



MaineDOT

Maine Department of Transportation

CONTRACT COMPLIANCE REVIEW PROCESS

**Revised: November 2011
(All prior publications obsolete)**



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

Dear User:

This updated manual is presented in an effort to help users better understand the Contract EEO/Nondiscrimination Compliance Review Process. The manual should provide a comprehensive outline of contract compliance review procedures.

As a result of the U.S. DOT order issued February 1, 1999: "Clarification of Federal Highway Administration (FHWA) and State Responsibilities under Executive Order 11246 and Department of Labor (DOL) Regulations in 41 CFR Chapter 60," the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has sole authority to determine compliance with Executive Order 11246, 41 CFR Chapter 60, and the minority and female participation goals established by the OFCCP.

However, note that the Maine Department of Transportation has adopted the OFCCP's requirements of 6.9% females and .5% minorities per craft per trade on federal-aid construction projects. We believe these goals represent the minimum standard for contractors. We anticipate all contractors and subcontractors will strive to meet and exceed the goals.

Also, the Department retains the authority and responsibility to ensure compliance with 23 USC Section 140 and Title VI of the Civil Rights Act of 1964, as amended, and related regulations, including 49 CFR Parts 21 and 23, and 23 CFR Parts 200, 230 and 633.

The MaineDOT Civil Rights Office is committed to equal opportunity in employment and will work cooperatively with contractors to ensure compliance with federal statutes, regulations and executive orders which require equality of opportunity in the highway construction industry.

Theresa Savoy, Director
MaineDOT Civil Rights Office

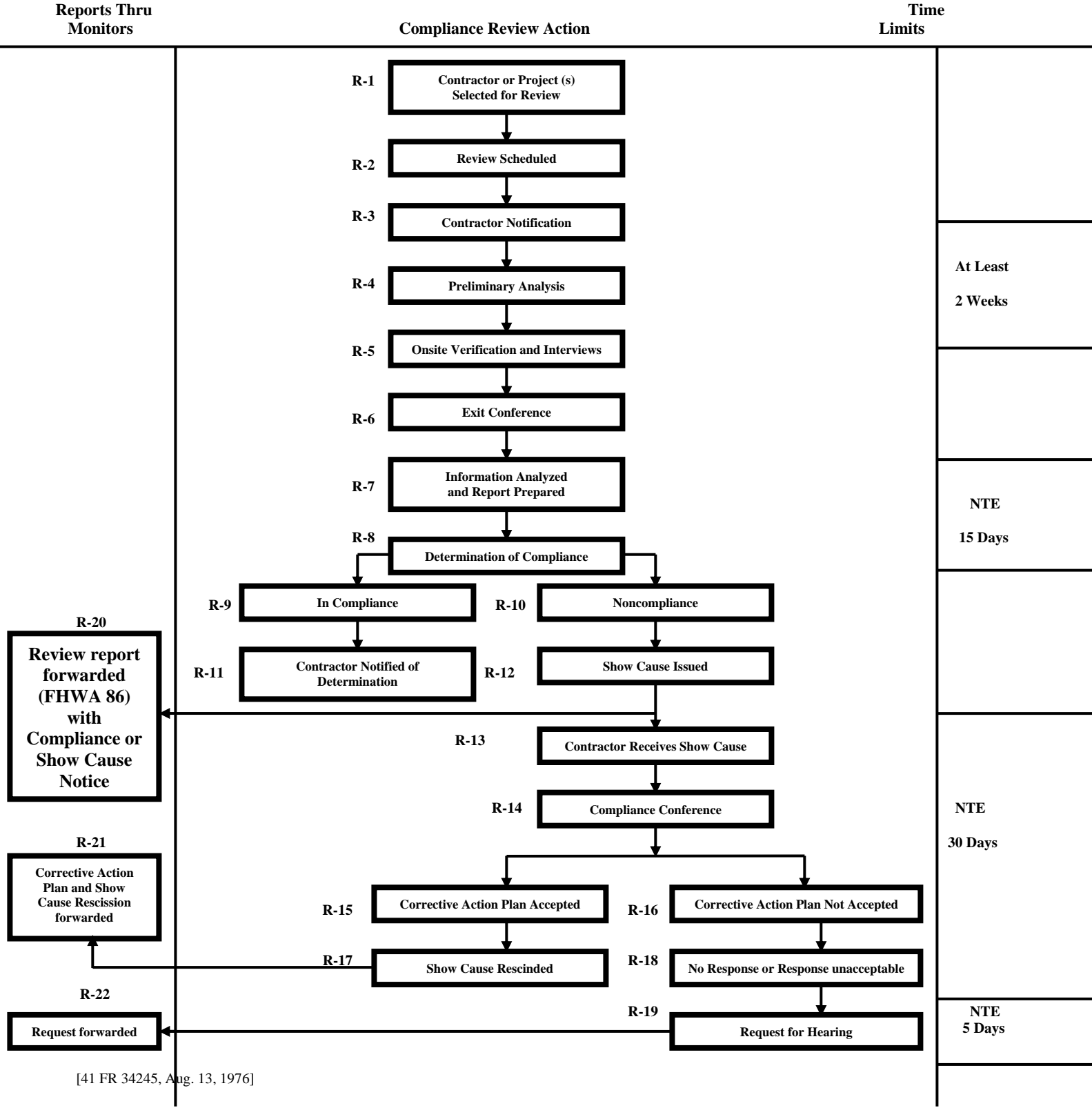
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Contract Compliance Review

1. All compliance reviews conducted by the Civil Rights Office (CRO) will follow procedures outlined in 23 CFR 230. CRO will recommend findings of compliance or non-compliance based upon 2. (See below) and will report findings to the Federal Highway Administration (FHWA) or other appropriate agencies as required by the federal funding source.
2. The Department and FHWA have the authority and the responsibility to ensure compliance with 23 USC Section 140 and Title VI of the Civil Rights Act of 1964, as amended, and related regulations, including 49 CFR Parts 21 and 23, and 23 CFR Parts 200, 230, and 633.
3. The Department is required to prepare and complete written reports of its findings in contract compliance reviews. These reports, and the evidence on which they are based, shall be available to the U.S. DOT modal agency with jurisdictional authority.
4. The standard Federal Equal Employment Opportunity Construction Contract Specifications are included in all federal and federally assisted construction contracts.
5. The MaineDOT specifications establish specific and minimum affirmative action obligations.
6. Federal financially assisted contractors/sub-contractors designated to undergo a Contract Compliance Review will be reviewed by CRO to determine the Contractor's efforts to achieve maximum results from its affirmative action obligations.
7. The following steps are those which all EEO/AA Construction Compliance Reviews will follow:

Contract Compliance Review Process Flow Chart



[41 FR 34245, Aug. 13, 1976]

Guide to Selecting Project(s) for Review

Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's work forces:

1. Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);
2. Working in areas which have significant minority and female labor forces within a reasonable recruitment area;
3. Working on projects that include special training provisions; and
4. Where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391's (23 CFR part 230, subpart A, appendix C) Review Reports and Hometown Plan Reports). In addition, the following considerations shall apply:
5. Reviews specifically requested by the Federal Highway Association shall receive priority scheduling;
6. Compliance Reviews in geographical areas covered by area-wide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in § 230.415.
7. Reviews shall be conducted prior to or during peak employment periods.
8. No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and
9. For compliance reviews based on an area work force (outside of area wide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:
 - i. Union geographical boundaries;
 - ii. The geographical area from which the contractor recruits employees, i.e. reasonable recruitment area;
 - iii. Standard Metropolitan Statistical Area (SMSA) or census tracts; and
 - iv. The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

Sample Contractor Notification

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Company Name
Address
City, State, Zip Code

Dear _____,

The Federal-Aid contract you entered into with the MaineDOT contains certain Civil Rights provisions, which require the contractor to implement a program of Equal Employment Opportunity (EEO). Federal regulations (23 CFR 230 Subpart D) further require that MaineDOT monitor contractor operations to ensure that the provisions are being executed.

In keeping with these requirements, the MaineDOT Civil Rights Office (CRO) will be conducting a compliance review of your Project Number project located in Project Location on Date, 20__ at ____ a.m./p.m.. The review shall be conducted on the basis of Federal and State law referenced in the contract specifications for Equal Employment Opportunity and On-the-Job Training.

The Civil Rights Office, with support from MaineDOT project personnel, will verify documentation submitted prior to review and will interview members of your workforce to evaluate your EEO/OJT performance on this project. We will also be discussing your efforts to incorporate Disadvantaged Businesses, and will make a physical tour of the project site.

Provide a meeting place, accessible under MaineDOT standard specification 639, at or near the project site on the above date.

Under 23 CFR Part 230, the following documentation is required by 4 p.m., _____, _____, 20___. Forward this information to:

Civil Rights Office
Maine Department of Transportation
#16 State House Station
Augusta, ME 04333-0016.

1. Current Form PR-1391 developed from the most recent payroll (form enclosed);
2. Copies of all current bargaining agreements;
3. Copies of purchase orders, subcontracts and public correspondence including newspaper advertisements containing the clause of being an “Equal Opportunity Employer”;
4. A list of recruitment sources available and utilized;
5. A statement of any actions (pending or taken) pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other federal, state or local agency regarding the contractor or any source of employees including the Maine Human Rights Commission within the last 5 years;
6. A list of all company wide promotions and/or raises made during the past six months, to include race, national origin, and sex of employee, previous job held, job promoted into, and corresponding wage rates;
7. Copies of three certified project payrolls as follows: for the first week of the project, the week of peak employment, and the most current payroll. Please denote for each person listed the job classification, race, national origin, and sex;
8. A list of Disadvantaged Businesses contacted as possible subcontractors, vendors, material suppliers, etc. and documented evidence of such correspondence;
9. A list of all subcontractors including Disadvantaged Businesses working on this project, include dollar amounts paid to date and total subcontract amount (do not include suppliers);
10. A blank job application and four (4) completed job applications received by the company;
11. A copy of the agenda or any printed materials or minutes of the last meeting with supervisors in which; a) the company’s EEO policy/program was discussed; b) sexual harassment training was provided;
12. A copy of the company’s EEO Policy, Affirmative Action Policy, Sexual Harassment Policy, and Complaint Policy and procedures;
13. A copy of the company’s Employee Handbook, if any;
14. Blank performance evaluation form used to evaluate general employees performance and managers performance evaluation. Include a sample of female and minority evaluations that have been conducted;

15. Provide total number of employees employed for the most current payroll completed for this project by the following:

Males: White, Hispanic, American Indian, Asian, Black.

Females: White, Hispanic, American Indian, Asian, Black.

16. Identify total number of employees on the project at start date by the above ethnic group references. In addition, complete the enclosed table regarding retention of women and minority employees.

17. Provide full copies of all subcontracts for this project **including the FHWA Form 1273**.

We appreciate your cooperation in this review. Please contact the CRO if you have any questions regarding this review.

Sincerely yours,

Theresa Savoy, Director
Civil Rights Office

TS/god

Enclosures: FHWA PR-1391

cc: FHWA

CHECK APPROPRIATE BLOCK ? CONTRACTOR ? SUBCONTRACTOR	NAME OF FIRM	FEDERAL AID PROJECT NUMBER	TYPE OF CONSTRUCTION ? HIGHWAY ? BRIDGE			
EEO OFFICER:	PERCENT COMPLETE	BEGINNING CONST DATE	\$ AMOUNT OF CONTRACT	ESTIMATED PEAK EMPLOYMENT		
				<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">MONTH & YEAR</td> <td style="width: 50%; text-align: center;"># OF EMPLOYEES</td> </tr> </table>	MONTH & YEAR	# OF EMPLOYEES
MONTH & YEAR	# OF EMPLOYEES					

EMPLOYMENT DATA

TABLE A

JOB CATEGORIES	PROJECT TOTAL EMPLOYEES	PROJECT TOTAL MINORITIES	BLACK <i>Not of Hispanic Origin</i>	HISPANIC	AMERICAN INDIAN OR ALASKAN NATIVE	ASIAN OR PACIFIC ISLANDER	WHITE <i>Not of Hispanic Origin</i>	ON THE JOB TRAINEES
Superintendent								
Operating Engineer								
Clerical								
Equipment Operator								
Mechanics								
Truck Drivers								
Ironworkers/Re-Rod								
Carpenters								
Const. Worker Bridge								
Const. Worker Highway								
Pipelayer								
Bridge-Maintenance Worker								
Laborer, Semi-Skilled								
Laborer, Unskilled								
Foreperson, Bridge								
Foreperson, Highways								
Welder								
Other:								

COMMENTS:

Prepared by & Title: _____	Date: _____	MaineDOT Representative: _____	Date: _____	Action: _____
---------------------------------------	--------------------	---------------------------------------	--------------------	----------------------

Retention of Female and Minority Group Employees

Contractor:

Project #:

Review Date:

# Permanent Employees on the Project Site			Total # of Employees on Construction Start Date			Total # of:									Total # of Hours Worked to Date		% of Hours on the Project Site Worked by Females	
						New Hires			Transfers			Recalls						
WM	M	FE	WM	M	FE	WM	M	FE	WM	M	FE	WM	M	FE	M	FE	6.9% of Total Hours	

Preliminary Analysis

Note: Based on the preliminary analysis, complete as much information as possible on the Compliance Exit Review prior to the onsite visit. Note any questions or comments to be raised onsite.

