

§ 265.3

referred to as the "Act") to ensure that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through financial assistance under the Act, or any provision of law amended by the Act. Nothing contained in these regulations is intended to diminish or supersede the obligations made applicable by either title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d), or Executive Order No. 11246, (42 U.S.C. 2000e (note)). Subsection (d) of section 905 of the Act authorizes the Secretary to prescribe such regulations and take such actions as are necessary to monitor, enforce, and affirmatively carry out the purposes of that section. This authority coupled with the provisions of section 906 of the Act, which requires the establishment of a Minority Resource Center which is authorized to encourage, promote and assist in the participation by MBE enterprises in the restructuring, improvement, revitalization and maintenance of our Nation's railroads, provides the basis for requirements for the development of affirmative action programs by recipients of Federal financial assistance and certain of their contractors to insure that minorities and MBEs are afforded ample consideration with respect to employment and contractual opportunities produced as a result of the implementation of the Act and other provisions of law amended by the Act.

§ 265.3 Applicability.

This part applies to any project, program, or activity funded in whole or in part through financial assistance provided under the Act, and to any activity funded under any provision of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 *et seq.*) or the Rail Passenger Service Act, as amended (45 U.S.C. 501 *et seq.*) amended by the Act including the financial assistance programs listed in appendix A. It applies to contracts awarded to implement the Northeast Corridor Project and to financial assistance programs administered by the United States Railway Association.

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§ 265.5 Definitions.

As used in this part, unless the context indicates otherwise:

(a) *Act* means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210).

(b) *Administrator* means the Federal Railroad Administrator or his delegate.

(c) *Affirmative action program* means the program described in § 265.9 through § 265.15 of this part.

(d) *Agency* means the Federal Railroad Administration.

(e) *Applicant* means persons applying for financial assistance under any of the Rail Acts.

(f) *Contractor* means a prime contractor or a subcontractor who will be paid in whole or in part directly or indirectly from financial assistance provided under the Rail Acts.

(g) [Reserved]

(h) *Includes* means includes but not limited to.

(i) *Minority* means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.

(j) *MBE* means a business concern which is owned and controlled by a minority. For the purpose of this part, *owned and controlled* means a business:

(1) Which is at least 51 per centum owned by one or more minority individuals; or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more minority individuals; and

(2) Whose management and daily operations are controlled by one or more such individuals.

(k) *MBE Resource Center* means the Minority Resource Center established in the Department of Transportation pursuant to section 906 of the Act.

(l) *Rail Acts* means the Railroad Revitalization and Regulatory Reform Act of 1976, the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 *et seq.*) and the Rail Passenger Service Act, as amended (45 U.S.C. 501 *et seq.*).

(m) *Recipient* means a person who receives financial assistance under any of the Rail Acts except under section 602 of the Rail Passenger Service Act, as amended (45 U.S.C. 501 *et seq.*).

(n) *Underutilization* means the condition of having fewer minority employees in a particular job group or fewer awards of contracts to MBEs than would reasonably be expected by their availability for such jobs or awards.

[42 FR 4286, Jan. 24, 1977, as amended at 44 FR 36339, June 21, 1979]

Subpart B—Requirements

§ 265.7 Nondiscrimination clauses.

(a) Each agreement for financial assistance made under any provision of the Rail Acts shall include, or in the case of agreements made prior to the effective date of this part, shall be amended to include, the following clauses:

(1) As a condition to receiving Federal financial assistance under the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"), or the provisions of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 *et seq.*), or the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 501 *et seq.*) amended by the Act (collectively called, together with the Act, the "Rail Acts"), the recipient hereby agrees to observe and comply with the following:

(i) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program, or activity funded in whole or in part through such assistance.

(2) The following specific discriminatory actions are prohibited:

(i) A recipient under any project, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) 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 such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid or other benefit under such project, program or activity;

(D) 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 such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under such project, program or activity.

(ii) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program or activity shall 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, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity, with respect to individuals of a particular race, color, national origin or sex.

(iii) In determining the site or location of facilities, a recipient shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(iv) The recipient shall not discriminate against any employee or applicant for employment because of race, color,