

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 152

[Docket No. 16419; Amdt. No. 152-9]

Airport Aid Program; Civil Rights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments are being issued to ensure compliance with the statutory requirements of Section 30, Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*), that no person is excluded on the grounds of race, creed, color, national origin, or sex from participating in any activity for airport development, airport master planning, or airport system planning conducted with funds received from any grant made under the Airport Aid Program. This action is required by Congressional legislation.

EFFECTIVE DATE: March 17, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Irene H. Miels, Attorney Advisor, General Legal Services Division, Personnel and Labor Law Branch (AGC-14), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426-3765.

SUPPLEMENTARY INFORMATION: Interested persons have been afforded an opportunity to participate in the making of this final rule by a notice of proposed rulemaking (Notice No. 77-1) issued on January 11, 1977, and published in the *Federal Register* on January 13, 1977 (42 FR 2850). Due consideration has been given to all comments received in response to the notice. Except as otherwise discussed, they are reflected in this amendment. The FAA recognizes, however, that events which have transpired since the comment period closed in 1977, may require adjustments to the rule after implementation. The FAA therefore will continue to accept comments for one year, following the date the rule becomes effective. If appropriate, it will be amended after consultation with the Equal Employment Opportunity Commission, as required by Executive Order 12067.

The final rule also responds to two major developments at the national level: (1) The President's Civil Rights Reorganization as contained in Reorganization Plan Number 1 of 1978 (43 FR 19807; May 9, 1978) and (2) Issuance of Executive Order 12044,

Improving Government Regulations (43 FR 12661; March 24, 1978).

The majority of the 135 commenters expressed two chief concerns:

1. They perceived the requirements of the NPRM as duplicative of, or in conflict with, those of other agencies having responsibility for equal employment opportunity enforcement.

2. They felt the requirements would result in undue administrative burdens.

During the same time frame, the research efforts of a number of Presidential Task Forces uncovered similar problems in the administration of civil rights programs as a whole. Their conclusions resulted in the incorporation of two programs of civil rights consolidation in Reorganization Plan Number 1. The first was implemented by Executive Order 12067 (43 FR 28967; July 5, 1978), assigning to the Equal Employment Opportunity Commission the leadership role for all Federal efforts relating to equal employment opportunity. The second, consolidating the contract compliance programs under Parts II and III of Executive Order 11246 in the Department of Labor, was implemented by Executive Order 12086 (43 FR 46501; October 10, 1978).

Also during this same time frame, the President acted to simplify regulatory procedures through the issuance of Executive Order 12044, Improving Government Regulations (43 FR 12661; March 24, 1978). Section 1 of the Executive Order requires that regulations be as simple and clear as possible, and that they achieve legislative goals effectively and efficiently. In addition, Executive Order 12044 requires that regulations impose no unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

The FAA believes that this amendment meets the President's regulatory criteria and has determined that it lends support to the Civil Rights Reorganization Program. In accordance with section 1-304 of Executive Order 12067, the DOT has submitted this amendment formally to the Equal Employment Opportunity Commission for review. In addition, the amendment has been provided for comment to the Office of Federal Contract Compliance Programs, the Department of Labor, and the Department of Justice.

It should be noted that the Civil Rights Reorganization is based not only on the premise that duplication should be avoided, but that effort should be maximized. Section 1-201 of Executive Order 12067 contains a mandate to the Equal Employment Opportunity

Commission to that effect. The FAA has conformed the provisions of this amendment to the Executive Order, as discussed below. The discussion is divided into two parts. The first explains major changes in the overall structure of the final rule. The second part deals with specific comments, received during the public comment period.

I. General Discussion

As part of its efforts to avoid overlap and duplication, the FAA has worked closely with the Office of the Secretary of Transportation to coordinate its revision of the amendment with new developments in the Department. These new developments have included the drafting, by the Secretary of Transportation, of a proposed rule for Minority Business Enterprise Programs and a proposed revision to 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 (See Regulations Agenda, 43 FR 23884, June 1, 1978).

In view of these documents, the FAA has deleted from this amendment all specific requirements relating to the utilization of minority and female entrepreneurs. Instead, Section 152.419, as adopted, requires compliance with the requirements of the Department's Minority Business Enterprise Regulation in its final form (scheduled for publication in 49 CFR Part 23). Use of the Minority Business Enterprise regulation to implement the FAA's section 30 responsibilities will result in a uniform program throughout the Department, avoid duplication of record-keeping and reporting, and prevent the imposition of multiple requirements.

Secondly, the FAA has deleted all references to requirements similar to those of Title VI of the Civil Rights Act of 1964 or 49 CFR Part 21, regulations of the Department of Transportation implementing Title VI. In the NPRM, these requirements related to nondiscrimination in the provision of public accommodations, services, and other benefits to persons who may be subject to discrimination on the basis of sex or creed. Section 152.421, as adopted, incorporates by reference all the requirements of 49 CFR Part 21, thereby prohibiting discrimination on the basis of sex or creed in FAA Federal financial assistance programs in the same manner that Title VI prohibits discrimination on the basis of race, color, or national origin. 49 CFR Part 21 also calls for affirmative action, where appropriate. Incorporation of Part 21 requirements by reference will ensure uniformity of treatment of beneficiaries

and prevent needless repetition in rulemaking.