When analyzing preliminary material, the following general questions should be considered:

1.) Did the contractor provide all requested documentation? *(see complete list in Contractor Notification)*

YES

NO

2.) Does a comparison and analysis of information and documents verify accuracy and nondiscrimination in wages? *(see Items 6, 7, and 14)*

YES

NO

3.) Is there any evidence of discriminatory treatment in employment data (past or present legal claims, promotions, discharges, pay rate, etc.)? *(see Items 1, 4, 6, 7, 14, 15, and 16)*

YES

NO

4.) Is there adequate female and minority representation? *(6.9% female, 0.5% minority)*

YES

NO

5.) If not, are good faith efforts taken to recruit and hire female and minority workers?

YES

NO

When analyzing preliminary material, the following specific questions should be taken into consideration:

1.) Does the contractor maintain a list of recruitment sources utilized? *(see Item 3)*

YES

NO

2.) Are the recruitment sources likely to yield qualified female and minority group applicants? *(see Item 3)*

YES

NO

3.) Do purchase orders, subcontracts, job advertisements, and other public correspondence for this project include the “Equal Opportunity Employer” clause? *(see Item 3)*

YES

NO

4.) Did the contractor contact Disadvantaged Businesses to solicit bids on this project? Is the EOE clause included in all written communications? *If legitimacy of contact is questionable, verify. (see Item 8)*

YES

NO

5.) Are company job applications non-discriminatory? Do they avoid illegal questions or wording? Do they include the EEO clause? *(see Item 10)*

YES

NO

6.) Has the EEO policy/program been discussed with supervisors within the last six months? *(see Item 11)*

YES

NO

7.) Has sexual harassment training been provided to all supervisory personnel and employees within the last year? *(see Item 11)*

YES

NO

8.) Does the company EEO Policy contain the name and contact information of the company EEO Officer? Is it signed and updated at least annually by Company CEO? *(see Item 12)*

YES

NO

9.) Does the company have a Sexual Harassment Policy, Affirmative Action Policy, and Complaint Policy and procedures? *(see Item 12)*

YES

NO

10.) Does the company’s Employee Handbook contain the EOE policy/program, sexual harassment policy, affirmative action policy, and complaint policy and procedures ? *(see Item 13)*

YES

NO

Affirmative Action Plan Evaluation Form

Firm: _____ **Date:** _____ **PIN#** _____ **Reviewed by:** _____

AREAS OF EVALUATION	ADEQUATE	INADEQUATE
A. Includes a strong company policy statement of commitment to EEO		
B. Includes Equal Employment Opportunity Employer M/F Phraseology		
C. Cites applicable federal and state laws, regulations and executive orders (49 CFR Parts 21 and 23, 23 CFR Parts 200, 230, and 633, 23 USC Section 140, & Title VI of the Civil Rights Act of 1964, as amended)		
D. Lists all protected group members (including, but not necessarily limited to, race, color, religion, national origin, sex, sexual orientation, age, veteran status, or disability)		
E. Includes the statement that affirmative action is taken to overcome the effects of past discrimination		
F. Prohibits discrimination in any activity, program and/or employee process		
G. Equal opportunity in all employment practices (including, but not limited to, advertising, recruitment, hiring, placement, transfers, termination, training, upgrading, pay rates, fringe benefits, layoff, and demotion)		
H. Assures compliance with and details positive action steps taken to assure EEO in all applicable DOT Contract Provisions (EEO, EEO Officer, Dissemination of Policy, Recruitment, Personnel Actions, Training and Promotion, Unions, Selection of Subcontractors, and Records and Reports)		
I. Includes AA Plan/Program to recruit, hire, train, & promote qualified minority and female workers		
J. Sets specific, measurable, attainable hiring and promotion goals in each area of underutilization		
K. Includes accountability for action or inaction in the areas of EEO by management personnel		
L. Includes firms grievance and complaint procedures to an impartial body without fear of reprisal		
M. Names and contact information of firm's qualified Equal Employment Opportunity Officer		
N. Lists women & minority media/advertising and recruitment referral sources to be utilized by firm		
O. Addresses retention of records/documentation to substantiate all EEO and affirmative action efforts		
P. Includes firm's EEO, sexual harassment, and family leave policy		
Q. Strong personal commitment and support of EEO by firm's executive, signed and dated annually		
R. Affirmative Action/EEO Policy Statement issued and updated annually		
S. Includes signature page of supervisory and managerial Personnel EEO Program Awareness		

On-Site Inspection Form

CONTRACT NUMBER AND LOCATION	DATE
NAME OF RESIDENT ENGINEER	NAME OF PRIME CONTRACTOR

	CHECK BELOW	
	YES	NO
Are all mandatory job postings conspicuously displayed? (See enclosed list)		
Are EEO Posters placed in areas accessible to employees and applicants for employment at the project site?		
Is the company's EEO policy posted in near proximity to the EEO poster?		
Are all employee facilities at the project site desegregated?		
Are supervisory personnel aware of the company's equal opportunity commitments?		
Are other employees aware of or have they seen the company's EEO Policy?		
Are minorities/women integrated into the contractor's and/or subcontractor's project work force?		
Is the employee referral source system being implemented?		
Are there any personnel in an OJT or apprenticeship training program?		
Are minority/women employees in the training program?		
Are disadvantaged subcontractors being utilized on the project?		
Are subcontractors with observed minority/women representation among their employees being utilized?		

DETERMINATION OF UNION MEMBERSHIP STATUS OF UNION EMPLOYEES ON THE SITE (e.g. whether they have permits, membership cards, or books, and in what category are they classified [e.g. A, B, or C])	
---	--

COMMENTS

INSPECTOR INFORMATION				
LAST NAME	FIRST NAME	MI	JOB TITLE	
SIGNATURE				DATE (YYMMDD)

Required Job Site Poster Checklist

State of Maine Required Posters

- 1. Minimum Wage
- 2. Whistleblower's Protection Act
- 3. Workers' Compensation (WCB-90)
- 4. Occupational Safety & Health Regulations
- 5. Child Labor Laws
- 6. Regulations of Employment
- 7. Sexual Harassment Poster
- 8. Maine Equal Pay Law
- 9. Maine Employment Security Act
- 10. Domestic Violence in the Workplace Poster (Optional)
- State Wage Determination (on State Funded Projects Only)

Federal Government Required Posters

- 11. Equal Employment Opportunity is the Law (OFCCP 1420)
- 12. Fair Labor Standards Act – Federal Minimum Wage (WHD-1088)
- 13. Employee Rights on Government Contracts (WHD-1313)
- 14. Family and Medical Leave Act (WH-1420)
- 15. Notice to Workers with Disabilities Paid at Special Minimum Wages (WH-1284)
- 16. Employee Polygraph Protection Act (WH1462)
- 17. Uniformed Services Employment and Reemployment Rights Act (USERRA)
- 18. Notice to Employees - Davis Bacon (WH-1321)
- 19. NOTICE – Federal Aid Projects (FHWA-1022)
- 20. Job Safety and Health - It's the Law (OSHA 3165) Replaces OSHA-2203
- 21. Wage Rate Information on Federal-Aid Highway Project (FHWA-1495)
- Federal Wage Decision & Additional Project Specific Rates
- Contractor's EEO Policy Statement with EEO Officer's name & contact information

ARRA Projects Only

- 22. Know Your Rights Under The Recovery Act!
- 23. Whistleblowers Know Your Rights (ARRA)

Checked by: _____ Date: _____

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EEO Contractor Compliance Review Questionnaire

Company Name: _____ Date: _____

Representative(s): _____

1. What is the nature of this project? Pin Number?
What was the start date of this project?
What is the project completion date?

Percent complete: _____ %
2. What is the dollar amount of this project? _____

I. Equal Employment Opportunity:

3. Does the company have a written Equal Employment Opportunity (EEO) statement?

Is it signed and updated at least annually?

II. EEO Officer:

4. Who is the company EEO Officer? Do they have a job description?
5. Does the EEO Officer keep, or have access to, records for each company employee?

III. Dissemination of Policy:

6. How are employees made aware of the Company's various policies/ programs?

How often?

By whom?

Are records kept of meetings or training?
Is the EEO Policy included?

7. How are supervisory and personnel office employees made aware of the Company's various policies?

How often? Are they informed within 30 days of employment and at least every 6 months?

By whom?

Are meetings or discussions documented?

8. Are supervisory and personnel office employees held responsible in any way for respective projects or crews if discriminating acts are uncovered?

If yes, how?

9. How does the company inform Managers of their responsibilities in carrying out the company's various policies and procedures?

10. Where on this job are the various required posters posted?

Are they readily accessible to all employees and potential employees?

Is your company EEO policy included?

11. Does the company have an internal publication/newsletter? _____ Handbook? _____

How often is it published?

Who gets it?

Does it contain EEO/AA information/updates?

12. Is the Equal Opportunity Employer (EOE) statement included in all advertising, applications, purchase orders, leases, etc?

IV. Recruitment:

13. Are job applications taken at this job site?

If not, why not?

14. What specific efforts has the company taken to recruit female and minority applicants?

15. What factors does the company consider when interviewing and selecting candidates?

16. Does the company notify recruitment sources seeking their assistance at the start of all major contracts?

17. What minority recruitment sources have you used for this project?

What was the outcome?

18. Who typically contacts referral/recruitment sources?

19. Do you inform recruitment sources of the company EEO/non-discrimination policy?
20. Do recruitment letters outline hiring opportunities including job descriptions, screening procedures, and tests that will be used in the selection process?
21. Do you keep documentation of contact with minority recruitment sources?
22. Does the company use the phrase: “Women and Minorities encouraged to apply” on job advertisements? If not, why not?

If yes, what is the typical response to these advertisements?

23. Do you have an applicant pool of women and minority applicants?

If yes, how do you utilize this pool?

24. Does the company do any pre/post employment testing? If so, describe.

V. Personnel Actions:

25. How does the company ensure that a harassment-free work environment, one free of intimidation and coercion, exists for all workers?
26. Do you periodically inspect the project site for discriminatory treatment?
27. Do you periodically evaluate the spread of wages within each classification to determine any evidence of discriminatory wage practices?
28. Do you periodically review personnel actions for evidence of discrimination?
29. Does the company currently have or ever had a charge of discrimination which was found to have probable cause? If yes, explain type, governmental agency, investigation, recommendations to resolution, and final outcome.
30. Describe the company complaint procedure (reporting, processing, and resolution).
31. What are the consequences of sexual harassment?
32. How are employee's made aware of these consequences?
33. What is the company's hiring/disciplinary/termination procedure?

34. Who within the company are authorized to do such actions?

35. Who is the project Superintendent?

Is the Superintendent an equal opportunity employer? Does this person treat workers, subcontractors fairly?

36. Does the company do any exit or end of employment interview with workers to determine if during employment their treatment, work environment, and job duties were not discriminatory or to ascertain why they are leaving the company? If not, why not?

If so, what is the typical result?

Do you keep records of exit or end of employment interviews?

VI. Training and Promotion:

37. On new hires, how is starting pay determined?

38. How are promotions or merit raises determined?

39. How are employees made aware of promotional opportunities in the company?

40. How are employees made aware of training opportunities and entrance requirements?

41. Are women and minority employees encouraged to seek promotional and training opportunities? Are they given assistance to prepare for advancement?

42. Are Superintendents, Foremen, and Managers evaluated on their job performances?

What factors are reviewed?

How often?

By whom?

Does the company keep records of the appraisal?

43. Are all workers evaluated on their job performance?

What factors are reviewed?

How often?

By whom?

Does the company keep records of the appraisal?

- 44. Are there On-the-job trainees (OJTs) on this project?
- 45. Does the company develop OJT opportunities beyond those required in your contract?

