

Chapter 6: SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 1: Compliance Procedures Which Apply to CDOT

If CDOT fails to comply with any requirement of this part, CDOT may be subject to formal enforcement action under 49 CFR Parts 26.103 or 105 or appropriate program sanctions by the concerned OA, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

As provided in statute, CDOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because CDOT has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Ref: 49 CFR 26.101

Section 2: Enforcement Actions under FHWA and FTA

Any person who believes that a recipient has failed to comply with its obligations may file a written complaint with the concerned OA's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in 49 CFR Part 26.109. Complaints under this part are limited to allegations of violation of the provisions of this part.

The concerned OA may review CDOT's compliance with this part at any time, including reviews of paperwork and on site reviews, as appropriate. The Office of Civil Rights may direct the OA to initiate a compliance review based on complaints received.

If it appears, from the investigation of a complaint or the results of a compliance review, that CDOT, as a recipient, is in noncompliance with this part, the appropriate DOT office promptly sends CDOT, return receipt requested, a written notice advising CDOT that there is reasonable cause to find CDOT in noncompliance. The notice states the reasons for this finding and directs CDOT to reply within 30 days concerning whether CDOT wishes to begin conciliation.

If CDOT requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of CDOT's request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes. If CDOT and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed, and CDOT is regarded as being in compliance. The conciliation agreement sets forth the measures CDOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, CDOT remains eligible for FHWA or FTA financial assistance. The concerned OA shall monitor CDOT's implementation of the conciliation agreement and ensure that its terms are complied with. If CDOT fails to carry out the terms of a conciliation agreement, CDOT is in noncompliance.

If CDOT does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

Ref: 49 CFR 26.103

Section 3: Enforcement Actions in FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them. The provisions of 49 CFR 26.103 (b) and this section apply to enforcement actions in FAA programs. Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Ref: 49 CFR 26.105

Section 4: Enforcement Actions for Participants in the DBE Program

If a firm that does not meet the eligibility criteria attempts to participate in a CDOT's DBE Program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria, USDOT may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

In a suspension or debarment proceeding, the concerned OA may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude USDOT from determining that the

purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

USDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31.

USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any program or otherwise violates applicable Federal statutes.

Ref: 49 CFR 26.107

Section 5: Confidentiality, Cooperation, and Intimidation or Retaliation

CDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Colorado Open Records Act allows CDOT to protect certain records from inspection or disclosure, including contractor records that are privileged or confidential information, etc. Notwithstanding any contrary provisions of state or local law, CDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

In responding to requests for information concerning any aspect of the DBE program, USDOT complies with provisions of the Federal Freedom of Information (5 U.S.C. 552) and Privacy Acts (5 U.S.C. 552a). USDOT may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, CDOT will not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, CDOT will transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR 26.85.

Notwithstanding the provisions above, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR Part 16 with respect to confidentiality of information in complaints.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with

respect to a contractor which uses DBE firms to meet goals, findings of non responsibility for future contracts and/or suspension and debarment).

If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

Ref: 49 CFR 26.109