The FAA also has deleted proposed Sections 152.165 through 152.173, relating to complaints, procedures for effecting compliance, hearings, decisions and notices, and judicial review. Section 152.423 provides for the use of the procedures required in 49 CFR Part 21 for these actions. In addition, under Section 1.47(f) of the Regulations of the Secretary (49 CFR 1.47(f)), the Administrator of the FAA may conduct investigations as considered necessary to carry out the provisions of the Airport and Airways Development Act of 1970, as amended. The investigation procedures established by the Administrator are contained in 14 CFR Part 13, Investigation and Enforcement Procedures, and also may be used for the investigation of noncompliance with this subpart. Section 152.423, as adopted, contains a cross-reference to 14 CFR Part 13.

Noncompliance with the requirements of the Department's Minority Business Enterprise (MBE) regulation will be investigated and enforced through the procedures contained in the MBE regulation. Allegations of noncompliance with Federal employment requirements which the Equal Employment Opportunity Commission, the Department of Labor, or other agencies enforce will be referred to those agencies for enforcement. In these instances, Part 13 investigative procedures and 49 CFR Part 21 procedures will be used to supplement or enhance the investigative and enforcement authority of other agencies. Following a finding on the record by any such agency, the FAA will adopt the finding as its own and determine whether grant-related sanctions should be imposed in addition to the remedies provided, or other sanctions imposed, by that agency. However, when it appears that deferral to the proceedings of these agencies could result in undue delay and lead to the expenditure of Federal funds without compliance with this subpart, the FAA may initiate proceedings.

It should be noted that Part 13 investigative procedures will be utilized in conjunction with procedures established by the Office of the Secretary for the receipt of complaints, on-site investigations, and informal resolutions.

The enforcement procedures as made applicable in this amendment have a threefold effect: (1) They do not disturb procedures established by other agencies for other statutes; (2) They make possible an added sanction for employment discrimination; and (3)

They do not duplicate the remedies or sanctions provided elsewhere such as debarment of contractors under 41 CFR Part 60 (Department of Labor regulations to implement Executive Order 11246); those available through a private cause of action under Title VII of the Civil Rights Act of 1964, as amended; or the sanctions for discrimination on the basis of race, color, or national origin under Title VI of that Act.

A fourth major revision concerns the extent to which employment practices are covered in this amendment. In view of the many specific comments on the employment-related sections of the NPRM, this major change is discussed in Part II.

II. Discussion of Specific Comments

A. Employment

Many commenters felt that employment should be excluded totally in a section 30 rule in view of the remedies and sanctions available under Titles VI and VII of the Civil Rights Act of 1964, under Executive Order 11246, and under statutes addressing specific protected groups such as handicapped persons, those over a certain age limit, and veterans.

Since section 30 does not speak to groups such as handicapped persons, veterans, or others who are the subject of specific legislation, this amendment contains no requirements which overlap or duplicate the requirements in regulations implementing that specific legislation.

The Department of Transportation regulations to implement Title VI cover two types of employment discrimination: (1) employment practices of a grantee and other covered persons that impact unfavorably upon beneficiaries, and (2) discrimination in programs designed to provide employment. Complaints under the Title VI regulations, however, may not be brought on the basis of sex or creed. Section 30 and this subpart affords this right to complainants, thereby supplementing the Title VI regulations rather than conflicting with them.

Similarly, this subpart does not conflict with Title VII, but supplements its coverage through the establishment of positive affirmative action requirements. These affirmative action requirements are designed to strengthen Title VII, which operates largely in response to complaints rather than as an affirmative action tool. Further, the affirmative action requirements contained in this Subpart are designed to avoid conflict with requirements that may exist in other programs related to Title VII, including those of the

Department of Labor, implementing Executive Order 11246. This subpart also makes possible the imposition of grant-related sanctions for noncompliance with, or discrimination in, employment programs, not possible under Title VII or Executive Order 11246.

The FAA also believes that section 30 requires the coverage of employment not presently regulated by other agencies. Employers with less than 15 employees, for example, are not subject to Title VII of the Civil Rights Act and the regulations of the Equal Employment Opportunity Commission.

While this subpart does not afford a private cause of action to employees or applicants of covered employers to obtain the remedies available under Title VII, they do provide for sanctions against recipients and other covered organizations for employment discrimination. As previously stated, however, this does not impair the rights of complainants to seek remedies from other appropriate agencies or to bring their complaints to the attention of the FAA for referral, investigation, or enforcement through the application of sanctions provided in this subpart. That is, under section 30, the FAA does not have authority to make legally binding orders with respect to promotion, back pay, reinstatement, and so forth, as the Equal Employment Opportunity Commission and the courts may make under Title VII. However, employers who are found to have discriminated in violation of section 30 are subject to sanctions, such as the termination of Federal funding. As part of the conciliation process (negotiations with a recipient to resolve a finding of discrimination or noncompliance before sanctions are imposed), a recipient may be required, as a condition of a conciliation, to take action to make employees whole in appropriate cases.

