indicators**

  Mobility--Ease of movement of people and goods.

  Accessibility--Access to opportunities (jobs, medical care, emergency services, family, shopping, entertainment).

  Environment--Sustainable development and preservation of the existing system and the environment.

  Cost-effectiveness--Maximized return on investment, direct as well as indirect costs associated with air pollution, congestion delay for individuals/businesses.

  Reliability--System reliability (Probability of arriving at destination or even making the trip.)

  Safety--Physical design and operation of system (Measured in accidents per person mile) Also includes security related to criminal activities on highways as well as on transit systems.

  Equity--Transportation investments and benefits are invested in a manner that meets the needs of all persons.

  Customer Satisfaction--Increased ability to make trips, improved travel time, safety and security, improved access to system.

  Livable Communities--Enhancement of living conditions for communities through transportation policies that provide multi-modal options including non-motorized modes.

ARIZONA INQUIRY
Handout 4-3
State Transportation Agency EEO Program Guide

PRELIMINARY ANALYSIS
Prepared by FHWA Regional Office of Civil Rights
Region 6—Fort Worth, Texas
May 24, 1996

BACKGROUND

David S. Baron of the Arizona Center for Law in the Public Interest in a letter dated April 24, 1996, addressed to the Director of the Arizona Department of Transportation (ADOT) and the Director of the Maricopa Association of Governments (MAG) questions whether ADOT and MAG are complying with the requirements of Title VI of the Civil Rights Act of 1964. Specifically, Mr. Baron questions compliance by ADOT and MAG with the information collection and reporting requirements of Title VI. The letter alleges that ADOT and MAG are not complying with these requirements particularly in the preparation and execution of transportation plans and programs in metropolitan Phoenix. Mr. Baron wants these situation corrected so that the required information is collected and used in transportation decisions and in better understanding how those decisions would affect different groups. Mr. Baron cites the following laws, regulations and guidance as being on point with the issues he raises;

- Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d *et seq.*}, as amended.
- 49 CFR §21.3(a), 21.7, 21.9
- 23 CFR §§ 200.3, 200.9
- 23 CFR § 450.316(b)(2)
- 28 CFR §§ 42.406, 42.407
- DOT Order 1000.12, Ch. IV, §§ 1-2 (1/19/77)
- FHWA, Federal-Aid Highway Program Manual, Vol. 2, Ch. 2, sec. 2, Transmittal 233, §§ 3, 7, 10 (FHWA Manual)

ISSUES

1. Whether and to what extent if any, each of the above requirements apply to ADOT and MAG.

2. Whether ADOT and MAG are complying with those requirements cited above which are found to apply.

    a. Whether ADOT and MAG are collecting required community and population make up data.
    b. Whether ADOT and MAG are utilizing data collected to ensure that the

requirements of Title VI are met with respect to the planning and construction of transportation programs and facilities.

3. Whether ADOT is ensuring the compliance of subrecipients such as MAG with those requirements cited above which are found to apply.

AUTHORITY

The following authorities apply to this inquiry;

1. **Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d *et seq.*}**

Title VI is applicable in that it prohibits discrimination on the basis of race, color, or national origin in Federally assisted programs. The Federal Highway and Federal Transit Programs are federally assisted programs to which the act applies. Both the ADOT and MAG are recipients of federal financial assistance and both the ADOT and MAG agreed to comply with Title VI as a condition for receipt of the federal financial assistance.

The Act gives standing to persons in the United States, therefore the Arizona Center for Law in the Public Interest has standing to pursue their inquiry or a complaint to determine whether the ADOT and the MAG are in compliance with Title VI.

2. **49 CFR, Part 21**-Nondiscrimination In Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964

§ 21.3(a) Contains language applying Title VI to this program.

§ 21.5 Contains language citing the discrimination prohibited and the coverage of the regulation to all persons in the United States. In addition requires non-discrimination in the opportunity to participate in planning, advisory, or similar bodies which are part of the program. Cites the "effect" rather than the "intent". In addition, this section also requires recipients to undertake affirmative action to remove or overcome the effects of prior discriminatory practices. Implication is that in order to comply with the objective of Title VI, recipients must know the make up of communities and populations affected by transportation programs and facilities.

§ 21.7 Requires assurances of compliance with Title VI from recipients (ADOT) and sub-recipients (MAG) as a condition of receiving the federal financial assistance. The assurance requires the recipient to ensure compliance with Title VI by its sub-recipients.

§ 21.9 Requires recipients to keep records and submit reports as determined by

the Secretary as necessary to ascertain the recipient's compliance. Requires sub-recipients (MAG) to submit compliance reports to the primary recipient (ADOT). Generally requires recipients to have available racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

§ 21.11 Allows any person on behalf of themselves or any specific class of persons believing to have been subjected to discrimination prohibited by Title VI to file a written complaint with the Secretary. The Secretary is required to make a prompt investigation. Calls for instances of non-compliance to be resolved by informal means wherever possible.

Appendix C Subsection (a)(2), paragraphs (iv), (vi), (vii), require recipients to not discriminate in their location, design, and construction of transportation facilities. These paragraphs apply directly to the allegations raised in this inquiry.

In addition, subsection (a)(3) applies similar requirements to mass transit programs and activities with respect to routing, scheduling, and location of projects or facilities.

3. Standard DOT Title VI Assurance

The recipient agrees, by executing this assurance that as a condition of receiving Federal financial assistance from the U.S. Department of Transportation, it will comply with Title VI **and** all requirements imposed by or pursuant to 49 CFR 21 and other pertinent directives. The assurance is binding on the recipient, other recipients, subgrantees and others (last paragraph of assurance).

Paragraph 1 Requires programs and facilities to be conducted and operated in compliance with Title VI.

Paragraph 9 Requires the recipient to provide for methods of program administration as found by Secretary that reasonably guarantee that the recipient, other recipients, subgrantees and others will comply with all requirements under the Act, the regulations and the assurance.

4. 23 CFR 200- Federal Highway Administration Title VI Regulations

§ 200.3 Applies regulations to all elements of the FHWA and imposes specific requirements upon FHWA recipients.

§ 200.9 Repeats application of Title VI Assurances and obligations of recipients thereunder and amends assurances pursuant to Section 162a of the Federal-Aid Highway Act of 1973 {23 U.S.C. 324} to include the prohibition against sex discrimination.

Paragraph (a) (3) requires recipient to take affirmative action to correct any deficiencies found by FHWA within a reasonable time period, not to exceed 90 days.

Paragraph (a)(4) requires State to conduct annual reviews of all pertinent program areas.

Paragraph (b)(3) Requires specific data be kept on complaints including the race, color, sex, or national origin, nature of complaint, date filed and date investigation completed, the disposition, date of disposition. Copies of complaints required to be forwarded by recipient to FHWA Division Office within 60 days of receipt.

Paragraph (b)(4) requires the recipient to develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in and beneficiaries of recipient's programs, including relocatees, impacted citizens and affected communities.

Paragraph (b)(7) requires the recipient to conduct Title VI reviews of cities, counties, consultants, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

Paragraph (b)(10) requires the recipient to prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

Paragraph (b)(11) requires that recipients annually submit Title VI implementation plans to the FHWA for approval.

Paragraph (b)(12) requires recipients to develop Title VI information for dissemination to the general public, including where appropriate, in languages other than English.

5. **23 CFR 450.316--Metropolitan Transportation Planning Process: Elements**

Requires {paragraph (a)} the explicit consideration, analysis and incorporation as appropriate in the planning process products the following 15 factors:

1. Preservation of existing transportation facilities and ways to meet needs with existing facilities.
2. Consistency of transportation planning with energy conservation programs, goals, and objectives.
3. Congestion relief and prevention.
4. Effect of transportation policy decisions on land use and development.

Analysis to include projections of metropolitan planning area economic, demographic, environmental protection, growth management, and land use activities consistent with metropolitan and local/central city development goals (community, economic, housing) and projections of future transportation demands.

5. Programming of expenditures for transportation enhancement activities.
6. The effects of all transportation projects within metropolitan planning area, including financing and related impacts on community/central city goals regarding social and economic development, housing and employment.
7. International border crossings and access to intermodal facilities, parks, recreation areas.
8. Connectivity of roads.
9. Transportation needs identified through the use of the management systems required under 23 U.S.C. 303.
10. Preservation of rights of way for construction of future transportation projects.
11. Enhancement of the efficient movement of freight.
12. Use of life-cycle costs in design and engineering of bridges, tunnels, or pavement.
13. The overall social, economic, energy, and environmental effects of transportation decisions (including consideration of the effects and impact of the plan on the human, natural and man-made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resources protection and management plans and appropriate emphasis on transportation related air quality problems.
14. Expansion, enhancement, and increased use of transit services and
15. Capital investments that would result in increased security in transit systems.

Paragraph (b) (1) requires that in addition to the above, the transportation planning process is to include a proactive public involvement process that provides complete public information, timely public notice, full public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs and meets the following:

(i) Minimum public comment period of 45 days prior to initial adoption or revision of public involvement process;
(ii) Timely information about transportation issues and processes to all involved and affected by transportation plans, programs and projects.

(iii) Reasonable public access to technical and policy information used in development of plans and TIPs. Open public meetings.

(iv) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs.

(v) Demonstrate explicit consideration and response to public input received during planning and project development processes.

(vi) Seek out and consider the needs of those traditionally under served by existing transportation systems, including but not limited to low-income and minority household.

(vii) When significant input received on draft transportation plan or TIP, a summary, analysis, and report on the disposition of comments as part of the final plan and TIP.

(viii) Where final transportation plan or TIP differs significantly from one presented for public comment by MPO and raises new material issues which interested parties could not have reasonably foreseen from public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available.

(ix) Periodic review by MPO of public involvement processes to assess effectiveness to ensure full and open access to all.

(x) FHWA to review these procedures during certification reviews for TMAs and as necessary for all MPOs to assure full and open access is provided to MPO decision making procedures.

(xi) Coordination of metropolitan planning processes with statewide public involvement processes to enhance public consideration of the issues, plans, and programs and reduce redundancies and costs.

Paragraph (b)(2) requires that the planning process be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance.

Paragraph (b)(3) requires the identification of actions necessary to comply with the Americans With Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and 49 CFR Parts 27, 37, and 38).

Paragraph (d) requires that the metropolitan planning process include technical and other reports to assure documentation of the development, refinement, and update of the transportation plan and that the reports are to be made available to interested parties.

CONSIDERATIONS

1. The Arizona Center for Law In The Public Interest has expressed concern over compliance by the ADOT and the MAG with data collection and reporting requirements necessary to comply with Title VI of the Civil Rights Act of 1964. The expressed concern does not rise, at this point, to a complaint alleging violation of Title VI.

2. The Arizona Center for Law In The Public Interest has standing to pursue their expressed concern and would have standing to file a complaint alleging violation of Title VI by ADOT and MAG.

3. The FHWA has jurisdiction in the matter under the above cited authorities.

4. All programs and activities of the ADOT and MAG, whether federally funded or not, are covered (Title VI, as amended by the Civil Rights Restoration Act of 1987, P.L. 100-259).