VII. Unions:

- 46. Does the company rely in whole or part upon unions as a source of employees?
- 47. What training programs have you developed, in cooperation with the unions, aimed toward qualifying more minority group members and women for membership in the unions?
- 48. Is there an EEO clause incorporated in union agreements?
- 49. Have you obtained information regarding referral practices and policies of each union? If not, why not?

VIII. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

- 52. Does the company notify all potential subcontractors and suppliers of his/her EEO obligations under this contract? If so, how? If no, why not?
- 53. How do you ensure that subcontractors and suppliers are in compliance with EEO/AA Regulations?

54. Does the company provide training for subcontractors and/or suppliers on EEO/AA?
55. What process is used to solicit D/WBE quotes? Is the process documented?
56. Identify the D/WBE firms solicited for this project.
57. What DBE Subcontractors are being used on this project?
58. Describe how the D/WBE firms are carrying out terms and conditions of their work.

IX. Records and Reports:

59. Does the company document the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees?
60. Does the company document the progress and efforts being made in securing services of DBE subcontractors and subcontractors with meaningful minority and female representation among their employees?

X. General Questions:

61. What does the company see as the legitimacy of affirmative action and non-discrimination policies?

62. What trades are represented on this project?

_____ Iron Workers

_____ Mechanics

_____ Carpenters

_____ Electricians

_____ Equipment Operators

_____ Painters

_____ Cement Masons

_____ Truck Drivers

_____ Cement Finishers

63. What is the employment forecast for the balance of this project? What are the projected new hires?

64. How does the company verify workers are legally able to work in this country? Is the Immigration and Naturalization I-9 form used?

Has U.S.I. and N. Service ever conducted a site inspection of the firm?

65. Has the Office of Federal Contract Compliance Programs of the U.S. Department of Labor ever done a comprehensive compliance review of the company? If so, what was the outcome?

66. Does the company have a child rearing or adoptive leave policy? _____

If yes, is it paid or unpaid? For how long?

Employee Site Interview Questionnaire

*****Note: Neither the EEO Officer nor any supervisors are to be present during employee interviews unless requested by the employee being interviewed. A minimum of One Minority, One Non-Minority, One Female, and One Supervisor should be interviewed.***

On behalf of the Maine Department of Transportation Civil Rights Office, I'd like to ask you a few questions about your work experience. Is it okay that we conduct this interview without your employer, or would you prefer to have someone else in the room? All answers are confidential and will not be disclosed to your employer. This is completely voluntary; you may choose not to participate, stop at any time, or skip any questions you do not wish to answer. The interview should take less than fifteen minutes to complete. Do you have any questions before we begin?

Date: _____

Company Name: _____ Project Number: _____

Employee Name: _____

Mailing Address: _____

Job Classification: _____ Wage Rate: \$ _____

Who is your supervisor? _____

Benefits (i.e. health, dental, vacation, retirement fund, etc): _____

Describe what you do on a day-to-day basis: _____

Which of the following describes your work status? Journeyed: _____ OJT _____

(Trainees Only):

Did you receive an outline of your training program? _____

How were you solicited for this training position? _____

What new skills are you learning on this job? _____

When did you start work on this project? _____, 20_____

How did you know/hear about the job? _____

How were you notified to report for work? _____

Were you recalled from layoff? _____

If yes, what project were you previously assigned to? _____

Have you worked for this contractor on other jobs? _____

Were you unemployed/laid off for more than 3 months during the last construction season? _____

If yes, explain. _____

Who is your employer's Equal Opportunity Employment (EEO) and Affirmative Action Officer?

Are you aware if the company has a non-discrimination policy? _____

Briefly explain what it entails. _____

Where can you find a copy of your company EEO policy? _____

Have you discussed the policy with your employer? _____ Received a copy? _____

When? (i.e. time of hire, once a year, safety meetings, etc.) _____

How often? _____

Have you received training on Sexual Harassment? _____

When? _____ Who instructed you? _____

How often does training occur? _____ Do all employees attend? _____

Have you ever received a pay raise from your employer? _____

From \$_____ to \$_____ How often _____

Have you ever had a performance evaluation? _____

If yes, how often? _____ Were you treated fairly? _____

Have you ever witnessed anything of a discriminatory or harassing nature, or anything that made you or others feel uncomfortable or unwelcome, from other employees or supervisors on the job site? _____

If yes, explain _____

If yes, was any corrective action taken? _____

Are you aware that you have a right to file a complaint if you feel you have been discriminated against? _____

Overall, do you feel that you are treated fairly without regard to your sex, race, age, sexual orientation, or national origin? _____

Explain _____

Is there anything else you would like to add? _____

Thank you very much. We appreciate your time.

ADDITIONAL COMMENTS: _____

Compliance Exit Review

Project Number: _____ Location: _____

Contractor: _____ Date: _____

Contractor Representative(s): _____ Reviewer(s): _____

Equal Employment Opportunity

	Adequate	Inadequate
Does the EEO statement adopt verbatim the language used in Required Contract Provisions (FHWA-1273) <i>(with the inclusion of sexual orientation as a protected class)</i> ?		
Does the EEO statement include the name and contact information of the EEO Officer?		
Is the EEO statement signed and updated at least annually?		
Does the company have a Sexual Harassment, Affirmative Action, & Family Leave Policy?		

EEO Officer

	Adequate	Inadequate
Does the company have an appointed EEO Officer?		
Does the EEO Officer have adequate authority to implement the company EEO Policy?		

Dissemination of Policy:

	Adequate	Inadequate
Is the EEO policy and other required notices and posters placed in an area readily accessible to employees, applicants for employment, and potential employees?		
Is the EEO policy discussed during periodic meetings of supervisory and personnel office employees before the start of work and then not less often than once every six months?		
Are supervisory or personnel office employees given a thorough indoctrination by the EEO officer within 30 days of beginning work and then not less often than once every 6 months?		
Are personnel who are engaged in direct recruitment for the project instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees?		
Is the EEO policy posted in areas readily accessible to employees, applicants for employment and potential employees?		
Is the company EEO policy and the procedures to implement such policy brought to the attention of all employees at least annually?		
Is EEO/AA information included in internal publications/newsletters?		
Is the Equal Opportunity Employer statement in all advertising, purchase orders, etc.?		

Compliance Exit Review Cont'd

Recruitment:

	Adequate	Inadequate
Is the notation: "Equal Opportunity Employer" included in all advertisements for employment?		
Does the company use Affirmative Action when hiring employees?		
Are recruitment sources utilized that are likely to yield qualified minority group applicants?		
Are present employees encouraged to refer minority group applicants for employment?		
Does the contractor have an applicant pool of women and minority applicants?		

Personnel Actions:

	Adequate	Inadequate
Are project sites periodically inspected to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel?		
Are the spread of wages within each classification evaluated for evidence of discrimination?		
Are personnel actions periodically reviewed in depth for evidence of discrimination?		
Are all complaints of alleged discrimination thoroughly investigated?		
Where possible, are at least two or more women assigned to each construction project?		

Training and Promotion:

	Adequate	Inadequate
Does the contractor assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment?		
Does the contractor make full use of training programs?		
Does the contractor advise employees and applicants for employment of available training programs and entrance requirements for each?		
Are reviews conducted at least annually of the training and promotion potential of minority group and women employees?		
Are eligible women & minority employees encouraged to apply for training and promotion?		

Unions:

	Adequate	Inadequate
Does the contractor develop, in cooperation with the unions, training programs aimed toward qualifying minority group members and women for membership in the unions?		
Is an EEO clause incorporated into each union agreement?		
Has the contractor obtained or attempted to obtain information as to the referral practices and policies of the labor union?		

Compliance Exit Review Cont'd

Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

	Adequate	Inadequate
Are all potential subcontractors and suppliers notified of his/her EEO obligations?		
Did the contractor solicit or attempt to solicit bids from D/WBES?		
Are procedures established to ensure subcontractors' compliance with EEO obligations?		

Records and Reports:

Records kept by the contractor must document:	Adequate	Inadequate
The number of minority, non-minority, and women employed in each work classification.		
Progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for women and minorities?		
The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees (including all communication with minority and women recruitment/referral services)?		
The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees?		
The periodic monitoring of the work environment (any reports, diaries, analyses, etc.)		

Additional Comments:

Guide to Determining Compliance

IN COMPLIANCE: NO FURTHER ACTION REQUIRED BY CONTRACTOR

- Contractor has provided all documentation required by 23 CFR 230
- Contractor has provided EEO in all hiring and personnel actions. Equal Opportunity requirements have been implemented, or there is evidence that every good faith effort has been made toward achieving this end.

IN COMPLIANCE: VOLUNTARY CORRECTIVE ACTION PLAN REQUIRED

- Procedural deficiencies can be corrected within 30 days if the opportunity to do so exists. The Contractor must sign and agree to abide by the terms of a Voluntary Corrective Action Plan (VCAP), which may be executed at the review or within five working days of the review date.
- Lack of documentation, which can be provided within the 30-day time frame of the VCAP.
- A VCAP may be negotiated at the exit conference, but the acceptance of a VCAP does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing.
- During the term of a VCAP, a contractor is considered to be in compliance. If the VCAP extends beyond the normal 30-day period, the contractor must submit monthly reports until the corrective action is taken. The reports should contain any changes that have occurred and indicate whether anticipated hiring opportunities will take place. If the follow-up review on a VCAP (conducted within a week after the anticipated compliance date) reveals that the contractor has either (1) not corrected the deficiencies, or (2) has not demonstrated a good faith effort to correct the deficiencies, the reviewer must declare the contractor in NON-COMPLIANCE and issue a Show Cause Notice.

IN NON-COMPLIANCE: REQUIRES A SHOW CAUSE NOTICE

- The contractor has not met all of the contract requirements under the Federal-aid contract and/or has not provided EEO in their hiring and other personnel actions.
- The contractor has not met their commitment to correct deficiencies identified in a VCAP and cannot demonstrate a good faith effort to do so.
- When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted.

Sample Voluntary Corrective Action Plan

PROJECT: _____ LOCATION: _____

A. The following deficiencies were found during the review of project _____ located at _____ on _____ 20____.

- 1.
- 2.
- 3.
- 4.
- 5.

B. The Contractor agrees to correct these as follows:

- 1.
- 2.
- 3.
- 4.
- 5.

C. These deficiencies will be corrected by: _____
Date

D. A formal follow-up review will be conducted on _____ (within one week of date entered above) to determine if corrective measures have been taken. If deficiencies have not been corrected, a 30-day Show Cause Notice will be issued. The contractor will be provided a copy of the report prepared as a result of the follow-up review.

Signature of the Contractor

Signature of Authorized MaineDOT Personnel

Date _____

Date _____

Sample Letter of Compliance

(Date)

Contractor's Name
Address
City, State, Zip Code

DEAR CONTRACTOR:

After the onsite visit of your Project Number project located in Project Location conducted on Date, the MaineDOT Civil Rights Office (CRO) has completed our review of your company's compliance with the Civil Rights Special Provisions pursuant to regulations 23 CFR 230 and 40 CFR 26.

It is our determination that Company Name has accomplished the objectives of the Civil Rights Special Provisions and has provided Equal Employment Opportunity as required. Therefore, the Civil Rights Office will report to the Federal Highway Administration (FHWA) that your company has been found in-compliance.

Thank you for your cooperation in this review process. We look forward to a continuing cooperative relationship with Company Name. Please contact the CRO if you have any questions.

Sincerely yours,

Theresa Savoy, Director
theresa.savoy@maine.gov
(207) 624-3042

TS: god
cc: FHWA

Sample Show Cause Notification

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Contractor's Name
Address
City, State, Zip Code

DEAR CONTRACTOR:

As a result of the contract compliance review of your Project Number project located in Project Location conducted on Date by the MaineDOT Civil Rights Office (CRO), it is our determination that your company is not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

List of Deficiencies:

- 1.
- 2.
- 3.

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semi-skilled and skilled categories of employees.

The U.S. Department of Transportation regulations 23 CFR 230, Subparts A and D are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form PR-1273, and Clause 11). 23 CFR 230.409 requires that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. Your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of female and minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of noncompliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at ____Address____ at ____Time____ on ____Date____ for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under 23 CFR 230, Subparts A and D, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as authorized by 23 CFR 23, Subparts A and D, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to:

Theresa Savoy, Director
Civil Rights Office
Maine Department of Transportation
#16 State House Station
Augusta, ME 04333
(207) 624-3349

Sincerely yours,

Theresa Savoy, Director

TS: god
cc: FHWA

Sample Employee Interview Follow-up Cover Letter

Date

Employee Name
Address
Town, State Zip code

Dear _____ (Company name) Employee:

On _____ (date) you were interviewed by the MaineDOT Civil Rights Office at the jobsite in _____ (town, state). We appreciate your willingness to speak with us about the nature of your work, as your opinion is very important to us.