Further, many contractors or tenants on airports, who provide services or supplies to recipients and beneficiaries of Federal financial assistance and other covered organizations, are not subject to Executive Order 11246 and the regulations of the Department of Labor. Similarly, some construction contractors are not covered by Executive Order 11246. Where such employers benefit from the provision of Federal financial assistance to a grantee, or where their employment practices impact upon the public which uses the facilities or participates in the programs of a recipient, the FAA believes it should extend the protection of section 30 to the employees and to the applicants for employment. As in the case of Title VII

remedies, sanctions available elsewhere, such as debarment of contractors under Executive Order 11246, will not be duplicated. As with Title VII, this means that, under section 30, FAA does not have authority parallel to that of the Department of Labor under Executive Order 11246 to make a legally binding order debarbing a contractor for employment-related reasons. Grantees are not precluded from taking contract sanctions against covered organizations that violate their assurances, and, as part of the conciliation process, grantees may be required in appropriate cases to impose contract sanctions, as a condition of a conciliation agreement.

The employment requirements stated in Section 152.161 of the NPRM have been replaced by those included within Sections 152.407 through 152.411 of this final rule.

The FAA agrees with commenters, however, that record keeping and other administrative burdens relating to employment should be minimized and that the FAA should avoid duplicating the requirements of other agencies. This matter is discussed further in a succeeding paragraph on "Affirmative Action Plans" and related requirements.

B. Affirmative Action Plans; Affirmative Action Steps; Nondiscrimination Clauses

To minimize paperwork and other administrative burdens, the FAA has revised the requirements on nondiscrimination clauses and affirmative action plans it proposed in Sections 152.155 through 152.161 of the NPRM. The clauses have been replaced by simplified assurances in revised Section 152.405. Section 152.407, as adopted, requires affirmative plans only from (1) airport sponsors that employ 50 or more employees in their aviation workforces and covered organizations which have 50 or more employees located on the sponsors' airports; (2) planning agencies that employ 50 or more employees in their agencies for aviation purposes; and (3) the political entities which administer grants received to develop standards for airport development at general aviation airports, when those entities employ 50 or more employees in their aviation workforces. Where a covered entity has prepared an affirmative action plan acceptable to another Federal agency, it will be deemed that it is in compliance with the requirements set forth in Section 152.409. An affirmative action plan prepared for a State or local authority will be acceptable only if the covered entity has certified that the plan meets the standards of Section 152.409.

Covered organizations which have less than 50 employees as specified, will be required to follow affirmative action steps and keep records relating to equal employment opportunity, under the circumstances stated in Section 152.411, in lieu of preparing an affirmative action plan. If these organizations are subject to an affirmative action plan or steps required by another Federal agency or to a State or local plan or steps which meet the requirements of Section 152.411, they will not be required to keep a separate written account of their steps. They will be expected to make these records available to the FAA, upon request.

As a general rule, organizations subject to review by a another Federal agency will not be reviewed by the FAA. However, the FAA reserves the right to investigate any employment problems of which it becomes aware, to refer them to the appropriate agency for action, or, when it appears that delay could lead to the expenditure of Federal funds without compliance under the Airport Aid Program, to initiate proceedings.

As part of its ongoing program of monitoring the compliance of grantees and other covered organizations, the FAA will "spot check" to ensure that affirmative action plans which are required by the regulations exist and meet applicable standards. This "spot checking" process will be separate from the more detailed compliance reviews which FAA or other compliance agencies undertake of the overall equal employment policies and practices of the grantees and other covered organizations.

Federally assisted construction contractors subject to the goals and timetables established in 41 CFR Part 60, regulations of the Department of Labor implementing Executive Order 11246, will not be required to prepare affirmative action plans or to participate in a program of steps beyond those necessary to comply with 41 CFR Part 60, or be subject to FAA review.

Federally assisted construction contractors, who are not subject to the goals and timetables established in 41 CFR Part 60 (§ 60-4), are required to participate in a program of affirmative action steps, as set forth in Section 152.411 of this subpart.

Construction contractors who are not subject to 41 CFR Part 60, but who benefit from the Federal financial assistance provided to grantees or who participate in projects that are aviation related, as defined in Section 152.403, also will not be required to prepare affirmative action plans. Instead, they will be required to take affirmative

action steps as set forth in Section 152.411. Unlike Federally assisted construction contractors, they will be subject to FAA review.

C. Applicability

Many of the comments expressed disagreement with the proposal to make the nondiscrimination clauses and affirmative action plans set forth in proposed Sections 152.155 and 152.159 applicable to certain lessees and sublessees. Commenters contended that section 30 is applicable only to activities conducted with funds received from grants made under Title I of the Act and that lessees and sublessees receive neither grants nor monies flowing from grants. The FAA concurs to the extent that nonaviation related lessees and sublessees which provide no services to the airport or the airport public are not related sufficiently to the grant program to warrant coverage. Lessees and sublessees who provide goods or services to the airport or to its users or who are aviation related, however, benefit from the development made possible by those grants. Accordingly, the requirements set forth in this final rule are made applicable to lessees and sublessees of this nature.

Similarly, supply, service, and construction contractors whose activities are aviation related but who are not paid with Federal funds, benefit from the development made possible by Federal grants. The requirements set forth in this final rule are applicable to these categories of organizations.