5. Absent a formal complaint, it would be in the best interest of the FHWA, ADOT, MAG and the overall public interest, to identify ways for all parties to jointly explore systematic means to effectively address the issues raised.

INFORMATION AND ANALYSIS REQUIRED

1. Identify major federally required reports and data.

2. Identify current data collected by ADOT and MAG for use in developing transportation plans, programs and projects and the specific sources of the data.

3. Identify how the data collected by ADOT and MAG in developing transportation plans, programs and projects is specifically used to fulfill Title VI and environmental justice objectives.

4. Identify reports currently prepared by ADOT and MAG.

5. Review ADOT's Annual Title VI Plan. Has the plan been approved by the FHWA? Date of last approval_____.

6. How does ADOT ensure compliance by its subrecipients, such as MAG, with Title VI and environmental justice requirements? What reviews has ADOT conducted of MAG? What reports does ADOT require from MAG?

7. Describe efforts, outreach and otherwise, by ADOT and MAG to ensure the greatest

possible involvement of minority and low income communities in the transportation planning process.

8. What efforts are exerted by ADOT and MAG to ensure minority and low income communities are represented on all transportation decision making bodies.

9. How does the allocation of funding for major transportation improvements in Phoenix in areas with high minority populations compare with non-minority areas?

10. What data should be collected that isn't collected presently?

11. What reports should be periodically submitted?

    -By MAG?
    -By ADOT?

STRATEGIES

1. Provide Title VI "Nondiscrimination in the Federal Aid Highway Program" training course. Participants in the course should include ADOT, MAG, other MPOs and subrecipients and the Arizona Center For Law In The Public Interest. The training course should be preceded by an executive overview with the CAOs and key management personnel of each of the organizations to be represented at the training course.

   The training should cover a segment on federally required and/or desirable data that should be collected in the development of transportation plans and facilities that would enable clearer identification of affected communities and groups, impacts and encourage public participation from minority and low income communities.

2. As part of the training course, present a structure for the ADOT, MAG, the Arizona Center For Law In the Public Interest and the other organizations to work together to develop improved techniques for;

   (a) Data collection and analysis.
   (b) Data reporting.
   (c) Increasing involvement and participation from minority and low income communities throughout the transportation planning, development and construction process.
   (d) Considering and addressing expressed concerns, recommendations and desires of minority and low income populations.

DESIRED OUTCOMES

1. An ongoing, credible partnership between government and the public in the transportation program that includes;

    (a) Data collection and analysis sufficient to identify affected populations and impacts of transportation plans, programs and projects.
    (b) Open reports accessible to and understandable by all.
    (c) Public involvement representative of low income and minority communities throughout the entire transportation process, from long range planning through project/facility completion.
    (d) Equitable consideration of input from minority and low income groups.

2. Compliance with Title VI, Environmental Justice Executive Order 12898 and NEPA.

EDF COMMENTS ON ATL TIP—FOWARDED
Handout 4-4
State Transportation Agency EEO Program Guide

From: Ed Morris
To: FHQMS01.GROUPS.##ALLADS, FHQMS01.GROUPS.##ALLFLD, ...
Date: 7/8/98 4:57pm
Subject: **INFORMATION:** EDF Comments on Atl TIP -Forwarded

The attached comments indicate the types of issues being raised regarding State plans and projects by those opposed to or concerned about the processes employed by recipients to identify needs and prioritize projects.

The comments reflect increased levels of awareness, cooperation, communication, and sophistication on the part of those who represent potentially impacted individuals and communities,
FHWA managers, State DOTs and MPOs need to be aware of and address the actions or inaction which give rise to these types of concerns to ensure their obligations are met.

From: Brenman, Marc <OST>
To: Morris, Ed <FHWA>, Marchese, April L <FHWA>, Edner...
Date: 7/8/98 2:31pm
Subject: EDF Comments on Atl TIP

FYI, attached are the Environmental Defense Fund/Environmental Justice Resource Center/Sierra Club's comments on Atlanta's transportation plan. Note especially their emphasis on lack of compliance with Title VI of the Civil Rights Act of 1964, on intermodal aspects, on environmental justice, and on the needs of the transit dependent.

Those who are interested in the LAMTA case may wish to note the characterization of that situation, and those interested in the Jersey Heights case, that characterization. Robert Bullard, who signed on for the Environmental Justice Resource Center, is a nationally recognized EJ advocate and expert.

There are many interesting and potentially useful signposts in this set of documents, particularly in the list of demographic and income circumstances and effects which the commenters believe should be proactively considered and projected through the planning process before regional transportation decisions are made.

ENVIRONMENTAL
DEFENSE FUND

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July 3, 1998

Ms. Wendy Morgan
Atlanta Regional Commission
200 Northcreek, Suite 300
3715 Northside Parkway
Atlanta, GA 30327-2809

Dear Ms. Morgan,

Environmental Defense Fund takes this opportunity to comment on the Atlanta Regional Commission's (ARC) June 5, 1998 Draft Interim Regional Transportation Plan: 2020 (RTP) and the Draft Interim Transportation Improvement Program: FY 1999 - FY 2001 (TIP).

Our comments are based on the following general principles:

- The transportation decision making process should be transparent, accountable, fact based, and actively considering a wide range of alternatives, as well as seeking broad continual public input.

- An explicit goal of the plan should be expeditious attainment of health-based federal air quality standards to protect human health in the Atlanta region. Project selection for the TIP should be driven by this goal.

- Maintaining healthy air in this fast growing region requires reducing vehicle miles traveled (VMT) and motor vehicle trips made, rather than increasing travel speeds. Achieving a reduction in VMT and trips in this region can only be accomplished through provision of transportation options, incentives to use them and land use patterns which make them viable. Project selection for the TIP should be based explicitly on whether the project will help promote the kind of compact development consistent with achieving numerous regional goals, including air quality.

- Regional investment policy should be guided by equity and equality concerns to ensure adequate access by those who do not drive to jobs, community services and entertainment and recreational facilities.

- Congestion relief should be precisely targeted to provide transit, carpools, pedestrians and bicyclists with a competitive travel advantage over motorists who drive alone. High speed peak-period single occupant vehicle (SOV) mobility should be assured only for those motorists willing to pay a premium for access to dedicated high occupancy toll lanes and revenues from such facilities should contribute to expanding non-SOV travel options within these travel corridors, as in San Diego.

PLAN NOT BASED ON ADEQUATE INFORMATION OF IMPACTS

The first step in addressing the region's air quality, traffic congestion and quality of life problems involves having adequate information. The Atlanta Regional Commission's (ARC) choice to update the TIP only five months after its adoption, and to quickly develop a twenty year RTP in only a few months does not serve this region or its citizens well. This continued self-imposed reckless pace limits the region to programming projects, rather than planning solutions. Why did ARC chose to do this? It was not because the current RTP expires August 7, 1998. A new RTP is not necessary in order for the current TIP to remain in affect for its two year life. If ARC had provided more time for planning, then additional transportation control measures could have been developed and included in the RTP/TIP, and the public could have been provided with information on the impacts of the proposed investments.

The comments below are very similar to those submitted on December 23, 1997 about the first Interim Transportation Improvement Program. To the extent those comments raise objections to the adoption of a TIP that does not conform under the Clean Air Act, they are incorporated here by reference. Unfortunately, our concerns raised then still remain, therefore our recommended corrective actions are similar.

The draft RTP/TIP, on page 1-31 states, "The Interim plans and programs are not intended to set long-term policy for transportation and air quality investment strategies . . ." Intended or not, a $775 million commitment to build 280 lanes miles of grandfathered highway expansions by 2010 is not only setting long-term policy, but also hampering the region's ability to create and implement policies which will actually solve problems of air pollution, traffic congestion and declining quality of life.

The draft RTP/TIP, on page 1-25 states, the goals of the Interim RTP are accessibility and mobility for people and goods, attain regional air quality goals, improve and maintain system performance and system preservation, and protect and improve the environment and quality of life. However, no where is there an assessment of how well the proposed investment achieves these goals. Goals are of little use unless our progress toward them is assessed, and the information used to make any required adjustments to our actions.

We strongly recommend the ARC Board not adopt the current draft RTP/TIP because:

- there has been no determination that the emissions from motor vehicles resulting from the draft RTP/TIP investment will meet mobile source emission budgets in effect under the CAA;

- there has been no demonstration that the investment proposed in the RTP/TIP will contribute to:
  (A) eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and
  (B) that such activities will not--
  (i) cause or contribute to any new violation of any standard in any area;
  (ii) increase the frequency or severity of any existing violation of any standard in any area; or
  (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

- there has been no determination of the impact of the draft RTP/TIP investment on regional goals of accessibility, mobility, equity, equality and a high quality of life;

- ARC, the Federal Highway Administration, and project implementing agencies have not met their obligation to consider the cumulative effects of the draft RTP/TIP projects on air quality or other environmental factors, as required by the Clean Air Act and National Environmental Protection Act (NEPA);

- no information has been provided demonstrating draft RTP/TIP compliance with Title VI of the Civil Rights Act of 1964; and

- no alternatives to the draft RTP/TIP have been considered.

Please see Appendix A for more details.

We strongly recommend the ARC Board, with early, ongoing and informed public involvement, develop a new draft RTP/TIP:

- consisting only of exempt projects and pending transportation control measures (TCM), unless an air quality conformity analysis is done demonstrating other types of projects can be added while satisfying conformity requirements; in which case exempt projects and TCMs should receive priority funding over these other projects;

- containing the basic information necessary for the public to understand and judge what the proposed investment will accomplish. [See Appendix B.]; and

- based on a full consideration and analysis of possible future transportation investment and land use alternatives the Atlanta region and its citizens might choose; such as those described in the Livable Region Proposals I and II, which were cooperatively developed by a broad-range of homeowner, environmental and transportation groups around the region and copies of which have been previously given to ARC.

Finally, we strongly recommend the ARC Board seek, through formal resolution, the

Georgia Department of Transportation's (GDOT) cooperation and assurance that the Atlanta region will receive an equitable share, in all funding categories, of federal transportation funding, and that mode-flexible funds controlled by GDOT (e.g. NHS, STP-33D) should be made available to the region for air quality beneficial projects chosen by the region.

Please see Appendix C for project and program concerns and recommendations.

We look forward to your reply to the points raised. Thank you.

Sincerely,

Michael Replogle
Federal Transportation Director
Environmental Defense Fund
Washington, DC

Robert Bullard
Director
Environmental Justice Resource Center
Atlanta, GA

Bryan Hager
Chair, Georgia Chapter
Sierra Club

Attachments:

Appendix A--Reasons to Reject Draft RTP/TIP
Appendix B--Performance Measures and Public Information
Appendix C--Project and Program Concerns

APPENDIX A:
Reasons to Reject Draft RTP/TIP

TRANSPORTATION PLANNING VIOLATES FEDERAL LAW

We believe the transportation planning process in Atlanta is in violation of federal law and that this poses a threat to public health in the greater Atlanta region. There has been no determination that the emissions from motor vehicles resulting from the draft RTP/TIP investment will be limited to the adopted mobile source emission budget. ARC, the Federal Highway Administration (FHWA), and project implementing agencies have not met their obligation to consider the cumulative effects of the draft RTP/TIP projects on air quality or other environmental factors, as required by the Clean Air Act and National Environmental Protection Act (NEPA), nor have they considered any alternatives to the draft RTP/TIP. To protect public health and meet federal law, ARC should limit projects in the RTP/TIP to those projects that improve air quality or are exempt from the transportation conformity requirements because they are considered to have no ill effect on air quality.