Enclosed are some follow-up questions that relate to your previous interview. This information is very useful in assessing the contract compliance of your employer _____. The questionnaire should only take a few minutes to complete, and should be returned in the stamped, self-addressed return envelope we have provided. Any responses or other information you provide is confidential and will not be disclosed to your employer. Please also note that participation is completely voluntary.

Please direct any questions or concerns to:

Theresa Savoy, Director
Civil Rights Office
#16 State House Station
Augusta, ME 04333
(207) 624-3042
theresa.savoy@maine.gov

Thank you in advance for your participation.

Sincerely yours,

Theresa Savoy, Director

TS: god
Enclosure (Employee Interview Follow-up Questionnaire)

Employee Interview Follow-up Questionnaire

Date: _____

Name: _____

1. Did any follow-up discussion occur between you and your employer after our interview? Who did you speak with? Who initiated the discussion, you or your employer?
2. Since the interview, have you learned who your company EEO Officer is? (If so, who?)
3. Since the interview, have you learned anything more about your company's non-discrimination policy? (If so, please explain).
4. Do you have any questions or concerns (i.e. things that you did not understand and would like additional clarification) as a result of our previous interview?
5. Is there anything else you would like to add that you did not have the opportunity to say, or did not feel comfortable saying, during our interview?

Equal Opportunity Compliance Review Report

23 CFR Part 230 explicitly states that the Compliance Review Report should contain:

- The complete name and address of the contractor
- Project(s) identification
- Basis for the review (i.e. area work force, project work force, target area work force, etc.)
- Identification of Federal or Federal-aid contract(s)
- Date of review
- Employment data by job craft, classification, or occupation by race and sex
- Identification of local unions involved with contractor, when applicable
- Determination of compliance status
- Copy of Show Cause Notice or Compliance Notification sent to contractor
- Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist
- Concurrences at appropriate levels
- Whether the contractor has an adequate representation of minorities and females in each construction trade in relation to their availability in the relevant labor pool
- A review of the good faith efforts exerted by the contractor if under representation exists
- Documentary evidence to support the determination of a contractor's or subcontractor's compliance status.
- Findings, conclusions, and recommendations that are explicitly stated and, when necessary, supported by documentary evidence.

The authority for making the compliance determination should have no reference to Executive Order 11246 (Reference 23 USC 140 and 23 CFR 230).

Sample Compliance Review Report

STATE: Maine

TYPE OF REVIEW: Project Specific

PROJECT: Location, Project Number
Total Dollar Value
Project Description

DATES OF REVIEW: Initial Letter
On-Site Review
Show Cause Notice/Notification of Compliance
Compliance Conference (if noncompliance)

CONTRACTOR INFORMATION: Prime Contractor
Address
Town, State, Zip code

CONTRACTOR REPRESENTATIVES: – EEO Officer, Project Manager
Other Representatives Names – Title

DETERMINATION OF COMPLIANCE: Compliance or Noncompliance

COMPLIANCE REVIEWERS: Name, Job Title –MaineDOT Civil Rights Office
Phone and email contact information

PROJECT PRODUCTION SCHEDULE: Start date:
Peak Employment:
Estimated Completion:

UNION AFFILIATIONS:

PRELIMINARY ANALYSIS:

EQUAL EMPLOYMENT OPPORTUNITY:

EEO OFFICER:

DISSEMINATION OF POLICY:

RECRUITMENT:

PERSONNEL ACTIONS:

TRAINING AND PROMOTIONS:

UNIONS:

SUBCONTRACTORS, PROCUREMENT OF MATERIALS, AND LEASING OF EQUIPMENT:

RECORDS AND REPORTS:

NONSEGREGATED FACILITIES:

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS:

Sample Corrective Action Plan

CONCILIATION AGREEMENT

VOLUNTARY CORRECTIVE ACTION PLAN (VCAP)

BY AND BETWEEN

MAINE DEPARTMENT OF TRANSPORTATION

AND

on

_____, **20**_____

CONTRACT No. _____

PART I: GENERAL PROVISIONS

This Agreement is between the above noted parties, the Maine Department of Transportation (MaineDOT) and Company Name.

While this agreement may not constitute an admission by Company Name of any violation of Title 23 CFR 230, Subpart D, it does represent a congruent position that Company Name's EEO requirements have not been fully executed.

Subject to the demonstrated performance by Company Name of all commitments contained herein and in the contract specifications, at the subsequent follow-up review, all identified problem areas shall be deemed resolved. However, Company Name is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance, which may require modifications, and/or that Company Name has not carried out the agreed upon commitments.

If at any time in the future, the MaineDOT believes that Company Name has violated any portion of this Agreement, Company Name shall be promptly notified of that fact, including a statement of the facts and circumstances relied upon in forming that belief, in writing. In addition, the notification shall provide Company Name with fifteen (15) days to respond in writing except where the MaineDOT alleges that such delay would result in irreparable injury. It is understood that enforcement proceedings for violation of this agreement may be initiated at any time after the fifteen (15) day period has elapsed (or sooner if irreparable injury is alleged) without issuance of a Show Cause Notice.

It is recognized that where the MaineDOT believes that the contractor has breached this Agreement, evidence regarding the entire scope of Company Name's alleged noncompliance from which the conciliation agreement resulted, in addition to evidence regarding Company Name's alleged violations of the conciliation agreement, may be introduced at the enforcement proceedings.

It is further recognized that liability for violation of this Agreement may subject Company Name to sanctions as set forth in State and Federal rules, regulations, and law. It is also understood that this Agreement covers current and future Federal-aid highway projects.

PART II: SPECIFIC PROVISIONS:

The following deficiencies were found:

List all deficiencies

The contractor agrees to correct these as follows:

Contractor must list each action they will take along with a timetable for completion for each action item to correct the problems identified. The contractor must also list the documentation it will provide to MaineDOT to demonstrate they are taking the necessary corrective actions.

Company Name will maintain the levels of minority and female utilization in all other crafts, or demonstrate good faith efforts to do so.

This Agreement shall remain in full force and effect until Company Name has demonstrated performance of commitments or as long as the MaineDOT deems necessary.

At a minimum _____ must participate in Civil Rights trainings/conferences as announced by the MaineDOT through its Civil Rights Office. Submit a narrative report(s) monthly _____ / quarterly _____ report(s) denoting each corrective step/results of each action taken to bring _____ into compliance. Include supporting evidence. These reports will commence 45 days subsequent to the effective date of this agreement and shall continue as long as the Maine Department of Transportation deems necessary. Forward reports to Theresa Savoy at Maine Department of Transportation, Civil Rights Office, State House Station #16, Augusta, ME 04333-0016 or by Fax at (207) 624-3021.

PART III: SIGNATURES

This Agreement is hereby executed by and between the Maine Department of Transportation and Company Name, subject to approval by the Federal Highway Association.

Theresa Savoy, Director
Maine Department of Transportation

Date

Company Representative
Company Name

Job Title

Date

Sample Show Cause Rescission

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Contractor's Name
Address
City, State, Zip Code

DEAR _____:

On _____ Date _____, you received a 30-day Show Cause Notice from the MaineDOT Civil Rights Office (CRO) for failing to implement your contract requirements pertaining to equal employment opportunity.

Your corrective action plan, discussed and submitted at the compliance conference held on _____ Date _____, has been reviewed and determined to be acceptable. Implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered to be in compliance. If it should later be determined that your corrective action plan is not being implemented as agreed, this rescission will not prevent a subsequent finding of noncompliance and formal sanction actions will occur.

In view of the above, this letter is to inform you that the 30-day Show Cause Notice of _____ Date _____ is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of your Corrective Action Plan, formal sanction proceedings will be implemented immediately.

The Federal Highway Administration and OFCCP will be notified of this final finding.

Thank you for your cooperation in this review process. The CRO looks forward to a continuing cooperative relationship with _____ Company Name _____.

Sincerely yours,

Theresa Savoy, Director
Civil Rights Office

TS: god
cc: FHWA

Sample Request for Hearing

Date

Civil Rights Specialist, FHWA
Edmund Muskie Building, Room 614
40 Western Ave.
Augusta, Maine 04330

Dear:

On _____ Date _____ an Equal Employment Compliance Review was conducted on Project _____ Number _____ located in _____ Location _____. As a result of this review, _____ Company Name _____ was found to be in noncompliance with required contractual provisions related to equal opportunity employment. Although a show cause notice was issued and a conciliation conference held with the contractor, these efforts to attempt conciliation have been unsuccessful.

Accordingly, I am recommending that the Maine Department of Transportation Civil Rights Office obtain approval for a formal hearing. _____ Company Name _____ has been notified of this action. Please contact the Civil Rights Office with questions regarding this recommendation.

To facilitate your decision regarding this recommendation, I have enclosed full reports of findings and (as indicated in 23 CFR Subpart 230) the following items:

- (i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;
- (ii) Copies of any contractor or subcontractor certifications;
- (iii) Copy of show cause notice;
- (iv) Copies of corrective action plans; and
- (v) Copies of all pertinent Manpower Utilization reports

Sincerely yours,

Theresa Savoy, Director
Civil Rights Office

TS: god

cc: _____ Name _____, _____ Company Name _____ EEO Officer

APPENDIX “A”

Title 23 USC - Highways - Chapter 1 Sec. 140. Non-discrimination

TITLE 23 - UNITED STATES CODE
HIGHWAYS
CHAPTER 1 - FEDERAL AID HIGHWAYS

- Sec.
- 101. Definitions and declaration of policy.
 - 102. Program efficiencies.
 - 103. Federal aid systems.
 - 104. Apportionment.
 - 105. Programs.
 - 106. Plans, specifications and estimates.
 - 107. Acquisitions of rights-of-way.
 - 108. Advance acquisition of rights-of-way.
 - 109. Standards.
 - 110. Project agreements.
 - 111. Agreements relating to use of and access to rights-of-way Interstate System.
 - 112. Letting of contracts.
 - 113. Prevailing rate of wage.
 - 114. Construction.
 - 115. Advance construction.
 - 116. Maintenance.
 - 117. Certification acceptance.
 - 118. Availability of funds.
 - 119. Interstate maintenance program.
 - 120. Federal share payable.
 - 121. Payment to States for construction.
 - 122. Payments to States for bond and other debt instrument financing.
 - 123. Relocation of utility facilities.
 - 124. Advances to States.
 - 125. Emergency relief.
 - 126. Diversion.
 - 127. Vehicle weight limitations-Interstate system.
 - 128. Public hearings.
 - 129. Toll roads, bridges, tunnels and ferries.
 - 130. Railway-highway crossings.
 - 131. Control of outdoor advertising.
 - 132. Payments on Federal aid projects undertaken by a Federal agency.
 - 133. Surface transportation program.
 - 134. Metropolitan planning.
 - 135. Statewide planning.
 - 136. Control of junkyards.
 - 137. Fringe and corridor parking facilities.
 - 138. Preservation of parklands.
 - 139. Additions to Interstate system.
 - 140. Non-discrimination.**
 - 141. Enforcement of requirements.
 - 142. Public transportation.

143. Economic growth center development highways.
144. Highway bridge replacement and rehabilitation program.
145. Federal-State relationship.
146. Carpool and vanpool projects.
147. Priority primary routes.
148. Development of a national scenic and recreational highway.
149. Congestion mitigation and air quality improvement program.
150. Allocation of urban system funds.
151. National bridge inspection program.
152. Hazard elimination program.
153. Use of safety belts and motorcycle helmets.
154. [Removed by Pub. L. 104-59]
155. Access highways to public recreation areas on certain lakes.
156. Income from airspace rights-of-way.
157. Minimum allocation.
158. National minimum drinking age.
159. Revocation or suspension of drivers' licenses of individuals convicted of drug offenses.
160. Reimbursement for segments of the Interstate system constructed without Federal assistance.
161. Operation of motor vehicles by intoxicated minors.

Sec. 140. Non-discrimination

(a) Prior to approving any programs for projects as provided for in subsection (a) of section 105 of this title, the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter that employment in connection with proposed projects will be provided without regard to race, color, creed, national origin, or sex. He shall require that each State shall include in the advertised specifications, notification of the specific equal employment opportunity responsibilities of the successful bidder. In approving programs for projects on any of the Federal-aid systems, the Secretary shall, where he considers it necessary to assure equal employment opportunity, require certification by any State desiring to avail itself of the benefits of this chapter that there are in existence and available on a regional, statewide, or local basis, apprenticeship, skill improvement or other upgrading programs, registered with the Department of Labor or the appropriate State agency, if any, which provide equal opportunity for training and employment without regard to race, color, creed, national origin, or sex. The Secretary shall periodically obtain from the Secretary of Labor and the respective State highway departments information which will enable him to judge compliance with the requirements of this section and the Secretary of Labor shall render to the Secretary such assistance and information as he shall deem necessary to carry out the equal employment opportunity program required hereunder.