In effect, all grantees under the Act and all organizations on airports which are "aviation-related activities" (including Federally-assisted construction contractors, other construction contractors, supply and service contractors, lessees, and licensees), as defined in Section 152.403, are subject to the requirements of this subpart, as specified.

D. Monitoring and Enforcement

Twenty-two commenters expressed the view that all monitoring should be the function of the FAA, including that of contractors, subcontractors, lessees and sublessees, and other covered organizations. Commenters felt that grantees are not equipped to perform this function and that relationships between the grantees and these other entities would be adversely affected if grantees were required to monitor the equal employment opportunity performance of others. The FAA concurs that a monitoring role for the grantee poses problems. The FAA therefore will assume the full monitoring role and require grantees to serve merely as the

focal point for the collection of data and compliance information.

To minimize administrative burdens, data and compliance reports have been reduced in number. Certain organizations have been exempted from reporting requirements; and for still others, reporting requirements have been modified to fit the size or status of the organizations in question. In brief, reporting requirements will apply as follows:

1. *Construction Contractors and Subcontractors.* Construction contractors and subcontractors, which are subject to E.O. 11246 and the regulations of the Department of Labor (DOL), are not required to submit reports under this subpart. Instead, the FAA will seek an agreement with the DOL on compliance procedures and information sharing, in order to obtain a comprehensive picture of employment practices of Federal and Federally-assisted contractors on airports.

Construction contractors and subcontractors, which are not subject to E.O. 11246 and the regulations of the DOL, and which have contracts of \$10,000 or more, are required to submit a compliance report on an FAA form and a statistical report on a Form 257 or any superseding DOL form at the end of the project. For projects exceeding six months, a midway compliance report also is required.

2. *Covered Organizations with 15 or More Employees (Nonconstruction).* Covered organizations (nonconstruction), with 15 or more employees in the aviation workforce, are required to submit an annual compliance report on an FAA form and an annual statistical report on an EEO-1 or any superseding Equal Employment Opportunity Commission (EEOC) form. Where covered organizations already are submitting the EEO-1 form to another agency, a copy may be used for the FAA statistical submission.

3. *Covered Organizations with Less Than 15 Employees (Nonconstruction).* Covered organizations (nonconstruction), with less than 15 employees in the aviation workforce, are not required to submit compliance reports. They are required, however, to make available to the sponsor an annual count and breakdown of their employment levels. Sponsors are required to aggregate these figures, including their own, if they have less than 15 employees, and to submit this aggregate statistical report to the FAA on an EEO-1 form or any superseding form of the EEOC.

4. *Covered Organizations Subject to Review or Compliance Reports by Other Agencies.* Covered organizations

(nonconstruction), which are subject to review or compliance reports under the regulations of another agency, are not required to submit compliance reports to the FAA. They are expected, however, to make the reports available to the FAA upon request during an investigation of a complaint. In addition, these organizations are required to make the annual EEO-1 statistical submission to the FAA.

In all cases, covered organizations shall submit their reports to the sponsor, either directly or through their prime organizations, if they are subcontractors, sublessees, or other suborganizations. The sponsor is required to transmit these reports to the FAA, in accordance with instructions to be supplied by the FAA.

F. Definitions

Many persons submitted comments concerning the definitions set forth in proposed Section 152.153. Most of these commenters stated that "concession" should be defined. This term has been deleted from the final rule. To simplify identification of the organizations which are subject to the requirements of this subpart (in addition to the grantees), the term "Aviation related activity" has been used.

"Aviation related activity" is defined as a commercial enterprise operated on the airport pursuant to an agreement with the airport sponsor (or to a derivative agreement), which maintains on-airport employment and (i) is related primarily to the aeronautical activities taking place on the airport, or (ii) provides goods or services to the public which is attracted to the airport by such aeronautical activities, or (iii) provides services or supplies to other aeronautical or public service airport businesses or to the airport.

Others suggested that the term "underutilization," used in proposed Section 152.161, should be defined to conform with the Department of Labor's definition of that term. The FAA concurs, but has included within the definition a simplified method to determine availability.

G. Retroactivity

The NPRM invited comments on whether the proposed rule should be made retroactively applicable to all grants made under Part 152 between July 12, 1976, and the effective date of the rule, if adopted. Twenty-eight commenters opposed retroactive application on the grounds of questionable legality and undue burden on recipients, contractors, and lessees.

The FAA agrees that the provisions of this amendment should not be made

retroactive and notes, in this connection, that the terms of the legislation do not impose retroactivity.

Grantees and other covered organizations are required to comply with this amendment as of its effective date. These include grantees made subject to a clause in their grant agreements established December 16, 1976, requiring compliance with any regulations issued to implement Section 30, if the Federal financial assistance was approved on or after that date.

H. Economic Impact

Twelve commenters questioned the FAA's finding and determination that the proposed rule did not contain a major proposal requiring preparation of an Inflationary (Economic) Impact Statement. In view of the approach taken in this amendment, significantly reducing the administrative requirements and eliminating the duplication pointed out by commenters on the NPRM, the FAA does not believe an Inflationary Impact Statement is necessary for this final rule. However, as required by the Secretary's Procedures for Simplification, Analysis, and Review (Improving Government Regulations), published March 8, 1978 (43 FR 9582), the FAA has prepared a Regulatory Evaluation, calculating the resulting costs of the requirements on the private and governmental sectors. The Regulatory Evaluation also details the benefits and impacts of this final rule. A copy of the Regulatory Evaluation has been placed on file in the public docket and is available for inspection.