The draft TIP, if adopted, will commit $394 million in scarce public resources to highway expansions that will promote substantial, irreversible sprawl development. The draft RTP, if adopted, will commit another $380 million to complete these capacity expanding projects by 2010. By 2010 a total of $774 million is proposed to be spent on road projects which will induce further growth in dependence on single occupant vehicles in the region that already suffers from the highest rate of vehicle miles of travel per person in America. This would delay attainment of healthful air quality and make it more difficult for the region to complete the development of a new regional transportation plan update, which is already underway. The draft TIP includes funds for many highway projects that have not undergone adequate environmental analysis and review, for right-of-way acquisition for highways that will not be constructed before 2001, and in some cases not until after 2005, while at the same time ready-to-go, air quality beneficial projects with wide public support are delayed or not funded at all.

ARC staff contend all minimum federal planning and programming requirements have been satisfied. Yet the federal regulatory agencies continue to constrain the regional planning process because it is inadequate and harmful. Additional restraints are possible. For example, the January 16, 1998 "Atlanta Transportation Agreement" between the US Department of Transportation and the US Environmental Protection Agency (EPA) states, "GDOT and ARC committed to a goal to submit by July 17, 1999, a transportation plan which will comply with the applicable motor vehicle emissions budgets identified in the State Implementation Plan for the Atlanta ozone nonattainment area. Failure by ARC and GDOT to meet this deadline will lead the FHWA and FTA, in consultation with EPA, to consider constraining funding for certain categories of projects and projects phases not currently authorized."

The July 17, 1999 deadline will not be met any more than the December 1997 deadline was met. When GDOT requested an extension of the 1995 TIP in early 1997, it was for the purpose of allowing time to develop a new conforming regional plan. FHWA agreed to the extension based on the promise to adopt a new conforming plan by December 1997. That was no

accomplished. Then ARC asked for a further extension based on the commitment to adopt a conforming plan by April 1998. That deadline was not met. There is no reason to believe a 1999 deadline will be met.

ARC's current schedule shows adoption of a new regional transportation plan (RTP) sometime after 2000. The Atlanta region, one of the fasting growing in the nation, will be at least another three years without a twenty year, conforming RTP to guide investment. There will be no new, conforming RTP in place to guide the $775 million worth and 280 lane miles of grandfathered-capacity increasing highway projects listed in the draft RTP/TIP.

The EPA objected to any further extensions based on concerns about adverse air quality impacts of, additional highway widening projects to FHWA. In a letter received by Larry Dreihaup, Federal Highway Administration, on January 16, 1998, John Hankinson, EPA, wrote, ". . . the 1995 Atlanta Regional Transportation Plan (RTP) update is of limited utility as a basis for National Environmental Policy Act (NEPA) clearance under the Clean Air Act and Intermodal Surface Transportation Efficiency Act provisions for "grandfathering" additional single-occupant vehicle capacity-increasing highway projects during a conformity lapse. . . . EPA remains concerned that these deficiencies mean that the remaining SOV capacity-increasing highway projects may cause the ITIP as a whole to contribute to new violations, worsen existing violations, or delay attainment of the ozone standard in the 13-county region."

Such impacts, i.e., contributing to new violations, worsening exisitng violations or delaying attainment of the one-hour and 8-hour NAAQS for ozone are prohibited by section 176(c)(1)(B) of the Clean Air Act. To ensure that these impacts do not occur, the Act requires that ARC make a determination before a TIP is adopted that it not violate these prohibitions. In addition, you are required to determine that the TIP will contribute to achieving the purposes of the SIP, i.e., reducing emissions and timely attainment of the NAAQS. None of these requirements have been addressed by the proposed ITIP. Adoption by the ARC will violate these requirements.

The Atlanta region's transportation planning process is driven by the Georgia Department of Transportation's (GDOT) and local governments' goal of expanding highway capacity. GDOT seeks to minimize the obstacles to that goal created by federal requirements aimed at achieving healthful air quality in the Atlanta region. Professional judgement and common sense require meeting the full intention of these standards, especially as the region struggles with the unintended consequences of decades of accelerating auto-dependent sprawl. On the second day of the US Department of Transportation regional planning certification review team's May 1998 visit, Joel Stone, ARC Planning Director, said, "it is likely the grandfathered road projects will make air pollution worse. But no analysis was done," he explained, "because it was not required by federal regulations, nor was it requested by the ARC board." ARC has failed to provide necessary information about the air quality and other impacts of the proposed investments, or about the costs and benefits of other possible alternatives. This information has been repeatedly requested by interested parties, and is required by the Clean Air Act in order to satisfy the Act's demand for a demonstration of conformity with motor vehicle emission budgets now in effect and the statutory tests in section 176(c)(1)(A) and (B).

The flagrant abuse of the grandfathering provision of the Clean Air Act by a dominant GDOT also indicates problems with the Atlanta region planning process. Harry West, ARC executive director, has repeatedly and publicly attempted to absolve ARC of responsibility by claiming ARC had nothing to do with the grandfathering of road projects and any questions should be directed to GDOT. However, ARC cannot avoid its responsibility for making conformity determinations before adopting a TIP, and its exclusive authority under federal law for identifying the projects that will be funded in the Atlanta metro area. 23 USC section 134(h). ARC should have been deeply involved with these decisions because of their great impact on the region.

Not only will the 54 grandfathered highway projects increase the single-occupant-vehicle capacity of the region, their funding will also preclude additional investments in transportation options such as regional transit, and bicycle and pedestrian friendly streets. With the extremely difficult problems of dirty air, traffic congestion and auto dependency currently facing the region it is inappropriate to allow this investment to occur without being part of an updated, conforming RTP.

None of the grandfathered road projects are part of a conforming, twenty year RTP. No emissions analysis has been done to determine the air quality impacts of these projects. ARC's planning process has failed. This investment must be based on the outcomes of Vision 2020, new population and employment forecasts, and improved computer modeling. Instead it is based on an outdated framework created twelve years ago when the last major update to the RTP was completed. Not only has the Atlanta region experienced incredible change since then, but the 1986 RTP only looked ahead to 2010, six years short of the current standard of twenty year plans. Hundreds of millions of dollars are proposed to be spent building hundreds of miles of new highway lanes with no information on their impact on the region's already stressed air quality. Unless ARC can show that these investments will contribute to solving the region's air quality crisis and not make it worse, it cannot satisfy the basic tests for conformity in the Clean Air Act, and cannot adopt the TIP.

TITLE VI AND ENVIRONMENTAL JUSTICE: EQUITY AND EQUALITY CONCERNS SHOULD BE INTEGRATED INTO THE PLAN.

ARC provides no information demonstrating draft RTP/TIP compliance with Title VI of the Civil Rights Act of 1964, which assure transportation investments promote greater equity in access to opportunities in the Atlanta region. It is critical to addressing issues of equity and environmental justice that there be thorough assessment of the adequacy and appropriateness of current data, computer modeling capabilities, process for assessing needs and developing projects, and use of performance measures. For specific suggestion please see Appendix B "Performance Measures and Public Information."

The draft RTP/TIP presents an opportunity to take an important step forward in transportation planning by explicitly addressing equity and equality concerns. Moving people from where they are to where they want to go is the primary purpose of any transportation system. The transit dependant, including significant numbers of low income people of color, depend on public transit to reach the basic necessities of life which many people take for granted:

to go to work, home, schools, doctors, churches, and food stores; to visit loved ones; to reach a place to play, or to organize communities. Any satisfactory transportation plan must effectively serve the needs of the transit dependant.

We encourage ARC to take this opportunity to bring equity and equality to the fore while the draft plan is on the table. This is not only the proper time to address such issues, but, as will be discussed later, to disregard them at the planning stage may result in being compelled to revise the plan at a later time. Equity and equality concerns should be included in any transportation plan as a matter of sound public policy. We will also address applicable requirements under federal civil rights law.

In summary, we address the following major points:

- The RTP Should Promote Equity and Equality
- The RTP Should Address and Fulfill Title VI Requirements
- The RTP Should Adequately Address the Dislocation of Low-Income Communities Away From Jobs and Services.
- Failure of the RTP to Comply With Title VI Can Wreak Havoc on Future Transportation Planning and Implementation
- The RTP Should Adopt a Process That Will Achieve the Reality of Equity and Equality in Transportation

Equity, efficiency and the environment go hand in hand in a sound transportation plan. They should be considered together by ARC in an integrated way to ensure that all objectives are achieved, without sacrificing one at the expense of another.

1. The RTP Should Promote Equity and Equality

By equity, we mean, "meeting the mobility requirements of all people." Michael Cameron on *Efficiency and Fairness on the Road: Strategies for Unsnarling Traffic in Southern California* at 3 (1994). By equality, we mean no disparate impact discrimination and no intentional discrimination under Title VI of the Civil rights Act of 1964, as discussed below.

First, a transportation plan should strive to meet the needs of all residents in the metropolitan area. Commonly, lower income residents depend much more heavily on transit to get around than do others. Consequently, the RTP should address the proportion of benefits derived from its programs that go toward enabling the mobility of lower income residents. To do this, the RTP will need to provide an adequate method for measuring the distribution of benefits. This method needs to differentiate between the transportation concerns of residents of different income levels.

For instance, middle and high-income residents generally have much better access to personal transportation (cars) than do lower income residents. Therefore, a plan that provides "congestion relief" (a common benefit measured in transportation plans) may be very important for higher income individuals in the region, but is of significantly less benefit to the transit dependant and low-income travelers. For the transit dependant who cannot afford or do not have access to a car, the ability to make a trip at all is a central concern. Any method of measuring the

benefit of the RTP to *all* residents in the region must address the different transportation "needs" of the community.

Second, the RTP should explicitly assess the impact of planned investments on income, race, gender and age groups. While there undoubtedly is a close correlation between poverty, race and ethnicity, addressing only income is not enough to paint the full picture of the impact of the RTP. This information should be made explicit and the impact of the RTP on people of color should be explicitly assessed in order to comply with the requirements of Title VI of the Civil Rights Act which governs the implementation of federal grant programs.

Third, in addressing Title VI requirements and the needs of low-income residents, the RTP needs to develop methods that project the nature of these issues into the future. The RTP then needs to account for changes in the size and location of transit dependant communities, as well as changes in common destination locations, such as job placements, medical facilities, community programs (day care), etc. Failure to account for changing factors will make continued compliance with the requirements of Title VI an illusory promise.

Finally, the RTP needs to define a specific standard of transportation equity. Many standards receive explicit definition in transportation plans, such as air quality and congestion goals, but plans fail to provide such specificity for equity and equality. Fundamental to the process of achieving standards is clear definition. Additionally, it is difficult to accept the promise that equity and equality standards will be enforced if they are not specifically defined.