(b) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or non-profit), or any other organization or person, is authorized to develop, conduct, and administer highway construction training, including skill improvement programs. Whenever apportionments are made under section 104(b) of this title, the Secretary shall deduct such sums as he may deem necessary, not to exceed \$2,500,000 for the transition quarter ending September 30, 1976, and not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. Such sums so deducted shall remain available until expended. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary. Notwithstanding any other provision of law, not to exceed ½ of 1% of funds apportioned to a State for the surface transportation program under section 104(b) and the bridge program under section 144 may be available to carry out this subsection upon request of the State highway department to the Secretary.

(c) The Secretary, in cooperation with any other department or agency of the Government, State agency, authority, association, institution, Indian tribal government, corporation (profit or non-profit), or any other organization or person, is authorized to develop, conduct, and administer training programs and assistance that minority businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. Whenever apportionments are made under subsection 104(a) of this title the Secretary shall deduct such sums as he may deem necessary, not to exceed \$10,000,000 per fiscal year, for the administration of this subsection. The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts and agreements made under the authority herein granted to the Secretary notwithstanding the provisions of section 302(e) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(e)).

(d) Indian Employment and Contracting - Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(I)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

APPENDIX “B”

23 CFR Part 633 - Required Contract Provisions

(P.S. & E.'s) and shall be consistent with part VI if the MUTCD.

(3) The scope of the TCP should be determined during planning and design phase of a project.

(4) Provisions may be made to permit contractors to develop their own TCP's and use them if the highway agency and FHWA find that these plans are as good as or better than those provided in the P.S. & E.

(5)(i) Two-lane, two-way operation on one roadway of a normally divided highway (TLTWO) shall be used only after careful consideration of other available methods of traffic control. Where the TLTWO is used, the TCP shall include provisions for the separation of opposing traffic except:

(A) Where the TLTWO is located on an urban type street or arterial where operating speeds are low:

(B) Where drivers entering the TLTWO can see the transition back to normal one-way operation on each roadway; or

(C) Where FHWA approves nonuse of separation devices based on unusual circumstances.

(ii) Center line striping, raised pavement markers, and complementary signing, either alone or in combination, are not considered acceptable for separation purposes.

(b) *Responsible person.* The highway agency shall designate a qualified person at the project level who will have the primary responsibility and sufficient authority for assuring that the TCP and other safety aspects of the contract are effectively administered. While the project or resident engineer may have this responsibility, on large complex projects another person should be assigned at the project level to handle traffic control on a full-time basis.

(c) *Pay items.* The P.S. & E. should include unit pay items for providing, installing, moving, replacing, maintaining, and cleaning traffic control devices required by the TCP. Suitable force account procedures may be utilized for traffic control items. Lump-sum method of payment should be used only to cover very small projects, projects of short duration, contingency, and general items. Payment for traffic control items as incidental to other items of work should be discouraged.

(d) *Training.* All persons responsible for the development, design, implementation, and inspection of traffic control shall be adequately trained.

(e) *Process review and evaluation.* (1) A review team consisting of appropriate highway agency personnel shall annually review randomly selected projects throughout its jurisdiction for the purpose of assessing the effectiveness of its procedures. The agency may elect to include an FHWA representative as a member of the team. The results of this review are to be forwarded to the FHWA Division Administrator for his review and approval of the highway agency's annual traffic safety efforts.

(2) Construction zone accidents and accident data shall be analyzed and used to continually correct efficiencies which are found to exist on individual projects, and to improve the content of future traffic control plans.

[43 FR 47140, Oct. 12, 1978, as amended at 47 FR 21780, May 20, 1982]

PART 633—REQUIRED CONTRACT PROVISIONS

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

Sec.

- 633.101 Purpose.
- 633.102 Applicability.
- 633.103 Regulatory authority.
- 633.104 Availability.

Subpart B—Federal-Aid Contracts (Appalachian Contracts)

- 633.201 Purpose.
- 633.202 Definitions.
- 633.203 Applicability of existing laws, regulations, and directives.
- 633.204 Fiscal allocation and obligations.
- 633.205 Prefinancing.

- 633.206 Project agreements.
- 633.207 Construction labor and materials.
- 633.208 Maintenance.
- 633.209 Notices to prospective Federal-aid construction contractors.
- 633.210 Termination of contract.
- 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

APPENDICES TO SUBPART B

APPENDIX A TO SUBPART B—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE

APPENDIX B TO SUBPART B—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS

APPENDIX C TO SUBPART B—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

APPENDIX D TO SUBPART B—FEDERAL-AID PROPOSAL NOTICES

Subpart C—Direct Federal Construction Contracts

- 633.301 Purpose.
- 633.302 Applicability.
- APPENDIX A TO SUBPART C—CONTINUATION OF STANDARD FORM 19—A LABOR STANDARDS PROVISIONS (DOT-FHWA 3-74)

Subpart A—Federal-Aid Construction Contracts (Other Than Appalachian Contracts)

AUTHORITY: 23 U.S.C. 114 and 315; 49 CFR 1.48.

SOURCE: 52 FR 36920, Oct. 2, 1987, unless otherwise noted.

§ 633.101 Purpose.

To prescribe for Federal-aid highway proposals and construction contracts the method for inclusion of required contract provisions of existing regulations which cover employment, non-segregated facilities, record of materials and supplies, subletting or assigning the contract, safety, false statements concerning highway projects, termination of a contract, and implementation of the Clean Air Act and the Federal Water Pollution Control Act, and other provisions as shall from time-to time be required by law and regulation as conditions of Federal assistance.

§ 633.102 Applicability.

(a) The required contract provisions and the required proposal notices apply to all Federal-aid construction contracts other than Appalachian construction contracts.

(b) Form FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," contains required contract provisions and required proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The required contract provisions of Form FHWA-1273 shall be physically incorporated in each Federal-aid highway construction contract other than Appalachian construction contracts (see § 633.104 for availability of form).

(c) For contracts authorized under certification acceptance procedures, an alternate format for inclusion of required contract provisions may be used pursuant to 23 CFR part 640.

(d) The required contract provisions contained in Form FHWA-1273 shall apply to all work performed on the contract by the contractor's own organization and to all work performed on the contract by piecework, station work, or by subcontract.

(e) The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA-1273 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 the requirements contained in the provisions of Form FHWA-1273.

(f) The State highway agency (SHA) shall include the notices concerning certification of non-segregated facilities and implementation of the Clean Air Act and Federal Water Pollution Control Act, pursuant to 40 CFR part 15, in all bidding proposals for Federal-aid highway construction projects. As the notices are reproduced in Form FHWA-1273, the SHA may include Form FHWA-1273 in its entirety to meet this requirement.

§ 633.103 Regulatory authority.

All required contract provisions contained in Form FHWA-1273 are requirements of regulations promulgated by the FHWA or other Federal agencies. The authority for each provision will be cited in the text of Form FHWA-1273.

§ 633.104 Availability.

(a) Form FHWA-1273 will be maintained by the FHWA and as regulatory revisions occur, the form will be updated.

(b) Current copies of Form FHWA-1273, Required Contract Provisions, will be made available to the SHAs by the FHWA.

SUBPART B—Federal-Aid Contracts (Appalachian Contracts)

AUTHORITY: 40 U.S.C. App. 201, 402; 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 35146, Sept. 30, 1974, unless otherwise noted.

§ 633.201 Purpose.

The purpose of the regulations in this subpart is to establish policies and outline procedures for administering projects and funds for the Appalachian Development Highway System and Appalachian local access roads.

§ 633.202 Definitions.

(a) The word *Commission* means the Appalachian Regional Commission (ARC) established by the Appalachian Regional Development Act of 1965, as amended (Act).

(b) The term *division administrator* means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

§ 633.203 Applicability of existing laws, regulations, and directives.

The provisions of title 23 U.S.C., that are applicable to the construction and maintenance of

Federal-aid primary and secondary highways, and which the Secretary of Transportation determines are not inconsistent with the Act, shall apply, respectively, to the development highway system and the local access roads. In addition, the Regulations for the administration of Federal-aid for Highways (title 23, Code of Federal Regulations) and directives implementing applicable provisions of title 23 U.S.C., where not inconsistent with the Act, shall be applicable to such projects.

§ 633.204 Fiscal allocation and obligations.

(a) Federal assistance to any project under the Act shall be as determined by the Commission, but in no event shall such Federal assistance exceed 70 per centum of the cost of such a project.

(b) The division administrator's authorization to proceed with the proposed work shall establish obligation of Federal funds with regard to a particular project.

[39 FR 35156, Sept. 30, 1974, as amended at 40 FR 49084, Oct. 21, 1975; 41 FR 8769, Mar. 1, 1976]

§ 633.205 Pre-financing.

(a) Under the provisions of subsection 201(h) of the Act, projects located on the Appalachian Development Highway System including preliminary engineering, right-of-way, and/or construction may be programmed and advanced with interim State financing.

(b) Program approvals, plans, specifications, and estimates (PS&E) approval, authorizations to proceed, concurrence in award of contracts, and all other notifications to the State of advancement of a project shall include the statement, "There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission."

§ 633.206 Project agreements.

(a) Project agreements executed for projects under the Appalachian program shall contain the following paragraphs:

(1) "For projects constructed under section 201 of the Appalachian Regional Development Act of 1965, as amended, the State highway department agrees to comply with all applicable provisions of said Act, regulations issued there under, and policies and procedures promulgated by the Appalachian Regional Commission, and the Federal Highway Administration. Inasmuch as a primary objective of the Appalachian Regional Development Act of 1965 is to provide employment, the State highway department further agrees that in addition to the other applicable provisions of title 49, Code of Federal Regulations, part 21, § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof, shall be applicable to all employment practices in connection with this project, and to the State's employment practices with respect to those employees connected with the Appalachian Highway Program."

(2) "For projects constructed on a section of an Appalachian development route not already on the Federal-aid Primary System, the State highway department agrees to add the section to the Federal-aid Primary System prior to, or upon completion of, construction accomplished with Appalachian funds."

(b) For pre-financed projects, the following additional provision shall be incorporated into the project agreement: "Project for Construction on the Appalachian Development Highway System in Advance of the Appropriation of Funds. This project, to be constructed pursuant to subsection 201(h) of the Appalachian Regional Development Act Amendments of 1967, will be constructed in accordance with all procedures and requirements and standards applicable to projects on the Appalachian Development Highway System financed with the aid of Appalachian funds. No obligation of Appalachian funds is created by this agreement, its purpose and intent being to provide that, upon application by the State highway department, and approval thereof by the Federal Highway Administration, any Appalachian development highway funds made available to the State by the Appalachian Regional Commission 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."

§ 633.207 Construction labor and materials.

(a) Construction and materials shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the

specific projects.

(b) The provisions of 23 U.S.C. 324 and of title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d-2000d-4) and the implementing regulations in 49 CFR part 21, including the provisions of § 21.5(c)(1), and paragraphs (2)(iii) and (2)(v) of appendix C thereof relative to employment practices, shall be applicable to all types of contracts listed in appendix A.

(c) The "Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts," Form PR-1316 (appendix B), shall be included in all construction contracts awarded under the Act.

(d) The required contract provisions set forth in Form PR-1317 (appendix C) shall be included in all types of contracts described in appendix A, other than construction contracts.

(e) In the design and construction of highways and roads under the Act, the State may give special preference to the use of mineral resource materials native to the Appalachian region. The provision of § 635.409 of this chapter shall not apply to projects under the Act to the extent such provisions are inconsistent with sections 201(d) and (e) of the Act.

§ 633.208 Maintenance.

Maintenance of all highway projects constructed under the Act, whether on the development system or local access roads, shall be the responsibility of the State. The State may arrange for maintenance of such roads or portions thereof, by agreement with a local governmental unit.

§ 633.209 Notices to prospective Federal-aid construction contractors.

The State highway department shall include the notices set forth in appendix D in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts.

§ 633.210 Termination of contract.

All contracts exceeding \$2,500 shall contain suitable provisions for termination by the State, including the manner in which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

§ 633.211 Implementation of the Clean Air Act and the Federal Water Pollution Control Act.