In regard to the requirements which will result through compliance with the Department of Transportation Minority Business Enterprise regulation and incorporation by reference of the amendment to 49 CFR Part 21, their inflationary impacts, if any, will be assessed by the Office of the Secretary in conjunction with the NPRMs to be published.

I. Effective Date of Record-Keeping and Reporting Requirements

As adopted by this amendment, the record-keeping and reporting requirements in §§ 152.407, 152.411(c) (1) and (2), 152.415, and 152.417(b) will become effective 30 days after notice has been published in the Federal Register that the requirements of those sections have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Adoption of Amendment

Accordingly, Part 152 of the Federal Aviation Regulations is amended, effective March 17, 1980, as follows:

1. By amending § 152.1 by revising the introductory paragraph, and by adding a new paragraph (e), to read as follows:

§ 152.1 Applicability.

This part applies to airport planning and development, and the development of standards by states for airport development at general aviation airports under the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*), including Section 30 as added by the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1730).

(e) Subpart E prescribes civil rights requirements applicable to projects under this part.

2. By amending § 152.7 by revising paragraph (a)(1)(i), and by revising the flush paragraph immediately following paragraph (a)(1)(iii), to read as follows:

§ 152.7 Grant of funds: general policies.

(a) * * *

(1) * * *

(i) Any grant agreement made under the Federal Airport Act (49 U.S.C. 1101 *et seq.*) or the Airport and Airway Development Act of 1970, including section 30 as added by the Airport and Airway Development Act Amendments of 1976;

Denial of a grant of funds, or other sanctions or remedies, for failure to comply with the assurances required under section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), and § 21.7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 21), is based upon a determination under § 21.13 and other applicable provisions of Part 21. Denial of a grant of funds and resort to other legally available remedies for failure to comply with the civil rights requirements of the Airport and Airway Development Act Amendments of 1976, and Subpart E of this part, is based upon a determination of the applicable provisions of this part and the grant agreement.

3. By adding a new Subpart E to read as follows:

Subpart E—Nondiscrimination in Airport Aid Program**§ 152.401 Applicability.**

(a) This subpart is applicable to all grantees and other covered organizations under this part, and

implements the requirements of section 30 of the Airport and Airway Development Act of 1970, which provides:

The Secretary shall take affirmative action to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds received from any grant made under this title. The Secretary shall promulgate such rules as he deems necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under Title VI of the Civil Rights Act of 1964. The provisions of this section shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964.

(b) Each grantee, covered organization, or covered suborganization under this part shall negotiate reformation of any contract, subcontract, lease, sublease, or other agreement to include any appropriate provision necessary to effect compliance with this subpart by July 17, 1980.

§ 152.403 Definitions.

As used in this subpart—

"AADA" means the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*).

"Affirmative action plan" means a set of specific and result-oriented procedures to which a sponsor, planning agency, state, or the aviation related activity on an airport commits itself to achieve equal employment opportunity.

"Airport development" means—(1) Any work involved in constructing, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and lighting of airport hazards, and including navigation aids used by aircraft landing at, or taking off from, a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 612 of the Federal Aviation Act of 1958, and security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport;

(2) Any acquisition of land or of any interest therein, or of any easement

through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards; and

(3) Any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport.

"Aviation related activity" means a commercial enterprise—(1) Which is operated on the airport pursuant to an agreement with the grantee or airport operator or to a derivative subagreement;

(2) Which employs persons on the airport; and

(3) Which—(i) Is related primarily to the aeronautical activities on the airport;

(ii) Provides goods or services to the public which is attracted to the airport by aeronautical activities;

(iii) Provides services or supplies to other aeronautical related or public service airport businesses or to the airport; or

(iv) Performs construction work on the airport.

"Aviation workforce" includes, with respect to grantees, each person employed by the grantee on an airport or, for an aviation purpose, off the airport.

"Covered organization" means a grantee, a subgrantee, or an aviation related activity.

"Covered suborganization" is a subgrantee or sub-aviation related activity, of a covered organization.

"Department" means the United States Department of Transportation;

"Grant" means Federal financial assistance in the form of funds provided to a sponsor, planning agency, or state under this part;

"Grantee" means the recipient of a grant.

"Minority" means a person who is—

(1) Black and not of Hispanic origin: 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 or Pacific Islander: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including, but not limited to China, Japan, Korea, the Philippine Islands, and Samoa; or

(4) American Indian or Alaskan Native: a person having origins in any of the original peoples of North America who maintains cultural identification

through tribal affiliation or community recognition.

"Planning agency" means any planning agency designated by the Secretary which is authorized by the laws of the State or States (including the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam) or political subdivisions concerned to engage in areawide planning for the area in which assistance under this part is to be used;

"Secretary" means the Secretary of Transportation or an authorized representative of the Secretary within the Department of Transportation;

"SMSA" means Standard Metropolitan Statistical Area.