2. The 2020 RTP Should Address and Fulfill Title VI Requirements.

Title VI and its regulations do more than require an agency to provide transit services in a manner that does not "preclude use" on the basis of race, ethnicity and national origin. The Title VI statute prohibits both intentional discrimination and actions that have an adverse disparate impact against people of color.

The Disparate Impact Standard

Title VI provides that "[n]o person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. s2000d. Each federal department and agency empowered to extend federal financial assistance was "authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders or general applicability." 42 U.S.C. s2000d-1.

An important purpose of the Title VI remedial scheme was to assure that recipients of federal funds not maintain policies or practices that result in racial discrimination. President Kennedy's June 19, 1963, message to Congress, proposing Title VI, declared as follows: "Simple justice requires that public finds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." 110

Cong. Rec. 6543 (1964) (Sen. Humphrey, the Senate floor manager for Title VI, quoting the President's message); *Lau v. Nichols*, 414 U.S. 563, 569 n.4, 94 S. Ct. 786, 39 L Ed. 2d 1 (1974).

The United States Department of Transportation, which provides federal funds to ARC, GDOT and its member agencies and municipalities, has promulgated regulations that bar disparate impact discrimination by recipients of federal funds.

> 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 persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other agreements, utilize criteria or methods of administration which give 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.

49 C.F.R. §21.5(b)(2).

EPA, which provides federal funds to the state of Georgia for the development of the state implementation plan under the Clean Air Act, and possibly to ARC and its member agencies and municipalities, has also promulgated regulations that bar disparate impact discrimination by recipients of federal funds:

> A recipient [of federal funds] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of substantially defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of particular race, color, national origin or sex.

40 C.F.R. §7.35(b). These regulations may be implicated by ARC's conformity determinations and compliance with air quality standards.

On July 14, 1994, the 30th anniversary of the passage of Title VI, Attorney General Janet Reno issued a memorandum to the heads of departments and agencies that provide federal financial assistance to local government agencies reiterating that "administrative regulations implementing Title VI apply not only to intentional discrimination but also to policies and practices that have a discriminatory effect." According to the Attorney General:

> Individuals continue to be denied, on the basis of their race, color, or national origin, the full and equal opportunity to participate in or receive the benefits of programs from policies and practices that are neutral on their face but have the *effect* of discriminating. Those policies and practices must be eliminated unless they are shown to be necessary to the program's operation and there is no less discriminatory alternative.

Memorandum from Attorney General Janet Reno to Heads of Departments and Agencies the Provide Federal Financial Assistance, use of the Disparate Impact Standard in Administrative

Regulations Under Title VI of the Civil Rights Act of 1964 (July 14, 1994) (original emphasis). The Attorney General leads and coordinates the federal government's Title VI enforcement efforts. The Attorney General's interpretation of Title VI disparate impact standard is binding on federal agencies, including EPA. Executive Order 12250, 45 Fed. Reg. 72995 (November 2, 1980).

On February 11, 1994, the President issued Executive Order 12,898, the Executive Order on Environmental Justice:

> Each Federal agency shall conduct its programs, policies and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies and activities, because of their race, color or national origin.

Executive Order 12,898, § 2-2. "To the greatest extent practicable and permitted by law... each Federal agency shall make achieving environmental justice part of it mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of it programs, policies, and activities on minority populations and low income populations." *Id.* at § 1-101. This applies to U.S. DOT in the administration of federal transportation grant programs.

All agencies such as ARC and GDOT that receive federal funding enter into standard agreements that require certification that the recipient will comply with the implementing regulations under Title VI. *Guardians Ass'n v. Civil Service Commission*, 463 U.S. 582, 642 n.13, 103 S. Ct. 3221, 77 L. Ed. 2d 866 (1983) (Stevens, J., joined by Brennen and Blackmun, JJ., dissenting on other grounds). As Justice Marshal stressed in *Guardians*:

> Every application for federal financial assistance must, "as a condition to its approval and the extension of any Federal financial assistance," contain assurances that the program will comply with Title VI and with the requirements imposed pursuant to the executive regulations issued under Title VI. In fact, applicants for federal assistance literally sign contracts in which they agree to comply with Title VI and to "immediately take any measures necessary" to do so. This assurance is given "in consideration of" federal aid, and the Federal Government extends assistance "in reliance on" the assurance of compliance.

Guardians, 463 U.S. at 629 (Marshall, J. concurring in part and dissenting in part). "[T]he grant agreements under Title VI specifically mention compliance with the executive regulations, which unambiguously incorporate an effects standard." *Id.* at 631 n.27.

While intentional discrimination cases may turn on evidence of a discriminatory motive, "[p]roof of discriminatory motive... is not required under a disparate impact theory." *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, n.15, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977).

The Supreme Court has judicially implied a right to bring a private right of action to enforce Title VI disparate impact regulations. *Alexander v. Choate*, 469 U.S. 287, 292-94 (1985); *Guardians*, 463 U.S. 582 (1983). This ruling has been followed in at least one circuit, the third, where it was found that "private plaintiffs may maintain an action under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI of the Civil Rights Act of 1964." *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925 (3rd Cir. 1997).

a. The Three-Pronged Disparate Impact Standard

Federal courts have identified a three-pronged disparate impact claim that has the following components. First, whether an action by an agency that receives federal funding has a disparate adverse impact against people of color. Second, any action that has such a disparate impact must be justified by business necessity. Third, even if the action would otherwise be justified by business necessity, the action may be prohibited if there are less discriminatory alternatives to accomplish the same end. A disparate impact claim does not require proof of intentional discrimination.

i. The Statistical Disparities. This component of a disparate impact claim is met if "the challenged policy cause 'a significant disparate impact on a protected group.'" *Ortega v. Safeway Stores, Inc.*, 943 F.2d 1230, 1242 (10th Cir.1991)

ii. Business Necessity. If the program has a disparate adverse impact, it is prohibited unless the conduct causing the disproportionate impact is justified by business necessity. *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984). Under the business necessity test, 'it is an insufficient response to demonstrate some rational bases for the challenged practices. It is necessary, in addition, that they be 'validated'... However this process proceeds, it involves a more probing judicial review of, and less deference to, the seemingly reasonable acts of administrators and executives." *Washington v. Davis*, 426 U.S. 229, 248 (1976). According to the United States Supreme Court, the necessity standard requires expert proof that the challenged practice "bear[s] a demonstrable relationship to successful performance of [the end] for which it [is] used." *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). If the agency cannot justify the practice or policy, the fact-finder is entitled to assume no justification exists. *Nashville gas Co. v. Satty*, 434 U.S. 136, 143 (1977).

iii. Less Discriminatory Alternatives. A claim of business necessity cannot justify a program with a disparate adverse impact whenever less discriminatory alternatives are available. *Larry P.*, 793 F.2d at 983; *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975). To evaluate an intentional discrimination claim under Title VI, courts apply the standard articulated by the United States Supreme Court in *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 266 (1977). The Court recognized that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.* at 266. The Court listed the following evidence to be considered: "(1) the impact of the official action, whether it bears more heavily on one race than another, may provide an important starting point; (2) the historical background of the decision, particularly if a series of official actions was taken for invidious

purposes; (3) departures from the normal sequence; and (4) substantive departures, particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached." *Id.* at 266-67. (5) In addition, it is appropriate to consider evidence of the agency's extensive and specific knowledge of the harm its decision caused and would continue to cause. See *Columbus Board of Education v. Penick*, 443 U.S. 449, 465 (1979); *Washington v. Davis*, 426 U.S. at 242 (courts should consider totality of facts).

Where intentional discrimination does not motivate a policy such as a regional transportation plan, then statistical evidence of a substantial disparity in the effect of programs, practices, or activities will suffice to require the decision-maker to show a "business necessity" that justifies the discrimination; a showing which can sustain the program only if there are no less discriminatory alternatives.

In addition to the fact that compliance with Title VI requirements is simply sound public policy, the proclamations from the President, the Attorney General, and the Supreme Court concerning enforcement of Title VI should certainly be motivation for ARC to make compliance a significant priority in creating the RTP. EDF asks that ARC undertake an evaluation of the impact of its investment choices on communities to be served before taking action to adopt the proposed TIP.

3. The RTP Should Adequately Address the Dislocation of Low-Income Communities away From Jobs and Services.

The RTP should present data for the present and future location of jobs and housing, as well as data on where low-income communities, or "Communities-In-Need", are located. This data should not only address present conditions, but should also include a forecast of the location of low-income communities in the future. Will the poor live closer or further away from jobs and services, especially? The RTP should address more than the congestion problems faced by those living on the outlying parts of the region, but also the present and future problems of accessibility for residents of the urban core to reach jobs and services.

Transportation investments help to determine where jobs and services locate. The RTP investments should assist with the development of the region's urban core and should be designed to reverse, or at least slow, migration of jobs and the tax base to the outer reaches of the region. Such a policy would not only benefit low-income communities which disproportionately house people of color, it would also reduce sprawl in the region, reduce the infrastructure cost of new development, reduce VMT growth and reduce motor vehicle emissions. The RTP should forecast the future location of poor and minority communities vis-a-vis jobs and services. Policy alternatives should be identified that redirect development into those communities and provide adequate transportation access to new jobs, human services and amenities.

4. Understanding Current Developments in Area of Title VI Enforcement

To disregard the need to adhere to compliance requirements under Title VI could carry heavy consequences in terms of delay, wasted time and resources, and possibly the loss of

federal financial assistance. Action is ongoing in three different cities in the United States that shed valuable light on the need to comply with Title VI requirements.

The historic federal civil rights class action in *Labor/Community Strategy Center v. Los Angeles County Metropolitan transportation Authority (MTA)* provides valuable lessons on the requirements that Title VI imposes on transportation agencies that receive federal funding, such as ARC. Plaintiffs successfully established that MTA operated separate and unequal bus and rail systems that discriminated against low income people of color, in violation of Title VI. When suit was filed in 1994, MTA was attempting to raise bus fares and eliminate monthly passes on its dilapidated and inefficient bus system that served an overwhelmingly minority and poor ridership, while simultaneously spending millions on a state of the art rail system serving a disproportionately white ridership. Plaintiffs obtained a temporary restraining order and preliminary injunction lowering fares and preserving the monthly pass.

The parties settled the case in October, 1996, through a Consent Decree that the court approved as serving the best interests of the class of bus riders. Under the Consent Decree, MTA is required to invest approximately $1 billion to $1.3 billion to improve the bus system over the next ten years. The Consent Decree required MTA to take several steps to improve its bus system, including reducing fares and limiting future increases, lower off-peak prices, add buses and routes to facilitate access to job, education, and health centers, and enhance bus security. MTA will remain under the jurisdiction of the court over the next ten years; and a Special Master and NAACP Legal Defense Fund are assigned to monitor compliance with the Consent Decree.