Pursuant to regulations of the Environmental Protection Agency (40 CFR part 15) implementing requirements with respect to the Clean Air Act and the Federal Water Pollution Control Act are included in appendix B to this part.

[40 FR 49084, Oct. 21, 1975]

APPENDIX TO SUBPART B

Appendix A—TYPES OF CONTRACTS TO WHICH THE CIVIL RIGHTS ACT OF 1964 IS APPLICABLE

Section 324 of title 23 U.S.C., the Civil Rights Act of 1964, and the implementing regulations of the Department of Transportation (49 CFR part 21), including the provisions of paragraphs (2)(iii) and (2)(v) of appendix C thereof relative to employment practices, are applicable to the following types of contracts awarded by State highway departments, contractors, and first tier subcontractors, including those who supply materials and lease equipment:

1. Construction.
2. Planning.
3. Research.

4. Highway Safety.
5. Engineering.
6. Property Management.
7. Fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way including, but not limited to:
 - a. Advertising contracts.
 - b. Agreements for economic studies.
 - c. Contracts for surveys and plats.
 - d. Contracts for abstracts of title certificates and title insurance.
 - e. Contracts for appraisal services and expert witness fees.
 - f. Contracts to negotiate for the acquisition of right-of-way.
 - g. Contracts for disposal of improvements and property management services.
 - h. Contracts for employment of fee attorneys for right-of-way procurement, or preparation and trial of condemnation cases.
 - i. Contracts for escrow and closing services.

[40 FR 49084, Oct. 21, 1975]

APPENDIX B TO SUBPART B OF PART 633—REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONSTRUCTION CONTRACTS

- I. Application.
- II. Employment Preference.
- III. Equal Opportunity: Employment Practices.
- IV. Equal Opportunity: Selection of subcontractors, Procurement of Materials, and Leasing of Equipment.
- V. Non-segregated Facilities.
- VI. Payment of Predetermined Minimum Wages.
- VII. Statements and Payrolls.
- VIII. Record of Materials, Supplies and Labor.
- IX. Subletting or Assigning the Contract.
- X. Safety: Accident Prevention.
- XI. False Statements Concerning Highway Projects.
- XII. Implementation of Clean Air Act and Federal Water Pollution Control Act.

I. Application.

1. These contract provisions shall apply to all work performed on the contract by the contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided in sections II, III, and IV hereof, the contractor shall insert in each of his subcontracts all of the stipulations contained in these Required Contract Provisions and also a clause requiring his subcontractors to include these Required Contract Provisions in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of these provisions in any further subcontracts that may in turn be made. The Required Contract Provisions shall in no instance be incorporated by reference.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be grounds for termination of the contract.

4. A breach of the following clauses may also be grounds for debarment as provided in 29 CFR 5.6(b): Section 1, paragraph 2. Section VI, paragraphs 1, 2, 3, 5 and 8a. Section VII, paragraphs 1, 5a, 5b and 5d.

II. Employment preference.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as onsite work, shall give preference to qualified persons who regularly reside in the labor area as designated by the United States Department of Labor wherein the contract work is situated, or the sub-region, 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 laborers, mechanics and other employees he anticipates will be 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 one 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 the positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of section II-1 through II-4 in every subcontract for work which is, or reasonably may be, done as on-site work.

III. *Equal opportunity: employment practices.*

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 of 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 department 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 department advising the said labor union or workers' representative of the contractor's commitments under this section III 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 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 the said 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 this section III 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 Department 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 Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IV. *Equal opportunity selection of subcontractors, procurement of materials, and leasing of equipment.*

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 provisions of 23 U.S.C. 324 and 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, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipments. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices.

3. *Solicitations for subcontracts including procurement 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 potential subcontractor 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, sex, 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 State highway department or the Federal Highway 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 State highway department, or the Federal Highway 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 State highway department shall impose such contract sanctions as it or the Federal Highway 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. *Incorporation of provisions.* The contractor will 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 State highway department 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 supplier, as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States. V. *Non-segregated facilities.* (Applicable to Federal-aid construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.) By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, or material supplier, as appropriate, certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term *segregated facilities* means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, 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, creed, color, or national origin, because of habit, local custom, or otherwise. He agrees that (except where he has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods), he will obtain identical certifications from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

VI. *Payment of predetermined minimum wages.*

1. *General.* All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage

determination decision of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of section VI, paragraph 3b, hereof. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

2. *Classifications*—a. The State highway department contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State highway department contracting officer to the Secretary of Labor. b. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the State highway department contracting officer shall be referred to the Secretary for final determination.

3. *Payment of fringe benefits*—a. The State highway department contracting officer shall require, 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 wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefits, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination. b. If the contractor does not make payments to a trustee or other third person, he may consider as part of the wage of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is part of this contract: *Provided, however,* 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. *Payment of excess wages.* While the wage rates shown are the minimum rates required by the contract to be paid during its life, this is not a representation that labor can be obtained at these rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

5. *Apprentices and trainees (Programs of Department of Labor).* a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his 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. The allowable ratio of apprentices to journeymen in any craft shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in 29 CFR 5.2(c)(2) or is not registered or otherwise employed as stated above, shall be

paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the State highway department or to a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

b. Trainees, except as provided in 29 CFR 5.15, 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 U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the State highway department or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor 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. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

6. *Apprentices and trainees (Programs of Department of Transportation).* Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal opportunity in connection with Federal-aid highway construction programs are not subject to the requirements of section VI, paragraph 5 above. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

7. *Withholding for unpaid wages.* The State highway department contracting officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers, mechanics, (including apprentices and trainees) watchmen, or guards employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer, mechanic, (including apprentices and trainees) watchman or guard employed or working on the site, all or part of the wages required by the contract, the State highway department 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.

8. *Overtime requirements.* a. 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 and trainees described in paragraphs 5 and 6 above) shall require or permit any laborer, mechanic, watchman or guard in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty 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 basic rate of

pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.

b. In the event of any violation of paragraph 8a, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard employed in violation of paragraph 8a, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph 8a.

c. The State highway department contracting officer may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in paragraph 8b.

VII. *Statements and payrolls.*

1. *Compliance with Copeland Regulations (29 CFR part 3).* The contractor shall comply with the Copeland Regulations (29 CFR part 3) of the Secretary of Labor which are herein incorporated by reference.

2. *Weekly statement.* Each contractor or subcontractor shall furnish each week a statement to the State highway department resident engineer with respect to the wages paid each of its employees, including apprentices and trainees described in section VI, paragraphs 5 and 6, and watchmen and guards on work covered by the Copeland Regulations during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on U.S. Department of Labor Form WH-348, or the same certification appearing on the reverse of Optional U.S. Department of Labor Form WH-347, or on any form with identical wording.

3. *Final labor summary.* The contractor and each subcontractor shall furnish, upon the completion of the contract, a summary of all employment, indicating for the completed project the total hours worked and the total amount earned. This data shall be submitted to the State highway department resident engineer on Form PR-47 together with the data required in section VIII, hereof, relative to materials and supplies.

4. *Final certificate.* Upon completion of the contract, the contractor shall submit to the State highway department contracting officer, for transmission to the Federal Highway Administration with the voucher for final payment for any work performed under the contract, a certificate concerning wages and classifications for laborers, mechanics, watchmen and guards employed on the project, in the following form:

* * * * *

The undersigned, contractor on

(Project No.)

hereby certifies that all laborers, mechanics, apprentices, trainees, watchmen and guards employed by him or by any subcontractor performing work under the contract on the project have been paid wages at rates not less than those required by the contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the contract or training program provisions applicable to the wage rate paid.

Signature and title _____

* * * * *

5. *Payrolls and payroll records*—a. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers, mechanics, apprentices, trainees, watchmen 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 correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked,

deductions made and actual wages paid. Whenever the Secretary of Labor, pursuant to section VI, paragraph 3.b., 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 I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

c. The payrolls shall contain the following information:

1. The employee's full name, address and social security number and a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in section II, paragraph 1.a. (The employee's full name and social security number need only appear on the first payroll on which his name appears. The employee's address need only be shown on the first submitted payroll on which the employee's name appears, unless a change of address necessitates a submittal to reflect the new address.)

2. The employee's classification.

3. Entries indicating the employee's basic hourly wage rate and, where applicable, the overtime hourly wage rate. The payroll should indicate separately the amounts of employee and employer contributions to fringe benefits funds and/or programs. Any fringe benefits paid to the employee in cash must be indicated. There is no prescribed or mandatory form for showing the above information on payrolls.

4. The employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).

5. The itemized deductions made and

6. The net wages paid.

d. The contractor will submit weekly a copy of all payrolls to the State highway department resident engineer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of a weekly statement which is required under this contract by section VII, paragraph 2, and the Copeland Regulations of the Secretary of Labor (29 CFR part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor pursuant to section VI, paragraph 3b, shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the State highway department, the Federal Highway Administration and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

e. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor shall make all necessary

arrangements for them to be cashed and shall give information regarding such arrangements.

f. No fee of any kind shall be asked or accepted by the contractor or any of his agents from any person as a condition of employment on the project.

g. No laborers shall be charged for any tools used in performing their respective duties except for reasonably avoidable loss or damage thereto.

h. Every employee on the work covered by this contract shall be permitted to lodge, board and trade where and with whom he elects and neither the contractor nor his agents, nor his employees shall, directly or indirectly, require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

i. No charge shall be made for any transportation furnished by the contractor, or his agents, to any person employed on the work.

j. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

VIII. *Record of materials, supplies and labor.*

1. The contractor shall 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 PR-47 and in the units shown. Upon completion of the contract, this record, together with the final labor summary required in section VII, paragraph 3, hereof, shall be transmitted to the State highway department resident engineer for the project on Form PR-47 in accordance with instructions attached thereto, which will be furnished for this purpose upon request. The quantities for the listed items shall be reported separately for roadway and for structures over 20 feet long as measured along the centerline of the roadway.

2. The contractor shall become familiar with the list of specific materials and supplies contained in Form PR-47 prior to the commencement of work under this contract. Any additional materials information required will be solicited through revisions of Form PR-47 with attendant explanations.

3. Where subcontracts are involved the contractor shall submit either a single report covering work both by himself and all his subcontractors, or he may submit separate reports for himself and for each of his subcontractors.

IX. *Subletting or assigning the contract.*

1. The contractor shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any items designated by the State as *Specialty Items* may be performed by subcontract and the amount of any such *Specialty Items* so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the contractor with his own organization.

a. *His own organization* shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators.

b. *Specialty items* shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. In addition to the 50 percent requirements set forth in paragraph 1 above, the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations (regardless of who performs the work), and (b) such other of his own organizational capability and responsibility (supervision,

management, and engineering services) as the State highway department contracting officer determines is necessary to assure the performance of the contract.

3. The contract amount upon which the 50 percent requirement set forth in paragraph 1 is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

4. Any items that have been selected as *Specialty Items* for the contract are listed as such in the Special Provisions, bid schedule, or elsewhere in the contract documents.

5. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the State highway department contracting officer, or his authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the contractor that the labor standards provisions set forth in this contract shall apply to labor performed on all work encompassed by the request.

X. Safety: Accident prevention.

In the performance of this contract, the contractor shall comply with all applicable Federal, State and local laws governing safety, health and sanitation. The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility, or as the State highway department contracting officer may determine, 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.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (title 29, Code of Federal Regulations, part 1926, formerly part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

XI. 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 in one or more places where it is readily available to all personnel concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON
FEDERAL-AID HIGHWAY PROJECTS

Title 18 U.S.C., section 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 costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of 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 a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Road Act approved July 1, 1916 (39 Stat. 355), as amended and supplemented;

“Shall be fined not more than \$10,000 or imprisoned not more than five years, or both.”

XII. Implementation of Clean Air Act and Federal Water Pollution Control Act (applicable to contracts and subcontracts which exceed \$100,000).

1. The contractor stipulates that any facility to 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 part 15), is listed not on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR part 15.20.

2. The contractor agrees to comply 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 there under.

3. The contractor shall promptly notify the State highway department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included the requirements of subparagraphs 1 through 4 of this paragraph XII in every subcontract which exceeds \$100,000, and further agrees to take such action as Government may direct as a means of enforcing such requirements. [40 FR 49084, Oct. 21, 1975]

APPENDIX C TO SUBPART B OF PART 633—ADDITIONAL REQUIRED CONTRACT PROVISIONS, APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM AND LOCAL ACCESS ROADS CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS

EQUAL OPPORTUNITY: EMPLOYMENT PRACTICES AND SELECTION OF SUBCONTRACTORS, SUPPLIERS OF MATERIALS, AND LESSORS OF EQUIPMENT

During the performance of this contract, the contractor agrees as follows:

1. Compliance with regulations.

The contractor will comply with the provisions of

23 U.S.C. 324 and with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, part 21, hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.