"Sponsor" means any public agency that, either individually or jointly with one or more other public agencies, submits to the Administrator, in accordance with this part, an application for financial assistance, or that conducts a project for airport development or airport master planning, funded under this part;

"Underutilization" means having fewer minorities or women in a particular job group than would reasonably be expected from their availability in—

- (1) The SMSA; or
- (2) In the absence of a defined SMSA, in the counties contiguous to the employer's location, or the location where the work is to be performed, and in the areas from which persons may reasonably be expected to commute.

§ 152.405 Assurances.

The following assurances shall be included in each application for financial assistance under this part:

(a) *Assurance.* The grantee assures that it will undertake an affirmative action program, as required by 14 CFR Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E. The grantee assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The grantee assures that it will require that its covered organizations provide assurances to the grantee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(b) *Assurance.* The grantee agrees to comply with any affirmative action plan

or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any Federal, State, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. The grantee agrees that State or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. The grantee agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

§ 152.407 Affirmative action plan: general.

(a) Except as provided in paragraph (b) of this section, each of the following shall have an affirmative action plan that meets the requirements of § 152.409 and is kept on file for review by the FAA Office of Civil Rights:

(1) Each sponsor who employs 50 or more employees in its aviation workforce.

(2) Each planning Agency which employs 50 or more employees in its agency for aviation purposes.

(3) Each state political division, administering a grant under the AADA to develop standards for airport development at general aviation airports, which employs 50 or more employees in its aviation workforce.

(b) A grantee is in compliance with paragraph (a) of this section, if it is subject to, and keeps on file for review by the FAA Office of Civil Rights, one of the following:

(1) An affirmative action plan acceptable to another Federal agency.

(2) An affirmative action plan for a State or local agency that the covered organization certifies meets the standards in § 152.409.

(3) A conciliation agreement, consent decree, or court order which provides short and long-range goals for equal employment opportunity similar to those which would be established in an affirmative action plan meeting the standards in § 152.409.

(c) Each sponsor shall require each aviation related activity (other than construction contractors) which employs 50 or more employees on the airport to prepare, and keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in § 152.409, unless the activity is subject to one of the mechanisms described in

paragraphs (b) (1) through (3) of this section.

(d) Each sponsor shall require each aviation related activity described in paragraph (c) of this section to similarly require each of its covered suborganizations (other than construction contractors) which employs 50 or more employees on the airport to prepare, and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in § 152.409, unless the suborganization is subject to one of the mechanisms described in paragraphs (b) (1) through (3) of this section.

§ 152.409 Affirmative action plan standards.

(a) Each affirmative action plan required by this subpart shall be developed in accordance with the following:

(1) An analysis of the employer's aviation workforce which groups employees into the following job categories:

- (i) Officials and managers.
- (ii) Professionals.
- (iii) Technicians.
- (iv) Sales workers.
- (v) Office and clerical workers.
- (vi) Craft workers (skilled).
- (vii) Operatives (semi-skilled).
- (viii) Laborers (unskilled).
- (ix) Service workers.

(2) A comparison separately made of the percent of minorities and women in the employer's present aviation workforce (in each of the job categories listed in paragraph (a)(1) of this section) with the percent of minorities and women in each of those categories in the total workforce located in the SMSA, or, in the absence of an SMSA, in the counties contiguous to the employer's location or the location where the work is to be performed and in the areas from which persons may reasonably be expected to commute. This data on the total workforce of the applicable area will be supplied to grantees by the FAA. Grantees shall make this data available to the other organizations covered by this subpart. The comparison for minorities must be made only when minorities constitute at least 2 percent of the total workforce in the geographical area used for the comparison.

(3) A comparison, for the aviation workforce, of the total number of applicants and persons hired with the total number of minority and female applicants, and minorities and females hired, for the past year. Where this data is unavailable, the employer shall establish and maintain a system to provide the data, and shall make the

comparison 120 days after establishing the data system.

(4) Where the percentage of minorities and women in the employer's aviation workforce, in each job category, is less than the minority and female percentage in any job category in the workforce of the geographical area used, an analysis, based on the comparison required by paragraph (a)(3) of this section, determining whether any of the following exists:

(i) Insufficient flow of minority and female applicants.

(ii) Disparate rejection of minority and female applicants. The FAA generally considers disparate rejection to exist whenever a selection rate for any race, sex, or ethnic group is less than 80 percent of the rate for the race, sex, or ethnic group with the highest selection rate.

(b) Each affirmative action plan required by this part shall be implemented through an action-oriented program with goals and timetables designed to eliminate obstacles to equal opportunity for women and minorities in recruitment and hiring, which shall include, but not be limited to:

(1) Where disparate rejection of minority and female applicants is indicated by the analysis required by paragraph (a)(4) of this section, validation of those portions of the testing or selection procedures which cause the disparity in accordance with the "Uniform Guidelines on Employee Selection" (43 FR 38290; August 25, 1978), within 120 days of the analysis.

(2) Where testing or selection procedures cannot be validated, discontinuation of their use.

(3) Where an insufficient flow of minority and female applicants (less than the percentage available) is indicated by the analysis required by paragraph (a)(4) of this section, good faith efforts to increase the flow of minority and female applicants through the following steps, as appropriate:

(i) Development or reaffirmation of an equal opportunity policy and dissemination of that policy internally and externally.