The requirement to comply with Title VI has put the MTA and the Southern California Association of Governments, the MPO for the five county Los Angeles basin, in a difficult position. The planned regional light rail system relies primarily on MTA funds for local match and operating funds. The additional expense of Title VI compliance presents a competing demand for those limited resources. This has forced MTA to cut back its regional transit plans or suffer further consequences from non-compliance. MTA's initial reluctance to give up its commitment to expand the regional rail system in order to pay for Ttile VI compliance led to the Federal government withholding funds pending approval measures needed for Title VI compliance. In response, MTA has since suspended all funding for regional light rail expansion, which, in turn, has undermined the availability of financial resources for the SCAG region to implement the rapid transit element of the RTP. In sum, the failure of the Southern California Association of Governments to consider the requirements of Title VI during the development of the regional long-range plan has cast both the MTA's and SCAG's long range transportation planning into disarray.

ARC needs to learn from this lesson. The Atlanta region should put itself a head of the curve by addressing the needs of low income communities and people of color as criteria for the development of the RTP. The Atlanta region should be anticipating possible Title VI issues by considering where new jobs, health, education and community services, recreational and shopping facilities will be located around the region and how access to these destinations will be provided to people who do not drive either because they are environmentally responsible, too poor, too old, too young, or differently abled.

In *Chester Residents Concerned for Quality Living(CRCQL) v. Seif*, supra, CRCQL asserted disparate impact and intentional discrimination claims based on the decision to grant a permit for a toxic waste soil remediation facility in the City of Chester. The plaintiffs alleged that while the area of Delaware County outside Chester was 91% white and over 90% of the overall population of the county, only two waste facility permits were granted for sites outside Chester, and five facility permits were granted for sites within Chester. Additionally, the capacity of the two sites outside Chester is a combined 1,400 tons, whereas the capacity of the five facilities in Chester is 2.1 million tons.

This case has not yet been decided on the merits, but the Third Circuit held that the plaintiffs may bring a private right of action to enforce the requirements of Title VI regulations. *Id.* at 936. This decision is important for the fact that it adds to the stakes in a Title VI intentional discrimination case by opening the possibility of compensatory damages in addition to equitable relief already available under Tile VI. See also *Guardians*, 463 U.S. at 601.

Finally, an action alleging both intentional discrimination and disparate impact has been filed in the Fourth Circuit. In their complaint, the Jersey Heights Neighborhood Association discusses historical discrimination that has led to a concentration of African-Americans into specific urban neighborhoods. They further point to transportation decisions that have disproportionately burdened these neighborhoods, including the most recent decision to site another major highway facility in minority neighborhoods rather than in white neighborhoods that have historically been spared the adverse impacts of major highways. To support allegations of intentional discrimination, they highlight the lack of minority input into the siting decision at issue; in contrast to the value placed on the opinions and concerns of members of predominantly white neighborhoods that were alternative placements for the new highway.

Given the nature of evidence supporting Title VI claims, it would be a sound policy to consider such issues during the planning process rather than waiting for allegations to be brought and litigation commenced to cut off funding. Not only is it sound public policy to actively seek to eliminate both intentional discrimination and disparate impacts from the decision-making process, it is required by Title VI and its implementing regulations. Further, actions that successfully show discrimination in decision-making can wreak havoc on the planning process.

5. The RTP Process Should Insure that Equity and Equality Are Achieved

The draft RTP should identify and utilize an intensive process intended to lead to sub-regional input into the RTP alternatives. However, this process cannot limit its scope to the development of a draft plan and alternatives. It must have as its ultimate goal the actual attainment of equity and equality in transportation decisions and services in the region. ARC should engage regional stakeholders in thorough dialogue on the importance of delivering a transportation system that serves all of the region's residents. The Consent Decree filed in Los Angeles provides for bus rider representatives and the MTA to work hand-in-hand to ensure development of an equitable bus system. ARC should make such procedures part of its decision-making process now as a matter of choice, rather than waiting for it to be imposed.

Title VI enforcement is at the forefront of the Federal Government's policy concerning Federal financial assistance to local governments and agencies. The President and the Attorney General have made declarations emphasizing the importance of achieving equality in federally funded programs. The United States Supreme Court has paved the way for private rights of action against discrimination under Title VI, and the circuit courts are beginning to follow the Supreme Court's lead. Additionally, the stakes involved in Title VI actions are extremely high. Metropolitan planning organizations as big as the Southern California Association of Governments can be so affected by Title VI actions as to put their planning process in a state of complete disarray - so much so as to precipitate the withholding of federal funds until compliance can be shown.

All this leads to the conclusion that Title VI compliance needs to be made a primary objective of ARC in adopting spending priorities for the RTP/TIP. It is sound policy for ARC to seek to eliminate discriminatory effects from its planning process by obtaining a wide spectrum of input from all aspects of the community and giving proper weight to the concerns of the transit dependant. Additionally, Federal law mandates it. Rather than risking the detrimental effects of legal action that results from failure to adequately inform decision-making, ARC should follow the nobler course of proactively achieving equity and equality as a stated objective of its transportation planning process and developing the analytical tools to ensure its implementation.

To begin, we ask the ARC board to undertake an assessment of the Title VI consequences of the investment choices currently before it for consideration. This should at least include specific identification of transit-dependent communities, the adequacy of transit service currently available to those communities, the future need for transit services to meet the expected mobility needs of those communities over the next twenty years, and a comparison of how the proposed RTP will meet those needs as compared to how the needs of vehicle owners will be served by the proposed plan.

ALTERNATIVE APPROACHES NOT CONSIDERED

The current RTP/TIP fails to provide the citizens of the Atlanta region with adequate transportation services, almost no transportation options other than single-occupancy vehicle (SOV) travel in many parts of the region, and promotes massive growth in sprawl and vehicle use that will cause congestion to increase, travel times to deteriorate and compromise the health of the region's citizens and their quality of life. A major concern is the failure to consider much less harmful alternative approaches at any stage of the process.

NEPA requires consideration of reasonable alternatives to the proposed agency action. This requirement could be satisfied as part of a cumulative analysis of the proposed projects, or as part of the TIP review or it could be integrated into the development of the next regional transportation plan. But unless reasonable alternatives are considered at some stage of the process and exposed to public review and comment, NEPA will not be satisfied. The ARC should not adopt the RTP/TIP without a fuller exposition of the possible future alternatives that the Atlanta region and its citizens might choose.

The draft RTP/TIP should be rejected until the above inadequacies are addressed.

APPENDIX B:
Performance Measures and Public Information

This area of planning needs a great deal of improvement to meet basic federal requirements. The following comments are a compilation of those submitted to ARC over the past several years. They are provided here because they, for the most part, have not been acted on. A review of the draft RTP/TIP confirms the paucity of information provided to the public to develop an opinion on the value and effects of the proposed multi-year, multi-billion dollar investment.

In order to meet basic federal requirements the RTP/TIP must provide the public with the information necessary to develop an understanding and opinion of what the proposed investment will accomplish. It is critical that local and regional changes, relative to both a trend analysis and to current conditions, in travel behavior and land use are clearly documented. It is also important that alternative investment and growth scenarios be analyzed in order to give people a sense of the costs and benefits of various futures.

One method to package this information in an accessible way is to create a "day in the life" series which describes the changes Atlanta region citizens of various population groups, type and location of employment and residence, can expect from the proposed investments.

For each category the following general types of questions should be answered: Will I pay more or less for transportation? Spend more or less time traveling? Will the air I breathe be cleaner? How will the quantity of gasoline I use change? What travel choices will I have? Will cut-through traffic in my neighborhood increase or decrease? Will my child/grandchild be able to walk to school? Will I be safer walking or bicycling? Will truck traffic increase? What will happen in my neighborhood--more apartments, more commercial, stay the same, parking lots instead of farm land, etc.?

This list of specific questions is a sample of the many more needed to answer the question, "What does the RTP/TIP accomplish?" Providing information like this enables and promotes consideration of our transportation system in a regional context, instead of the more common project-level basis. ARC fails to provide the public with this information. More examples of other needed basic information are below.

Travel behavior and accessibility

- How will this investment affect, at both the corridor level and for the regional system, travel speeds, vehicle miles traveled, and number of trips by different modes?
- How will this investment affect at the individual level, disagregated by various demographics (race and ethnicity, gender, age,disability, income,) and locations (inner city, inner ring suburbs, suburbs, exurbs), miles traveled, travel time, accessibility to transit, car ownership, etc.?
- What percentage of trips, by type, are less than 1, 2, 3, 5, 10, 15, 20, 30 miles? When do these trips occur?
- For each road capacity expansions what are the impact on conditions for transit users,

bicyclists and pedestrians?

Environment

- How will this investment affect, at both the project level and for the regional system, air and water pollution levels?

Equity

Where does the money go?

- How are the benefits of federal transportation investments distributed among different population groups?
- How do expenditures for the road system compare to expenditures for transit?
- What percentage of road and transit funding is going to areas with high proportions of communities of color and low income communities?
- Is adequate funding be invested to maintain older areas with high populations of communities of color or low income communities?
- What percentage of transportation investments are devoted to new projects in newly developing areas?

How do travel patterns differ by population group?

- How is the transportation system used by different populations groups?
- What is the accessibility of the transportation system to different population groups?
- Are communities of color and low income communities likely to be transit dependent?

What does the transportation system look like and how does it function?

- What are the levels of car ownership among the different population groups?
- Do transportation services link, for all population groups, housing with jobs, schools, doctors, churches, parks and other basic needs of life?
- Where do the bus lines run? How often does the bus come? How crowded are buses?
- Where do the highways run? How congested are the highways?

Safety

- What is the change in the number of people injured and killed by each mode of transportation? Does the risk of people using one transportation mode being killed by people using another mode change? For example, do pedestrians face an increased risk of death by motor vehicles?
- What are the safety funding priorities? What is the money being spent on compared to who is being injured?

Land use

- Where will future population and employment locate? What affect will this have on densities, amount of newly developed land, use of brown sites and other infill opportunities?
- What is the change in the amount of land paved for roads? How does this relate to

new park space?

- What is the change in the amount of parking (acres and stalls) and its cost to users and providers?
- What is the change in the rate of land developed compared to population growth?

Funding and costs

- What is the total amount proposed to be programmed through the RTP/TIP? How is the funding divided between modes and jurisdictions? How is it divided between improvement to/near major activity centers and residential areas?
- How will this investment affect, at both the project level and for the regional system, future maintenance costs?
- Of expected city and county level transportation funding, how much is restricted for use only on roads and bridges? How much is available for all types of transportation?
- What are the average cost of the various facilities types (4, 8, etc. lane road, sidewalk, bicycle lane, bus and train service, etc.), in the RTP/TIP by mile, additional passenger, etc.?
- What is the change in personal and household transportation costs--an average for the region as well as by different community types (inner-city, inner suburb, suburb, exurb?
- What is the change in auto ownership--region wide, by household, by community type?

Infrastructure

- How many new lane-miles of road (by functional classification), and bicycle and pedestrian facilities will be built?
- At the project level, and for the regional system, provide the current level of service, and the forecasted changes both before and after any investment. The LOS should not be limited to vehicles, but also be provided for pedestrians, bicyclists, and transit users.

APPENDIX C:
Project and Program Concerns

Why aren't air quality beneficial projects part of the Scenario 3/3A RTP analysis funded?