2. Employment practices

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, 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, sex, or national origin. Such action shall include, but not be limited to the following: 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this employment practices 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, 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 advising the said labor union or workers representative of the contractor's commitments under the employment practices provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. *Selection of subcontractors, procurement of materials and leasing of equipment.*

a. The contractor, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

b. 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 potential subcontractor, supplier, or leaser shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. *Information and reports.*

The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway 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 State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Incorporation of provisions.*

The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway 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, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

6. *Sanctions for noncompliance.*

In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway 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.

[40 FR 49088, Oct. 21, 1975]

APPENDIX D TO SUBPART B OF PART 633— FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

I. *Certification of non-segregated facilities.*

(a) A Certification of Non-segregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Non-segregated Facilities" in this proposal. This certification provides that the bidder does not maintain or facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and materials suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

Notice To Prospective Subcontractors and Material Suppliers of Requirement for Certification of Nonsegregated Facilities

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities that are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material

suppliers where the subcontracts and material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. Implementation of Clean Air Act

(a) By signing this bid, the bidder will be deemed to have stipulated as follows

(1) That any facility to 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 by Pub. L. 91-604). Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

Subpart C—Direct Federal Construction Contracts

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b)(35).

SOURCE: 39 FR 22418, June 24, 1974, unless otherwise noted.

§ 633.301 Purpose.

To prescribe for direct Federal highway construction contracts, provisions covering employment, safety, specific equal employment opportunity responsibilities and false statements concerning highway projects.

§ 633.302 Applicability.

(a) The form "Continuation of Standard Form 19-A, Labor Standards Provisions" (appendix A) shall be made a part of all highway construction contracts under the direct supervision of the Federal Highway Administration. The form shall be incorporated in each highway construction contract as a continuation of Standard Form 19-A, Labor Standards Provisions and the clauses set forth in paragraph 7 of appendix A shall be included in all subcontracts.

(b) Such additional labor standards provisions as hometown or imposed equal employment opportunity plans shall be added at the end of the form.

APPENDIX A TO SUBPART C OF PART 633—CONTINUATION OF STANDARD FORM 19-A LABOR STANDARDS PROVISIONS (DOT-FHWA 3-74)

1. Weekly Statement.

The contractor and each subcontractor shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by the Copeland Act Regulations, 29 CFR part 3, and by 29 CFR part 5, during the preceding weekly payroll period. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. The statement shall be on U.S. Department of Labor Form WH 348, "Statement of Compliance," or on an identical form on the back of U.S. Department of Labor Form WH 347, "Payroll (For Contractor's Optional Use)," or on any form with identical wording. Copies of these forms may be purchased from the Government Printing Office.

2. Employment Practices.

a. The wages of labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by a negotiable check, on a solvent bank, which may be cashed readily by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the contractor and each subcontractor shall make

all necessary arrangements for them to be cashed and shall give information to their employees regarding such arrangements.

b. No fee of any kind shall be asked or accepted by the contractor, or any of his agents or subcontractors, from any person as a condition of employment on the project.

c. No laborers or mechanics shall be charged for any tools used in performing their duties unless prior permission to make payroll deductions for such charges has been granted by the Secretary of Labor in accordance with Section 3.6 of the Copeland Act Regulations.

d. Every employee on the work covered by this contract shall be permitted to lodge, board, and trade where and with whom he selects and neither the contractor, his subcontractors, nor his employees shall directly or indirectly require as a condition of employment that an employee shall lodge, board or trade at a particular place or with a particular person.

e. No charge shall be made for any transportation furnished by the contractor, or his subcontractors to any person employed on the work.

f. No individual shall be employed as a laborer or mechanic on this contract except on a wage basis, but this shall not be construed to prohibit the rental of teams, trucks, or other equipment from individuals.

g. Each employee's social security number must be shown on the first payroll on which his name appears.

3. Payment of Excess Wages.

While the wage rates shown in the wage determination decision are the minimum hourly rates required by the contract to be paid during its life, it is the responsibility of bidders to inform themselves as to the local labor conditions, such as the length of workday and workweek, overtime compensation, health and welfare contributions, labor supply, and prospective changes or adjustment of wage rates. No increase in the contract price shall be allowed or authorized on account of the payment of wage rates in excess of those listed herein.

4. Safety.

It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any individual employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, part 1926, as revised from time to time) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act.

5. 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 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 contractor shall post the Notice, Form PR-1022 on each Federal highway project in one or more places where it is readily available to all personnel concerned with the project.

6. Specific Equal Employment Opportunity Responsibilities.

a. General. (1) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in SF 23-A, General Provisions and in these Provisions. The requirements set forth in these Provisions shall constitute the specific affirmative action requirements

for project activities under this contract and supplement the equal employment opportunity requirements set forth in the General Provisions.

(2) The contractor will work with the Federal Government in carrying out equal employment opportunity obligations and in their review of his activities under the contract.

(3) The prime contractor, and all subcontractors (not including material suppliers), holding subcontracts of \$10,000 or more, will comply with the minimum equal employment opportunity requirements set forth in the balance of this clause 6.

b. Equal Employment Opportunity Policy.

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program: 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, or national origin. 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, pre-apprenticeship, and/or on-the-job training.

c. Equal Employment Opportunity Officer.

The contractor will designate and make known to the contracting officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

d. Dissemination of Policy.

(1) 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 equal employment opportunity policy and contractual responsibilities. To insure 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 equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(c) The EEO Officer or appropriate company official will instruct all employees engaged in the direct recruitment of employees for the project relative to the methods followed by the contractor in locating and hiring minority group employees.

(2) In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officer, etc., the contractor will take the following actions:

(a) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(b) The contractor's equal employment opportunity 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.

e. Recruitment.

(1) When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." He will insert all such advertisements in newspapers, or other publications, having a large circulation among minority groups in the area from which the project work force would normally be derived.

(2) 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, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, 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.

(3) The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

f. Personnel Actions.

(1) 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, or national origin. 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 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. 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.

g. Training and Promotion.

(1) The contractor will assist in locating, qualifying and increasing the skills of minority group employees and applicants, for employment.

(2) Consistent with his manpower requirements and as permissible under Federal and State regulations, the contractor will make full use of training programs, i.e., pre-apprenticeship apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.

(3) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

(4) The contractor will periodically review the training and promotion potential of minority group employees and will encourage eligible employees to apply for such training and promotion.

h. Unions.

If the contractor relies in whole or in part upon unions as a source of his work force, he will use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the

contractor, either directly or through a contractor's association acting as his agent, will include the procedures set forth below:

(1) Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

(2) Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the end that such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

(3) In the event a union is unable to refer applicants as requested by the contractor within the time limit set forth in the union agreement, the contractor will, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified minority group persons.

i. Subcontracting.

(1) The contractor will use his best efforts to utilize minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) The contractor will use his best efforts to assure subcontractor compliance with their equal employment opportunity obligations.

j. Records and Reports.

(1) The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(a) The number of minority and non-minority group members employed in each work classification on the project.

(b) The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to contractors who rely in whole or in part on unions, as a source of their work force).

(c) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority group employees.

(d) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group representation among their employees.

(2) All such records must 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 the contracting officer or his authorized representative.

(3) The contractor will submit to the Federal Highway Administration a monthly report for the first three months after construction begins, and thereafter upon request, for the duration of the project, indicating the number of minority and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR-1391.

7. Subcontracts.

The contractor shall include, verbatim, clauses 1, 2, 4, 5 and 6 of this continuation sheet in each of his subcontracts, except that Clause 6 will not be required for subcontracts less than \$10,000. In addition, the contractor shall include a clause requiring each subcontractor to include these clauses in any lower tier subcontracts.

**PART 635—CONSTRUCTION AND
MAINTENANCE**

Subpart A—Contract Procedures

Sec.

635.101 Purpose.

APPENDIX “C”

23 CFR Subchapter C – Civil Rights Part 200 – Title VI

**SUBCHAPTER C—CIVIL RIGHTS PART
200—TITLE VI PROGRAM AND
RELATED STATUTES—
IMPLEMENTATION AND REVIEW
PROCEDURES**

Sec.

200.1 Purpose.

200.3 Application of this part.

200.5 Definitions.

200.7 FHWA Title VI policy.

200.9 State highway agency responsibilities.

200.11 Procedures for processing Title VI reviews.

200.13 Certification acceptance.

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 pre-grant and post grant approval reviews of State programs and applicants for compliance with Title VI requirements; 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 non-concurrence 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

APPENDIX “D”

23 CFR Part 230 – External Programs

§ 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

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APPENDIX D TO SUBPART D—EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

AUTHORITY: 23 U.S.C. 101, 140, and 315; 42 U.S.C. 2000d et seq.; 49 CFR 1.48 and 60-1.

SOURCE: 40 FR 28053, July 3, 1975, unless otherwise noted.

Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts Including Supportive Services)

§ 230.101 Purpose.

The purpose of the regulations in this subpart is to prescribe the policies, procedures, and guides relative to the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts, except for those contracts awarded under 23 U.S.C. 117, and to the preparation and submission of reports pursuant thereto.

§ 230.103 Definitions.

For purposes of this subpart—*Administrator* means the Federal Highway Administrator.

Area-wide Plan means an affirmative action plan to increase minority utilization of crafts in a specified geographical area pursuant to Executive Order 11246, and taking the form of either a "Hometown" or an "Imposed" plan.

Bid conditions means contract requirements which have been issued by OFCC for purposes of implementing a Hometown Plan.

Division Administrator means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

Division Equal Opportunity Officer means an individual with staff level responsibilities and necessary authority by which to operate as an Equal Opportunity Officer in a Division office. Normally the Equal Opportunity Officer will be a full-time civil rights specialist serving as staff assistant to the Division Administrator.

Hometown Plan means a voluntary area-wide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

Imposed Plan means an affirmative action requirement for a specified geographical area made mandatory by OFCC and, in some areas, by the courts.

Journeyman means a person who is capable of performing all the duties within a given job classification or craft.

State highway agency means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency*.

Suggested minimum annual training goals means goals which have been assigned to each State highway agency annually for the purpose of specifying training positions on selected Federal-aid highway construction projects.

Supportive services means those services provided in connection with approved on-the-job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the performance of functions determined to be necessary in connection with such programs, but which are not generally considered as comprising part of actual on-the-job craft training.

Trainee means a person who received on-the-job training, whether through an apprenticeship program or other programs approved or accepted by the FHWA.

§ 230.105 Applicability.

(a) *Federal-aid highway construction projects.* This subpart applies to all Federal-aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:

(1) Federal-aided highway construction projects being constructed pursuant to 23 U.S.C. 117; and

(2) Those projects located in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or a "Hometown" Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.

(b) *Direct Federal highway construction projects.* This subpart applies to all direct Federal highway construction projects except:

(1) For those provisions relating to the special requirements for the provision of supportive services; and

(2) For those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Contract Compliance has implemented an "Imposed" or "Hometown" plan.

§ 230.107 Policy.

(a) *Direct Federal and Federal-aid highway construction projects.* It is the policy of the FHWA to require that all direct Federal and Federal-aid highway construction contracts include the same specific equal employment opportunity requirements. It is also the policy to require that all direct Federal and Federal-aid highway construction subcontracts of \$10,000 or more (not including contracts for supplying materials) include these same requirements.

(b) *Federal-aid highway construction projects.* It is the policy of the FHWA to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry. Moreover, it is the policy of the Federal Highway Administration to encourage the provision of supportive services which will increase the effectiveness of approved on-the-job training programs conducted in connection with Federal-aid highway construction projects.

§ 230.109 Implementation of specific Equal Employment Opportunity requirements.

(a) *Federal-aid highway construction projects.* The special provisions set forth in appendix A shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered Federal-aid highway construction subcontract.

(b) *Direct Federal highway construction projects.* Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Acquisition Regulations (48 CFR, chapter 1, section 22.803(c)). In order to obtain information required by 48 CFR, Chapter 1, § 22.804-2(c), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:

I expect to employ the following firms as subcontractors on this project: (Naming subcontractors at this time does not constitute a binding commitment on the bidder to retain such subcontractors, nor will failure to enter names affect the contract award):

Name _____
Address _____
Name _____
Address _____

§ 230.111 Implementation of special requirements for the provision of on-the-job training.