(ii) Contact with minority and women's organizations, schools with predominant minority or female enrollments, and other recruitment sources for minorities and women.

(iii) Encouragement of State and local employment agencies, unions, and other recruiting sources to ensure that minorities and women have ample information on, and opportunity to apply for, vacancies and to participate in examinations.

(iv) Participation in special employment programs such as Co-

operative Education Programs with predominantly minority and women's colleges, "After School" or Work Study programs, and Summer Employment.

(v) Participation in "Job Fairs."

(vi) Participation of minority and female employees in Career Days, Youth Motivation Programs, and counseling and related activities in the community.

(vii) Encouragement of minority and female employees to refer applicants.

(viii) Motivation, training, and employment programs for minority and female hard-core unemployed.

§ 152.411 Affirmative action steps.

(a) Each grantee which is not described in § 152.407(a) and is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity, shall make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking the affirmative action steps in § 152.409(b)(3), as follows:

(1) If it has 15 or more employees in its aviation workforce or employed for aviation purposes, by taking the affirmative action steps in § 152.409(b)(3), as appropriate; or

(2) If it has less than 15 employees in its aviation workforce or employed for aviation purposes, by taking the affirmative action steps in § 152.409(b)(3) (i) and (ii), as appropriate.

(b) Except as provided in paragraph (c) of this section, each sponsor shall require each of its aviation related activities on its airport, that is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism which provides short and long-range goals for equal employment opportunity, to take affirmative action steps and cause them to similarly require affirmative action steps of their covered suborganizations, as follows:

(1) Each aviation related activity or covered suborganization with less than 50 but more than 14 employees, must take the affirmative action steps enumerated in § 152.409(b)(3), as appropriate.

(2) Each aviation related activity or covered suborganization with less than 15 employees, must take the affirmative action steps enumerated in § 152.409(b)(3) (i) and (ii), as appropriate.

(c) Each sponsor shall require each construction contractor, that has a contract of \$10,000 or more on its airport and that is not subject to an affirmative action plan, regulatory goals or timetables, or other mechanism which

provides short and long-range goals for equal employment opportunity, to take the following affirmative action steps:

(1) The contractor must establish and maintain a current list of minority and female recruitment sources; provide written notification to these recruitment sources and to community organizations when employment opportunities are available; and maintain a record of each organization's response.

(2) The contractor must maintain a current file of the names, addresses, and telephone numbers of each minority and female walk-in applicant and each referral from a union, a recruitment source, or community organization and the action taken with respect to each individual. Where an individual is sent to the union hiring hall for referral, but not referred back to the contractor, or, if referred, not employed by the contractor, this shall be documented. The documentation shall include an explanation of, and information on, any additional actions that the contractor may have taken.

(3) The contractor must disseminate its equal employment opportunity policy internally—

(i) By providing notice of the policy to unions and training programs;

(ii) By including it in policy manuals and collective bargaining agreements;

(iii) By publicizing it in the company newspaper, report, or other publication; and

(iv) By specific review of the policy with all management personnel and with all employees at least once a year.

(4) The contractor must disseminate the contractor's equal employment opportunity policy externally—

(i) By stating it in each employment advertisement in the news media, including news media with high minority and female readership; and

(ii) By providing written notification to, or participating in discussions with, other contractors and subcontractors with whom the contractor does business.

(5) The contractor must direct its recruitment efforts to minority and female organizations, to schools with minority and female students, and to organizations which recruit and train minorities and women, in the contractor's recruitment area.

(6) The contractor must encourage present minority and female employees to recruit other minorities and women.

(7) The contractor must, where possible, provide after school, summer, and vacation employment to minority and female youth.

(d) Each sponsor shall require each of its prime construction contractors on its airport, with a contract of \$10,000 or

more, to require each of the contractor's subcontractors on the airport to comply with the affirmative action steps in paragraph (c) of this section, with which it does not already comply, unless the subcontractor is subject to an affirmative action plan, regulatory goals or timetables, or other mechanism which provides short and long-range goals for equal employment opportunity, or the subcontract is less than \$10,000.

§ 152.413 Notice requirement.

Each grantee shall give adequate notice to employees and applicants for employment, through posters provided by the Secretary, that the FAA is committed to the requirements of section 30 of the AADA, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds authorized under this part.

§ 152.415 Records and reports.

(a) Each grantee shall keep on file for a period of three years or for the period during which the Federal financial assistance is made available, whichever is longer, reports (other than those transmitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart.

(b) Each sponsor shall require its covered organizations to keep on file, for the period set forth in paragraph (a) of this section, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and shall cause them to require their covered suborganizations to keep similar records as applicable.

(c) Each grantee, employing 15 or more person, shall annually submit to the FAA a compliance report on a form provided by the FAA and a statistical report on a Form EEO-1 of the Equal Employment Opportunity Commission (EEOC) or any superseding EEOC form. If a grantee already is submitting a Form EEO-1 to another agency, the grantee may submit a copy of that form to the FAA as its statistical report. The information provided shall include goals and timetables, if established in compliance with the requirements of § 152.409 or with the requirements of another Federal agency or a State or local agency.