Why isn't the RTP's aggressive regional vanpool program funded in the TIP? If funding is dependent on the program being a transportation control measure (TCM), then the money should be programmed, but only made available once TCM status is given.

How will other, yet to be proposed, air quality beneficial projects be funded?

Page 1-30 of the draft RTP/TIP states, "Additional SIP TCMs, which are strategies to reduce single occupant vehicle travel, will be considered for inclusion into future updates of the Interim RTP and Interim TIP upon completion of the Regional Development Guide for Transportation." How will these future TCMs be funded if all of the money expected to be available over the next three year is proposed to be completely programmed?

Use of STP-33C

As a funding category controlled by the ARC, as opposed to GDOT, STP-33C should not be used for single-occupant vehicle capacity expanding projects. It should be dedicated to air quality beneficial projects only. The road projects proposed to be funded by this category should, once they are part of a conforming RTP, be moved to another category such as STP-33D or NHS.

Use of CMAQ

It is inappropriate to use $33 million of CMAQ money to fund GDOT's advanced transportation management system. Doing so delays bicycle, pedestrian and transit projects.

Oppose C/D roads

We oppose ill conceived road projects like the collector/distributor capacity expansion projects along Georgia 400 and I-85. These massive frontage roads will worsen air quality and damage many neighborhoods.

More funding for transportation options is needed, including:

- Bicycle and Pedestrian Projects: $50 million.
- Commuter Rail: $100 million.
- Cleaner government vehicle and bus investments: $50 million.
- Conversion of general traffic lanes to High Occupancy Toll lanes (free for carpools) with automated time-of-day pricing with net revenues devoted to enhancing alternatives to SOV travel: $100 million.
- Express bus service to run from existing and new park and ride lots along existing and new interstate high occupancy vehicle lanes: $10 million.
- Regional Vanpool that would provide thousands of people a real option to long commutes and reduce congestion: $6 million.
- New Park and Ride Lots including improved bicycle access and bike parking: $20 million.
- Commuter assistance programs to help commuters voluntarily take advantage of transportation options such as flexible work hours, parking cash out provisions of TEA-21,

telecommuting, carpooling and transit: $6 million.

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Handout 4-5

Environmental Justice and Title VI

A Paper Prepared By Tracey France FHWA Georgia Division Office, 1999

Fundamental Requirements

Environmental Justice (EJ) - Executive Order 12898 of February 11, 1994

". . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, **disproportionately high** and **adverse human health** or environmental effects of its programs, policies, and activities on **minority populations** and **low income populations** in the United States and its territories . . ."

Title VI of the Civil Rights Act of 1964 signed on July 2, 1964

"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 **subjected to discrimination** under any program or activity receiving Federal financial assistance." The scope of Title VI was expanded to include other protected groups. **23 U.S.C. 324** added **sex** as a protected category; **Section 504 of the Rehabilitation Act of 1973** added **handicapped** as a protected category and also the **Americans with Disabilities Act of 1990; and The Age Discrimination Act of 1975** added **age** as a protected category.

Applications

The EJ Order does not convey to the Department of Transportation any enforcement authority. However, under Title VI, DOT has jurisdiction and enforcement authority over its recipients including authority over Title VI complaints of discrimination. Section 6-609 of EJ Order 12898 states "This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person"

However, whenever a complaint alleging environmental discrimination is filed, we as officers of the FHWA have the authority and obligation to determine whether it falls within the jurisdiction of Title VI. In many instances, EJ issues alleging impacts covered by Title VI will fall within the purview of Title VI.

EJ introduces two new protected categories -- **low income** populations and **minority** populations. Low income is not covered under Title VI; however, minority is covered in that it is construed to mean the same thing as race, color, and/or national origin (ethnicity). It is assumed that if a person is allegedly discriminated against because he/she is a minority, then he/she falls under either race, color, or national origin.

EJ also introduces the concepts of **disproportionately high and adverse human health effects**.

While, Title VI does not mention this explicitly, it is implicit within Title VI. Title VI addresses this in that no person on the grounds of one of the protected categories shall "be excluded from participation in, be denied the benefits of or be subjected to discrimination . . ." Discrimination covers a lot of ground and it may be direct or indirect; it may be intentional or unintentional -- if harm is done to a member of one of the protected categories or there has been an impact, then there is grounds for a complaint.

Under Title VI, a disproportionately high impact can be both positive or negative -- positive in the form a benefit that one group is receiving vs another group who is being denied, or negative in the form of an adverse impact or effect. Title VI covers all of this. In the area of Planning when transportation decisions are made, are the benefits and adverse impacts being spread out in a manner that meets the transportation needs of the communities being served? Is there a public involvement process whereby every group or community has input? How is input solicited and as importantly what is done feedback? What kind of outreach is done? What strategies are used to reach those communities where there might be language, transportation, mobility, or other barriers? What about the disabled? These are areas where the distinctions between Title VI and EJ get really fuzzy, and they become almost one in the same thing.

PREVENTING DISCRIMINATION IN THE FEDERAL AID HIGHWAY PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH
Handout 4-6
"Illegal Aliens" and the Uniform Act Questions and Answers

A. General

1. Q. What is the purpose of Public Law 105-117?

A. The purpose of P.L. 105-117 is to prohibit, with certain limited exceptions, the provision of relocation payments or assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, to persons not lawfully present in the United States

2. Q. When did the law become effective?

A. On the day it was signed into law by the President, November 21, 1997. This position was clearly conveyed in Cindy Burbank's memorandum to the former Regional offices and her letter to the other Federal agencies both dated February 23, 1998.

3. Q. Are moving expense payments covered by the law's prohibition on benefits?

A. Yes.

4. Q. May a displacing agency choose to do nothing to implement the 1997 amendments and the implementing regulation?

A. The law and the regulation require displacing agencies to take some implementing action or risk losing Federal participation in the cost of relocation payments or assistance. The regulation provides minimal requirements for complying.

5. What is the impact if State law does not authorize compliance with the 1997 amendments (and subsequent final rule)?

A. Each state agency will have to determine if the lack of authorization prevents it from complying. If an agency determines that it cannot comply, then Federal funds will not be able to participate in the cost of any relocation payments or assistance.

B. Process-related

6. Q. When should potential displaced persons be informed of the requirements of P.L. 105-117?

A. Information concerning the requirements of P.L. 105-117 should be provided to potential displaced persons no later than the provision of the General Relocation Notice (49 CFR 24.203(a)).

7. Q. When should the displacing agency seek the certification from the displaced person?

A. As early as the provision of advisory assistance and no later than the application for benefits (claim).

8. Q. What is the role of the INS in the process outlined under the final rule?

A. The INS maintains a register of aliens who are lawfully in the U.S. and will serve as a potential source of verification for persons who certify that they are aliens lawfully present in the U.S. If an agency questions such a certification, it must check the residency status of the person with the INS before denying benefits.

9. Q. How do I contact the INS?

A. The November 17, 1997, Federal Register contains a list of local INS offices. This list may be found at 62 FR 61350. If you are unable to contact the INS, you may contact FHWA (Marshall Schy at 202-366-2035 or Reid Alsop at 202-366-1371) to obtain the listing for the office nearest you.

10. Q. Does P.L. 105-117, the regulation, or another Federal statute require the displacing agency to report to the INS any alien it believes to be present in the U.S. illegally?

A. No. The obligations of a displacing agency under P.L. 105-117 and the final rule extend only to assuring that aliens not lawfully present in the U.S. do not receive Uniform Act relocation payments and assistance. In addition, we asked the INS if another Federal statute requires the reporting of a person thought to be an illegal alien and they have told us that there is no such obligation.

C. Certification

11. Q. Must every person seeking benefits under the Uniform Act certify as to residency status?

A. Yes.

12. Q. What form may the certification take?

A. In keeping with our objective of minimizing prescriptive Federal requirements, we have not required a particular form for the certification. As noted in the NPRM, we believe it would be acceptable for an agency to incorporate the certification into its existing claim forms (for example, by adding a group of boxes to be checked), if the agency determines that this approach is appropriate to its process. However, in response to requests from a number of States, we have developed two sample certification forms which may be used or not, as suits a State's needs. Those sample forms are attached following the Qs and As.

13. Three related questions:

a. What documentation should be required in support of the certification?
b. What should be the nature of a displacing agency's review process?
c. What findings must an agency make?

A. We believe that documentation standards, the nature of a displacing agency's review process, and the question of required findings are matters best left to the displacing agency to determine, except that all processes and criteria related to this rule must be nondiscriminatory.

14. Q. What might constitute "reason to believe" a certification may be invalid?

A. The determination of what constitutes "reason to believe" a certification may be invalid should be based on the judgment of the displacing agency, relying on the agency staff's contacts with the displaced person, their knowledge of the affected geographic area, contacts with neighbors and neighborhood institutions, and various other factors specific to each situation.

15. Q. Are there certain circumstances which automatically would require documentation for a certification,

A. Not to our knowledge. The commenter who raised this issue in response to the Notice of Proposed Rulemaking did not provide any examples of such circumstances and we have been unable to identify any. In particular, we question whether a policy which determined that a particular situation(s) always required documentation could be implemented in a truly nondiscriminatory manner. We continue to think that each case must be handled on an individual basis.

16. Q. Who may sign the certification in the case of a family that is to be displaced?

A. We believe that a head of household may sign the certification, just as a head of household may sign the claim form for a relocation payment, and have so provided in new section 24.208(a)(2). However, unlike an individual's certification, a head of household's certification also would certify as to the residency status of other family members. Agencies should be careful to design their certification materials to be sure they ask for a response appropriate to the displaced person's situation.

D. <u>Eligibility</u>

17. What is the meaning of the term “exceptional and extremely unusual hardship?”

A. The final rule includes a definition of the phrase "exceptional and extremely unusual hardship,” which focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgement on the part of the displacing agency and does not lend itself to an absolute standard applicable in all situations.

18. Q. To whom does the "hardship exemption" extend?

A. When considering whether such an exemption is appropriate, a displacing agency may examine only the impact on an alien's spouse, parent, or child who is a citizen or lawful resident alien.

19. Q. What is a spouse?

A. In determining who is a spouse, we expect displacing agencies to use the definition of that term under State or other applicable law.

20. Q. What documentation is required to support a claim of hardship?

A. In keeping with the principle of allowing displacing agencies maximum reasonable discretion, we believe the question of what documentation is required to support a claim of hardship is one best left to the displacing agency, as long as it is handled in a nondiscriminatory manner.

21. Q. May income level be a factor in the consideration of "hardship."

A. We believe the amendments contemplate a standard of hardship involving more than the loss of relocation payments and/or assistance alone which, after all, is the basic thrust of the amendments. Thus, we believe that income alone (for example, measured as a percentage of income spent on housing), would not make the denial of benefits an "exceptional and extremely unusual hardship" and qualify for a hardship exemption.

22. Q. When may an agency deny eligibility for benefits?

A. Under this rule, a displacing agency may deny eligibility only if: (1) a person fails to provide the required certification; or (2) the agency determines that a person's certification is invalid, based on a fair and nondiscriminatory review of an alien's documentation or other information that the agency considers reliable and appropriate, including (for persons claiming to be lawfully present aliens) review by the Immigration and Naturalization Service (INS); and (3) the agency concludes that denial would not result in "exceptional and extremely unusual hardship."

