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(both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall identify specific actions to be taken to:

(i) Designate a liaison officer who will administer the MBE program;

(ii) Provide for adequate and timely consideration of the availability and potential of MBEs in all procurement decisions;

(iii) Assure that MBEs will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of MBEs and by assisting MBEs who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with;

(v) Submit quarterly reports of the records referred to in paragraph (c)(3)(iv) of this section in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of MBEs, establish specific goals and timetables to utilize MBEs in the performance of contracts awarded.

(d) *Successor organizations.* Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organization or organizations.

§ 265.14 Determining the MBE status of a business.

FRA or a recipient may, on the basis of available information, determine that a business is not an MBE within the meaning of this part. This determination shall be final, except as provided in § 265.14-1, for that contract and other contracts being let by that contracting agency at the time of the determination. Businesses may correct deficiencies in their ownership and control and apply as MBEs only for future contracts.

[44 FR 36339, June 21, 1979]

49 CFR Ch. II (10-1-06 Edition)

§ 265.14-1 Appeals of determination of MBE status.

(a) *Filing.* Any firm who believes that it has been wrongly determined not to be an MBE under § 265.14 by the FRA or a recipient may file an appeal in writing with the Administrator. The appeal shall be filed no later than 30 days after the date of the determination. The Administrator may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that a business has been wrongly denied or granted status as an MBE may advise the Administrator. This information is not considered an appeal pursuant to this section.

(b) *Decision to investigate.* The Administrator ensures that a prompt investigation is made of those cases with investigative merit (except those being reviewed on the merits by the Comptroller General), pursuant to prescribed DOT Title VI (49 CFR part 21) investigation procedures.

(c) *Status during the investigation.* The Administrator may deny the business in question eligibility to participate as an MBE in direct or FRA-assisted contracts let during the pendency of the investigation, after providing the business in question an opportunity to show cause by written statement to the Administrator why this should not occur.

(d) *Cooperation in investigation.* All parties shall cooperate fully with the investigation. Failure or refusal to furnish relevant information or other failure to cooperate is a violation of this part.

(e) *Determinations.* The Administrator will make one of the following determinations and so inform the business in writing of the reasons for the determination:

(1) The business is considered to be an MBE within the meaning of this part; or

(2) The business is not considered to be an MBE within the meaning of this part and is denied eligibility to participate as an MBE in any direct or FRA-assisted contract until a further determination is made by FRA that the

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business is an MBE within the meaning of this part.

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§ 265.15 Implementation and maintenance of affirmative action program.

The affirmative action program with respect to employment and procurement practices shall set forth in detail applicant's recipient's or contractor's program to implement and maintain its recommended action program to insure that persons and businesses are not discriminated against because of race, color, national origin or sex, and that minorities and MBEs have equal employment and contractual opportunities with applicant, recipient or contractor. In developing its maintenance program for employment, applicants, recipients and contractors shall follow the applicable regulations of the Department of Labor implementing Executive Order 11246 at 41 CFR 60-2, subpart C, which provisions may also be helpful in implementing and maintaining applicant's recipient's or contractor's procurement program.

§ 265.17 Review of affirmative action program.

(a) Except as provided for contractors and subcontractors in § 265.11(b), each affirmative action program to be acceptable must have the written approval of the Administrator.

(b) The Administrator recognizes that there may be some exceptional situations where the requirements of § 265.13 through § 265.15 may not fulfill the affirmative action objectives sought or that those objectives may be better achieved through modified or different requirements. Accordingly, the applicant, recipient or contractor may request approval for modified or different requirements that embody the objectives of §§ 265.13 through 265.15. Such a request must include detailed showings that the particular situation is exceptional and that the modified or different proposals substantially comply with the objectives of this part. If the Administrator determines that the requirements for a detailed justification have been met, he may waive or modify these requirements or impose different require-

ments as he deems necessary to further the objectives sought herein.

Subpart C—Compliance

§ 265.19 Compliance information.

(a) Each recipient and contractor shall keep such records and submit to the Administrator complete and accurate reports, at such times, and in such form, and containing such information as the Administrator may determine to be necessary to enable him to ascertain whether the recipient or contractor has complied or is complying with this part. These records shall show in connection with the project, program or activity funded in whole or in part through financial assistance under the Rail Acts:

(1) Procedures which have been adopted to comply with the policies set forth in this part, including the establishment of a source list of MBEs;

(2) Specific efforts to identify and award contracts to MBEs; and

(3) Awards to MBEs from the source list required in paragraph (a)(1) of this section.

(b) Each recipient and contractor shall permit access by the Administrator during normal business hours to such of its books, records, accounts and other sources of information and its facilities as may in the opinion of the Administrator be necessary to ascertain compliance with this part.

(c) Each recipient and contractor shall make available to participants, beneficiaries and other interested persons, such information regarding the provisions of this part and the applicability to the program, project or activity under which the recipient received financial assistance from the Rail Acts or under which the contractor is awarded a contract and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 265.21 Conduct of investigations.

(a) The Administrator shall from time to time review the practices of recipients and contractors to determine whether they are complying with this part. The Administrator shall to the