(d) Each sponsor shall—

(1) Require each of its aviation-related activities (except construction contractors), employing 15 or more

persons, to annually submit to the sponsor the reports required by paragraph (c) of this section, on the same basis as stated in paragraph (c), and shall cause each aviation-related activity to require its covered suborganizations, with 15 or more employees, to annually submit the reports required by paragraph (c) of this section through the prime organization to the sponsor, for transmittal by the sponsor to the FAA.

(2) Annually collect from its aviation related activities employing less than 15 employees, and transmit to the FAA an aggregate employment report, that includes the employment of sponsors with less than 15 employees, on an EEO-1 or any superseding EEOC form.

(e) Each sponsor shall require each of its construction contractors on its airport, with a contract of \$10,000 or more, which is not subject to E.O. 11246 and the regulations of the Department of Labor (DOL), to submit to the sponsor, at the conclusion of the project, a compliance report on a form provided by the FAA and a statistical report on a DOL Form 257 or any superseding DOL form. For projects exceeding six months, the sponsor shall require a midway compliance report. The sponsor shall submit these reports to the FAA.

(f) Each sponsor shall cause each of its construction contractors on its airport to require each of the contractor's subcontractors, with a subcontract of \$10,000 or more, which are not subject to E.O. 11246 and the regulations of the DOL, to submit the reports required by paragraph (e) of this section to the prime contractor for submission to the sponsor. The sponsor shall transmit these reports to the FAA.

(g) Each organization required to prepare an affirmative action plan for the FAA under this subpart shall update it annually and as changed circumstances require. Each organization that has prepared a plan in compliance with the requirements of another Federal agency or a State or local agency, shall update it in accordance with the requirements of that agency.

§ 152.417 Monitoring employment.

(a) Each grantee shall allow the FAA Office of Civil Rights to monitor its equal employment opportunity compliance with this subpart through on-site reviews and desk audits. Reviews or audits will include the records submitted under § 152.415.

(b) As it deems necessary, the FAA Office of Civil Rights will conduct on-site or desk audits of covered aviation related activities on airports.

§ 152.419 Minority business.

Each person subject to this subpart is required to comply with the Minority Business Enterprise Regulations of the Department.

§ 152.421 Public accommodations, services, and benefits.

Requirements relating to the provision of public accommodations, services, and other benefits to beneficiaries under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and Part 21 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 21) implementing Title VI are made applicable, where appropriate, to nondiscrimination and affirmative action on the basis of sex or creed, and shall be complied with by each applicant for assistance and each grantee.

§ 152.423 Investigation and enforcement.

(a) *Complaints.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may personally, or through a representative, file a complaint with the Director of the Departmental Office of Civil Rights. A complaint must be in writing and filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Director.

(b) *Investigations and informal resolutions.* The Departmental Office of Civil Rights will make a prompt investigation whenever a complaint, compliance review, report, or any other information indicates a possible failure to comply with this subpart. The procedures in 49 CFR Part 21, augmented as appropriate by the investigative procedures of Part 13 of this chapter, will be followed, except that—

(1) Compliance with a regulation of the Department applicable to minority business enterprise will be investigated and enforced through the procedures contained in that regulation; and

(2) Except as provided in paragraph (c) of this section, allegations of noncompliance with regulations governing equal employment opportunity of another Federal agency or a State or local agency, will be referred, for investigation and enforcement, to the Federal agency or, in the discretion of the Departmental Office of Civil Rights, to the State or local agency.

(c) When the FAA (under section 30 of the AADA) and another Federal agency, a referral agency recognized by the Equal Employment Opportunity

Commission, or a court have concurrent jurisdiction over a matter—

(1) If the other agency or court makes a finding on the record that noncompliance or discrimination has occurred, the FAA will accept the finding, and determine what sanctions or remedies are appropriate under section 30 as a result of the finding, after permitting the party against whom the finding was made to be heard on the determination of the sanctions or remedies; or

(2) If it appears that delay, through referral to another agency, will result in the continued expenditure of Federal funds under this part without compliance with this subpart, the Secretary may—

- (i) Investigate the matter;
- (ii) Make a determination as to compliance with section 30; and
- (iii) Impose appropriate sanctions and remedies.

(d) Nothing in this section shall preclude the Director of the Departmental Office of Civil Rights from initiating an investigation when it appears that the investigation of the complaint may reveal a pattern or practice of discrimination or noncompliance with the requirements of this subpart in the employment practices of a grantee or other covered organization.

§ 152.425 Effect of subpart.

Nothing contained in this subpart diminishes or supersedes the obligations imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Executive Order 11246 (42 U.S.C. 2000e (note)), or any other Federal law or Executive Order relating to civil rights.

4. Compliance with §§ 152.407, 152.411(c) (1) and (2), 152.415, and 152.417(b) is not required until 30 days after a notice of approval of the requirements of those paragraphs by the Office of Management and Budget is published in the *Federal Register*.

Note.—The FAA has determined that this document involves a proposed regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT:".

(Sec. 30 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1730); § 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)))

Issued in Washington, D.C., on February 7, 1980.

Langhorne Bond,
Administrator.

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