23. Q. Does the answer in Question 22 mean that failure to certify can result in a denial of Uniform Act benefits without INS verification?

A. Yes, provided the displacing agency is satisfied that the failure to certify constitutes a refusal or inability to certify and is not merely an oversight, misunderstanding, or other mistake.

24. Q. May a denial of Uniform Act benefits under the 1997 amendments be appealed?

A. Yes. Any person who is denied eligibility may utilize the existing appeals procedure, described in 49 CFR 24.10.

25. Q. How do the 1997 Uniform Act amendments apply to on-going relocation cases in which displacement occurred after the passage of the amendments (November 21, 1997) but before the effective date of the final rule (March 15, 1999)?

A. The general principle of the 1997 amendments is that, with certain limited exceptions, no relocation payment or assistance under the Uniform Act should be provided to a displaced person by a displacing agency if the agency is aware that the residency status of an alien is unlawful.

FHWA notified its field offices and the other Federal agencies whose programs are covered by the Uniform Act of the law's requirements and effect on February 23, 1998. Allowing a reasonable amount of time for an agency to adapt its processes to the new requirements, FHWA believes that no payment or assistance should have been provided to a person known to be in unlawful residency status who was displaced after June 1, 1998.

Between November 21, 1997, and June 1, 1998, for payments which already had been made, or, in the case of installment payments where an installment already had been paid, FHWA does not believe it is necessary to seek repayment or to terminate the remaining installments.

E. Residential displacements

26. Q. How should payments be computed if some members of a displaced family are present lawfully but others are present unlawfully?

A. There are two different computation methods, one for moving expenses and one for replacement housing payments (RHP). For moving expenses, the payment is to be prorated based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

For the RHP, the unlawful occupants are not counted as a part of the family and its size is reduced accordingly. Thus a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable for the family would reflect the makeup of the remaining four persons and the RHP would be computed accordingly.

27. Q. If a person who is a member of a family being displaced is not eligible for (does not receive) Uniform Act benefits because he or she is in the United States unlawfully, is that person's income excluded from the computation of family income?

A. No, the person's income is still counted unless the displacing agency is certain that the ineligible person will not continue to reside with the family. To exclude the ineligible person's income would result in a windfall by providing a higher relocation payment because a family member was not present lawfully in the United States. This is the result which led to the 1997 amendments in the first place.

28. Q. What is the effect of P.L. 105-117 on installment payments where one or more installments remain to be paid?

A. As noted under Question 25, in the case of installment payments where an installment already had been paid, FHWA does not believe it is necessary to seek repayment or to terminate the remaining installments.

F. <u>Business displacements</u>

29. Q. Does the prohibition on benefits in Public Law 105-117 apply to businesses?

A. Yes. It seems clear that it does since the term "person" used in Public Law 105-117 is defined broadly in the Uniform Act so as to include businesses (as well as farms and nonprofit organizations). We believe the Congress intended to prevent the receipt of Uniform Act benefits by any alien not legally present in the U.S. and not meeting the exception requirements previously discussed under section D. Eligibility. We also believe that the prohibition on benefits must be applied differently to the differing "ownership" situations found in, for example, a sole proprietorship, a partnership, or a corporation.

30. Q. How are the differing ownership situations referred to in Question 29 to be treated?

A. As in the case of residential displacees, we think the answer lies in looking at the nature of the entity to be displaced. Since a sole proprietorship involves only one person, the eligibility of the business is synonymous with the residency status of its proprietor.

At the other end of the spectrum, it is our view that a corporation, as a legal person established pursuant to State law, need only certify that it is authorized to conduct business in the United States.

For partnerships or other associations that have more than one owner but are not incorporated, we believe that the certification must be designed to elicit a response reflective of the status of all of the owners. If any of the owners are not eligible, no relocation payments may be made to such ineligible persons. Finally, any relocation payments for which the business would otherwise be eligible should be reduced by a percentage based on the proportion of eligible owners to the total number of owners. For example, if four out of five owners of a business to be displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the relocation payment(s) that otherwise would have been received.

We have adopted a similar approach to mixed eligibility in residential situations and have added clarifying language in Sec. 24.208(c) of the final rule.

31. Q. The law prohibits payments to “persons not lawfully present.” Does this mean that the owner(s) of a business must be present in the United States to be eligible for Uniform Act benefits?

A. No. The focus is on the displaced person’s unlawful residency status, not his or her presence

in the United States. If the owner of a business located in the U.S. was, for example, a resident of Great Britain and the business was displaced by a Federal or federally-assisted program or project, the owner's residency would have no effect on eligibility for Uniform Act benefits.

SAMPLE FORM SAMPLE FORM SAMPLE FORM SAMPLE FORM

CERTIFICATION CONCERNING LEGAL RESIDENCY IN THE UNITED STATES

[Please read instructions below before completing this form]

RESIDENTIAL DISPLACEMENTS

	(1) Number of Occupants	(2) Number of Citizens	(3) Number of Aliens Lawfully Present
a. Individual or Family:	_____	_____	_____

NON-RESIDENTIAL DISPLACEMENTS

	(1) Number of Owners	(2) Number of Citizens	(3) Number of Aliens Lawfully Present
b. Sole Proprietorship or Partnership:	_____	_____	_____
c. Corporation:			

I certify that _____(name of corporation)_____ is established pursuant to State law and is authorized to conduct business in the United States.

Instructions:

1. Please address only the category (individual, family, corporation, etc.) that describes your occupancy status.
2. Please note: If columns (2) plus (3) do not equal column (1), a reduction in the relocation payment(s) for which the displaced entity would otherwise be eligible may be indicated.
3. For item b include only owners who reside in the United States.
4. Your signature on this (or the claim) form constitutes certification.

SAMPLE FORM SAMPLE FORM SAMPLE FORM SAMPLE FORM

CERTIFICATION CONCERNING LEGAL RESIDENCY IN THE UNITED STATES

[Please read instructions below before completing this form]

RESIDENTIAL DISPLACEMENTS

a. Individual. I certify that I am: (check one) a citizen of the United States _____ ; an alien lawfully present in the United States _____.

b. Family. I certify that there are _____ persons in my household and that _____ are citizens of the United States and _____ are aliens lawfully present in the United States.

NON-RESIDENTIAL DISPLACEMENTS

c. Sole Proprietorship. I certify that: (check one) I am a citizen of the United States ___ ; I am an alien lawfully present in the United States ___ ; I am a non-U.S. citizen not present in the United States ___ .

d. Partnership: I certify that there are _____ partners in the partnership and that _____ are citizens of the United States, _____ are aliens lawfully present in the United States, and _____ are non-U.S. citizens not present in the United States.

e. Corporation. I certify that ___(name of corporation)___ is established pursuant to State law and is authorized to conduct business in the United States.

Instructions:

1. Please address only the category (individual, family, corporation, etc.) that describes your occupancy status.
2. For items b and d above, please fill in the correct number of persons.
3. The certification for a non-residential displaced person may be signed by an owner or other person authorized to sign on its behalf.
4. Your signature on this (or the claim) form constitutes certification.

D:\Training Power Points\TITLE6\rowalien.wpd.August 26, 1999

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM:
A SYSTEMATIC INTERDISCIPLINARY APPROACH
Handout 4-7
Processing Complaints of Discrimination Under Title VI of the Civil Rights Act of 1964
Prepared by: Humberto R. Martinez, FHWA Headquarters Office of Civil Rights

I. THE LAW

- Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d}.

"No person in the United States shall, on the ground of **race, color,** or **national origin,** be excluded from **participation** in, be denied the **benefits** of, or be subjected to **discrimination** under any program or activity receiving **Federal financial assistance.**"

- **Sex** added by Federal Aid Highway Act of 1973 {23 U.S.C. 324}.
- **Handicap** added by Section 504 of the Rehabilitation Act of 1973 {29 U.S.C. 790}.
- **Age** added by Age Discrimination Act of 1975 {42 U.S.C. 6101}.
- **Scope expanded** by Civil Rights Restoration Act of 1987 {P.L. 100-209} to include <u>all</u> of a recipient's and contractor's programs or activities whether federally assisted or not.

II. THE PROCESS

<u>AUTHORITIES</u>

- **49 CFR 21.11(b),** U.S. DOT'S Title VI Regulations

"**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."

- **23 CFR 200.9,** FHWA Title VI Regulations

These regulations require recipients to among other things;

- ➔ Develop procedures for prompt processing and disposition of Title VI complaints.
- ➔ Investigate complaints with civil rights personnel trained in compliance investigations.
- ➔ Forward complaints to FHWA within 60 days of receipt.
- ➔ Maintain a complaint log.

- **DOT Order 1000.12,** Chapter V - Complaint Procedures

DETERMINING JURISDICTION

1. **Does the complainant have standing?**

   -See Title VI and 49 CFR 21.11(b)
   -"Any person" who believes

2. **Is the complaint about an action, inaction, or result covered?**

   -Exclusion from participation
   -Denial of benefits
   -Discrimination

3. **Does the complaint directly or indirectly allege action, inaction, or result on bases of race, color, national origin, sex, handicap, or age?**

4. **Is the complaint timely?**

   -Within 180 days after the alleged act or if continuing acts, the date on which act was discontinued.

5. **What is the form of the complaint?**

   -Written
   -Signed
   -Provides sufficient detail to determine jurisdiction and identify issues and desired actions.

6. **Does the program or activity complained about involve federal assistance?**

ACTION

1. **Contact complainant to:**

   -Acknowledge receipt of complaint.
   -Clarify complainant's perspective and issues.
   -Identify relief being sought.
   -Obtain any other additional information that the complainant may have.

2. **Identify the issues.**
Some examples:

- Whether allocation of funding for construction of facilities is discriminatory.
- Whether non-elected transportation planning bodies exclude persons on the basis of the prohibited factors from membership.
- Whether the appraisal of property to be taken as a result of a transportation facility or program is conducted on a discriminatory basis.
- Whether relocation benefits and advisory services are provided on a discriminatory basis.
- Whether efforts to involve the public in the transportation planning process exclude persons on a discriminatory basis.
- Whether the collection of data and analysis are sufficient to identify minority or low income communities and the impacts of transportation programs and facilities on these communities.
- Whether inspections of work in progress discriminate against certain firms on the basis of race, color, national origin, age, sex or disability.
- Whether the mitigation of adverse impacts (air, noise, safety, cohesion, access to services, aesthetics) in minority or low income communities is conducted in a nondiscriminatory manner.
- Whether transportation facilities and systems are located in a discriminatory manner.
- Whether the maintenance and upkeep of transportation facilities and equipment are discriminatory.

3. **Identify the applicable authorities.**

Examples;

- Title VI of the Civil Rights Act of 1964
- 49 CFR 21 DOT's Title VI Regulations
- 23 CFR 200 FHWA's Title VI Regulations
- Other regulations pertaining to Planning, Research, Project Development, Right of Way and Relocation, and Contract Administration.
- Title VI Assurance
- Recipient's approved Title VI Program Document
- Appropriate Contract Provisions
- Policies and Directives

4. **Identify the information required and the sources of the information on point with the issue(s) raised.**

Examples;

- Criteria/formulas to allocate funding for transportation programs and facilities.
- Input solicited from the public in establishing the criteria.
- Data reflecting the application of the criteria over a period of time.
- Inventory of data collected and analyzed in the planning and advancement of transportation programs and facilities to identify the affected communities.
- Application of inspection standards by inspectors during work in progress.
- Comparison of property appraisals.
- Membership of non-elected planning body.
- Verification of mitigation measures undertaken.
- Average age and maintenance of transit rolling stock serving minority and low income communities compared with other communities.
- Location of transit routes and justification.

5. **Identify the other program officials that will be involved in the investigation and establish roles and responsibilities.**

Examples;

- Legal
- Engineering/Construction
- Contract Administration
- Right of Way and Relocation
- Planning
- Environment
- Research
- Other Modes--(Transit, Aviation, Port Authorities)

6. **Conduct investigation/evaluation.**

7. **Analyze findings.**

8. **Prepare report of findings.**

9. **Agree on desired outcomes.**

10. **Issue report and provide notice of appeal rights if appropriate.**

Note: Under 49 CFR 21, intent to discriminate is irrelevant, effect is what counts. If the net effect is exclusion from participation in, denial of benefits or discrimination on the basis of any of the prohibited factors, a violation of Title VI has occurred.

PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Tab 7

Case Studies

PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Case Study 4-1

Mr. Dame Mas Dinero vs. A State DOT

You have just received a letter from a Mr. Dame Mas Dinero alleging that the allocation of funding by the A State DOT is allocating funding for transportation projects in a manner which tends to favor other districts in the State over his district which is predominantly Hispanic. The complainant does not mention the words "discrimination" or cite any law governing illegal discrimination. The letter does mention that the reason the complainant feels is the cause of the inequity is the fact that his district is predominantly Hispanic.

Prepare a course of action.

1. Is this a complaint?
2. Should you accept this as a complaint?
3. If so, under what authority?
4. Does the complainant have standing to file this action?
5. What are the issues?
6. What information would you need?
7. Where would you get the information?
8. Who else (persons and offices) would you involve in processing this matter?
9. How would you proceed?
10. Describe some potential outcomes.

PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:
A SYSTEMATIC INTERDISCIPLINARY APPROACH
Case Study 4-2
Project Development

FACTS

1. The State DOT just received a letter which reads as follows:

"Dear Sir:

I am a resident of the Walnut Hills community in Whynot. My family and I have lived here for 15 years. We are members of the Walnut Hills Baptist Church and have many close, long term friends who have also lived in this community for a number of years.

I have learned from some friends that the highway department is planning to construct a new highway through Walnut Hills. I cannot understand why the highway department would want to disrupt all those families and divide our community when there is open land a few miles west where no one would be disturbed. It's true that many of the people in this community are poor and have let their property run down, but I don't think the city should decide to clean it up by building a highway through here. That's exactly what I think is happening, just because we are poor and black.

Is there any way the highway department will listen to our concerns? I have called the local office and was told that the department will not hold a public hearing on the project.

Any help you can provide to our community will certainly be appreciated by us.

Sincerely,

John Q. Public"

2. A public notice was published in the local newspaper 2 months ago offering to hold a public hearing. There was no response from the public.

3. There will be 20 families displaced by the project:

   18 families are minority
   15 families have annual incomes of between $10,000 and $15,000

Average family size is 5
Average age of residents is 40
Average length of residence is 12.5 years

There will be 5 businesses displaced:
Three are small businesses, owned and operated by minorities.
One is a chain fast-food restaurant.
One is a major company-owned service station.

4. An environmental assessment was done on this project. It was determined that there would be no significant impacts resulting from the project. There were no alternative except the no build alternative.

QUESTIONS

1. ***What is the issue(s) in this case (if any)?***

2. ***Identify additional information needed (if any).***

3. ***Roles and responsibilities (who is supposed to do what?).***

4. ***Identify possible strategies to informally resolve the case.***

PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM: A SYSTEMATIC INTERDISCIPLINARY APPROACH

Case Study 4-3

Right of Way

FACTS

1. The State DOT has a complaint of racial discrimination from a minority resident of a community where the State has been acquiring right-of-way for a Federal-aid project. The complainant has made the following allegation:

   "I feel I have been discriminated against because of my race. The highway department did not provide enough information to me regarding my rights for me to know what actions I should take. I was contacted one time by letter concerning the purchase of my house. The letter told what amount was being offered and gave me 2 weeks to consider the offer. One month after I had received the first letter, I received a second letter advising me that I was being taken to court to force me to sell my property. I did not know that the highway department had the right to do this or that they would take action so soon. A neighbor of mine, who is not a minority, received a letter as well as several visits by people from the highway department. He received his letter about 2 months before I did. I feel I am being pressured because of my race."

2. You are aware of the project in question. The State has been anxious to clear all right-of-way and begin construction. Local officials have been pushing for completion of the project.

QUESTIONS

1. ***What is the issue(s) in this case (if any)?***

2. ***Identify additional information needed (if any).***

3. ***Roles and responsibilities (who is supposed to do what?).***

4. ***Identify possible strategies to informally resolve the case.***

PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:
A SYSTEMATIC INTERDISCIPLINARY APPROACH
Case Study 4-4
Construction #1

FACTS

1. You are a highway engineer for the State highway department. You have just returned to your office after completing an inspection of a project being constructed by Hobbs Construction Company. You have called the State Title VI Specialist into your office to discuss a couple of your findings.

2. The project is for new construction of a major four-lane highway near the edge of the city. The contract is approximately $5 million and covers all activities (grading, landscaping, fencing, drainage, etc.) for the construction of the highway. The project is 25 percent complete. The contractor has subcontracted about $500,000 of work, all to nonminority subcontractors. He is planning to subcontract another $200,000 within the next few weeks. During your inspection, you learned that he sent letters to two DBE and six nonminority subcontractors for this work. He has not received a response from the DBE subcontractors and is planning to give the subcontract to one of the nonminority firms he has dealt with several times before. There are two more DBE's listed in the State's DBE directory who do this type of work.

3. The contractor is constructing a batch plant in a minority community adjacent to the project site. The trucks will have to go through local streets in the community. Ordinarily, you would not have thought this to be a problem but you overheard one of the supervisors at the project site make a remark to the effect that this route was "better than going through a white community." Upon reflection, you remember that this contractor had established a batch plant in a minority community on a project last year. There is some undeveloped land a couple of miles from the project site.

QUESTIONS

1. ***What is the issue(s) in this case (if any)?***

2. ***Identify additional information needed (if any).***

3. ***Roles and responsibilities (who is supposed to do what?).***

4. ***Identify possible strategies to informally resolve the case.***

PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:
A SYSTEMATIC INTERDISCIPLINARY APPROACH
Case Study 4-5
Construction #2

FACTS

1. You are a State Construction Liaison Engineer working out of the Headquarters office. You were employed by the Smithfield Construction Company part-time for 6 years prior to completing your Civil Engineer's degree. Your job responsibilities are to monitor the quality of highway construction and adherence by contractors to contract specifications. This entails frequent field trips Statewide to project sites and discussions with State and contractor project personnel. You have the authority to recommend corrective actions whenever you identify problem areas. Such recommendations may be directed to all organizational levels within the highway department: Resident Engineer, District Engineer and Headquarters.

2. On a recent field trip (August 3, 1997), Bill Smith, Resident Engineer for Interstate Projects I-001(120) and I-001(250), showed you a letter he received from J & Y Construction Company, the prime contractor on Project I-001(120). The letter (attached) alleged unfair treatment by the State's inspectors. He also alleged that the prime contractor on Project I-001(250), Smithfield Construction Caompany, received much more lenient treatment from the inspectors.

3. J & Y Construction Company has 3 years of experience as a prime contractor. This is the firm's first prime contract on a Federal-aid highway project. The president of the company is Joe Sanchez.

4. Smithfield Construction Company has 15 years of experience as prime contractor on numerous Federal-aid projects. Jack Sample is the president of this company.

QUESTIONS

1. ***What is the issue(s) in this case (if any)?***

2. ***Identify additional information needed (if any).***

3. ***Roles and responsibilities (who is supposed to do what?).***

4. ***Identify possible strategies to informally resolve the case.***

J & Y CONSTRUCTION COMPANY
P. O. BOX 1831
LittleTown, Big State 55511
JUNE 3, 1997

Mr. Bill Smith, Resident Engineer
State Highway Department
P.O. Box 1525
Big City, Any State 77722

Dear Mr. Smith:

Although you and I have discussed this before, I am formally notifying you of what I feel is unfair treatment against me by your inspectors. I have been constantly harassed by your people on signing of detours and temporary erosion control measures. One of your inspectors has even threatened to withhold my next monthly estimate unless I satisfy him.

I don't mind tough inspectors so long as <u>all</u> contractors are expected to comply to specifications equally. I know for a fact that the contractor on Project I-001(25) is allowed to get away with murder. Not only that, but he has been granted plan changes while I have not.

I am giving you one more opportunity to straighten out this problem to my satisfaction before proceeding further.

Respectfully yours,

Joe Sanchez
President, J & Y Construction Company

cc:
Max Jones, State EEO Officer
John Goldberg, Attorney at Law

PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:
A SYSTEMATIC INTERDISCIPLINARY APPROACH
Case Study 4-6
Research

FACTS

1. You are conducting a Title VI assessment of the State's research program. A copy of the program for the coming year has been provided to you (attached).

2. The State Research Engineer has received proposals on all of the new projects from State University.

3. State University has a large civil engineering school and has consistently done very good work on projects.

4. The highway department has not solicited proposals from any other universities in the state. There are two other universities; one of these is a large nonminority university which has a small civil engineering school. The other one is a smaller minority university which does not have an engineering school. This university has done some social-type research for the State.

QUESTIONS

1. ***What is the issue(s) in this case (if any)?***

2. ***Identify additional information needed (if any).***

3. ***Roles and responsibilities (who is supposed to do what?).***

4. ***Identify possible strategies to informally resolve the case.***

STATE RESEARCH PROGRAM
FY 1998

Research Study No.	Title
2-18-98-233	Priority Treatment of Narrow Bridges
2-9-99-240	Fly Ash Experimental Projects
3-8-99-249	Implementation of Rigid Pavement Overlay and Design System
3-9-99-252	Design and Characterization of Recycled Pavement Mixtures
3-9-99-253	Moisture Effects on Asphalt Mixtures
3-8-00-256	The Study of New Technologies for Pavement Evaluation
2-9-99-261	Evaluation of Fabric Underseals
1-10-01-272	Heating as Asphalt Tank Using Passive Solar Methods
2-9-00-285	Asphalt Concrete Mixture Design and Specification
*2-18-03-343	Improved Design of Light Poles, Guardrails and Other Appurtenances
*2-18-03-349	Improved Adhesion of Temporary Pavement Marking Materials
*3-9-03-358	The Effect of Mix Temperature on Asphalt Mixtures as Related to Drum Mixtures

*NEW PROPOSED RESEARCH STUDIES