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix b) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in § 230.111

(c) The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

- (1) Availability of minorities, women, and disadvantaged for training.
- (2) The potential for effective training.
- (3) Duration of the contract.
- (4) Dollar value of the contract.
- (5) Total normal work force that the average bidder could be expected to use.
- (6) Geographic location.
- (7) Type of work.
- (8) The need for additional journeymen in the area.
- (9) Recognition of the suggested minimum goal for the State.

(10) A satisfactory ratio of trainees to journeymen expected to be on the contractor's work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

- (1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.
- (2) The development of full journeymen.
- (3) The minimum length and type of training.
- (4) The minimum wages of trainees.
- (5) Trainees certifications.
- (6) Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be

formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA. [40 FR 28053, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140 (b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs. State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and

women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;

(5) Follow-up services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, follow-up procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-1273, and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month follow-up review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) No collusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office. [40 FR 28053, July 3, 1975, as amended at 41 FR 3080, Jan. 21, 1976]

§ 230.115 Special contract requirements for “Hometown” or “Imposed” Plan areas.

Direct Federal and Federal-aid contracts to be performed in “Hometown” or “Imposed” Plan areas will incorporate the special provision set forth in appendix G.

§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).

(a) *On-the-job special training provisions* State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) *Supportive services.* (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year’s allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State’s need for and ability to use such funds.

§ 230.119 Monitoring of supportive services.

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

§ 230.121 Reports.

(a) Employment reports on Federal-aid highway construction contracts not subject to “Hometown” or “Imposed” plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to “Hometown” or “Imposed” plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to “Hometown” or “Imposed” plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where “Hometown” or “Imposed” plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works’ request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) [Reserved]

(e) Reports on supportive services contracts. The State highway agency is to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978; 61 FR 14616, Apr. 3, 1996]

APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract, Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

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, or national origin. 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, pre-apprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. 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 equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity 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:

(1) 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 equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity 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.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. 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, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, 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.

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 equal employment opportunity contract provisions. (The U.S. Department of Labor 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 by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. *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, or national origin. 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.

7. *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 the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

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.

8. *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 equal employment opportunity 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, or national origin.

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 State highway department 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, or national origin; making full efforts to obtain qualified and/or qualified minority group persons and women. (The U.S. Department of Labor 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 State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).

(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 minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must 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 State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency 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 PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409. [40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

APPENDIX B TO SUBPART A OF PART 230— TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provide as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary

responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be

reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision. [40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

APPENDIX C TO SUBPART A OF PART 230

Insert 1391 Form

APPENDIX D TO SUBPART A OF PART 230

Insert 1392 Form

GENERAL INFORMATION AND INSTRUCTIONS

This form is to be developed from the "Contractor's Annual EEO Report." This data is to be compiled by the State and submitted annually. It should reflect the total employment on all Federal-Aid Highway Projects in the State as of July 31st. The staffing figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the

U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out section 22(A) of the Federal-Aid Highway Act of 1968.

In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity. It is requested that States submit this information annually to the FHWA Divisions no later than September 25.

Line 01—State & Region Code. Enter the 4-digit code from the list below.

Alabama	01-04
Alaska	02-10
Arizona	04-09
Arkansas	05-06
California	06-09
Colorado	08-08
Delaware	10-03
District of Columbia	11-03
Florida	12-04
Georgia	13-04
Hawaii	15-09
Idaho	16-10
Illinois	17-05
Iowa	19-07
Kansas	20-07
Kentucky	21-04
Louisiana	22-06
Maine	23-01
Maryland	24-03
Massachusetts	25-01
Michigan	26-05
Minnesota	27-05
Mississippi	28-04
Missouri	29-07
Nebraska	31-07
Nevada	32-09
New Hampshire	33-01
New Jersey	34-01
New Mexico	35-06
North Carolina	37-04
North Dakota	38-08
Ohio	39-05
Oklahoma	40-06
Oregon	41-10
Pennsylvania	42-03
Puerto Rico	43-01
South Carolina	45-04
South Dakota	46-08
Tennessee	47-04
Texas	48-06
Utah	49-08
Vermont	50-01
Virginia	51-03
Washington	53-10
West Virginia	54-03
Wisconsin	55-05
Wyoming	56-08

(23 U.S.C. sec. 140(a), 315, 49 CFR 1.48(b))
 [44 FR 46832, Aug. 8, 1979. Correctly redesignated at 46 FR 21156, Apr. 9, 1981, and amended at 56 FR 4721, Feb. 6, 1991]

APPENDIXES E-F TO SUBPART A OF PART 230 RESERVED]

APPENDIX G TO SUBPART A OF PART 230—
 SPECIAL REPORTING REQUIREMENTS FOR
 "HOMETOWN" OR "IMPOSED" PLAN AREAS

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR-1391 (appendix C to 23 CFR part 230) and in accordance with the instructions included thereon. [40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

**Subpart B—Supportive Services for
 Minority, Disadvantaged, and Women
 Business Enterprises**

SOURCE: 50 FR 51243, Dec. 16, 1985, unless otherwise noted.

§ 230.201 Purpose.

To prescribe the policies, procedures and guidance to develop, conduct, and administer supportive services

assistance programs for minority, disadvantaged, and women business enterprises.

§ 230.202 Definitions.

(a) *Minority Business Enterprise*, as used in this subpart, refers to all small businesses which participate in the Federal-aid highway program as a minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE), all defined under 49 CFR part 23. This expanded definition is used only in this subpart as a simplified way of defining the firms eligible to benefit from this supportive services program.

(b) *Supportive Services* means those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.

(c) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* is considered equivalent to *State highway agency* if the context so implies.

§ 230.203 Policy.

Based on the provisions of Pub. L. 97- 424, dated January 6, 1983, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of minority business enterprises in Federal-aid highway contracts in part through the development and implementation of cost effective supportive services programs through the State highway agencies.

§ 230.204 Implementation of supportive services.

(a) Subject to the availability of funds under 23 U.S.C. 140(c), the State highway agency shall establish procedures to develop, conduct, and administer minority business enterprise training and assistance programs specifically for the benefit of women and minority businesses. Supportive services funds allocated to the States shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section. Individual States are encouraged to be actively involved in the provision of supportive services. Such involvement can take the form of staff, funding, and/or direct assistance to augment the supportive services efforts financed by Federal-aid funds.

(b) State highway agencies shall give preference to the following types of services:

(1) Services relating to identification, pre-qualification, and certification assistance, with emphasis on increasing the total number of legitimate minority business enterprises participating in the Federal-aid highway program;

(2) Services in connection with estimating, bidding, and technical assistance designed to develop and improve the capabilities of minority businesses and assist them in achieving proficiency in the technical skills involved in highway construction;

(3) Services designed to develop and improve the immediate and long-term business management, recordkeeping, and financial accounting capabilities;

(4) Services to assist minority business enterprises to become eligible for and to obtain bonding and financial assistance;

(5) Services relating to verification procedures to ensure that only *bona fide* minority business enterprises are certified as eligible for participation in the Federal-aid highway program;

(6) Follow-up services to ascertain the outcome of training and assistance being provided; and

(7) Other services which contribute to long-term development, increased opportunities, and eventual self-

sufficiency of minority business enterprises.

(c) A detailed work statement of the supportive services which the State highway agency considers to meet the guidance under this regulation and a program plan for meeting the requirements of paragraph (b) of this section and accomplishing other objectives (Form FHWA-1273 is available for inspection and copying at the locations given in 49 CFR part 7, appendix D, under Document Inspection Facilities, and at all State highway agencies. shall be submitted to the FHWA for approval.

(d) State highway agencies which desire to provide or obtain services other than those listed in paragraph (b) of this section shall submit their proposals to the FHWA for approval.

(e) When the State highway agency provides supportive services by contract, formal advertising is not required by FHWA; however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with majority and minority contractors, contractors' associations, minority groups, and other persons or organizations whose cooperation and assistance will increase the opportunities for minority business enterprises to compete for and perform contracts and subcontracts.

(f) In the selection of contractors to perform supportive services, State highway agencies shall make conscientious efforts to search out, and utilize the services of qualified minority or women organizations, or minority or women enterprises.

(g) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the total number of minority firms participating in the Federal-aid highway program and to contribute to the growth and eventual self-sufficiency of minority firms;

(2) A statement that supportive services shall be provided only to those minority business enterprises determined to be eligible for participation in the Federal-aid highway program in accordance with 49 CFR part 23 and have a work specialty related to the highway construction industry;

(3) A clear and complete statement of the services to be provided under the contract, such as technical assistance, managerial assistance, counseling, certification assistance, and follow-up procedures as set forth in § 230.204(b) of this part;

(4) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in Form FHWA-1273, Required Contract Provisions, Federal-Aid Construction Contracts, and a statement of nondiscrimination in employment because of race, color, religion, sex, or national origin;

(5) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(6) Monthly or quarterly reports to the State highway agency containing sufficient data and narrative content to enable evaluation of both progress and problems;

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract; and

(12) A termination clause.

(h) The State highway agency is to furnish copies of the reports received under paragraph(g)(6) of this section to the FHWA division office. [50 FR 51243, Dec. 16, 1985, as amended at 52 FR 36922, Oct. 2, 1987]

§ 230.205 Supportive services funds obligation.

Supportive services funds shall be obligated in accordance with the procedures set forth in § 230.117(b) of this part. The point of obligation is defined as that time when the FHWA has approved a detailed work statement for the supportive services.

§ 230.206 Monitoring supportive services.

Supportive services programs shall be continually monitored and evaluated by the State highway agency so that needed improvements can be identified and instituted. This requires the documentation of valid effectiveness measures by which the results of program efforts may be accurately assessed.

§ 230.207 Sources of assistance.

It is the policy of the FHWA that all potential sources of assistance to minority business enterprises be utilized. The State highway agency shall take actions to ensure that supportive services contracts reflect the availability of all sources of assistance in order to maximize resource utilization and avoid unnecessary duplication.

Subpart C—State Highway Agency Equal Employment Opportunity Programs

SOURCE: 41 FR 28270, July 9, 1976, unless otherwise noted.

§ 230.301 Purpose.

The purpose of the regulations in this subpart is to set forth Federal Highway Administration (FHWA) Federal-aid policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and for assuring compliance with the equal employment opportunity requirements of federally assisted highway construction contracts.

§ 230.303 Applicability.

The provisions of this subpart are applicable to all States that receive Federal financial assistance in connection with the Federal-aid highway program.

§ 230.305 Definitions.

As used in this subpart, the following definitions apply:

(a) *Affirmative Action Plan* means:

(1) With regard to State highway agency work forces, a written document detailing the positive action steps the State highway agency will take to assure internal equal employment opportunity (internal plan).

(2) With regard to Federal-aid construction contract work forces, the Federal equal employment opportunity bid conditions, to be enforced by a State highway agency in the plan areas established by the Secretary of Labor and FHWA special provisions in non-plan areas (external plan).

(b) *Equal employment opportunity program* means the total State highway agency program, including the affirmative action plans, for ensuring compliance with Federal requirements both in State highway agency internal employment and in employment on Federal-aid construction projects.

(c) *Minority groups*. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging. As defined by U.S. Federal agencies for employment purposes, minority group persons in the U.S. are identified as Blacks (not of Hispanic origin), Hispanics, Asian or Pacific Islanders, and American Indians or Alaskan Natives.

(d) *Racial/ethnic identification*. For the purpose of this regulation and any accompanying report requirements, 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 should be counted in more than one racial/ethnic category. The following group categories will be used:

(1) The category *White (not of Hispanic origin)*: All persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian Subcontinent.

(2) The category *Black (not of Hispanic origin)*: All persons having origins in any of the Black racial groups.

(3) The category *Hispanic*: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(4) The category *Asian or Pacific Islanders*: All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(5) The category *American Indian or Alaskan Native*: All persons having origins in any of the original peoples of North America.

(e) *State* means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(f) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency* if the context so implies.

[41 FR 28270, July 9, 1976, as amended at 41 FR 46293, Oct. 20, 1976]

§ 230.307 Policy.

Every employee and representative of State highway agencies shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated thereunder, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in the performance of Federal-aid highway construction contracts.

§ 230.309 Program format.

It is essential that a standardized Federal approach be taken in assisting the States in development and implementation of EEO programs. The format set forth in appendix A provides that standardized approach. State equal employment opportunity programs that meet or exceed the prescribed standards will comply with basic FHWA requirements.

§ 230.311 State responsibilities.

(a) Each State highway agency shall prepare and submit an updated equal employment opportunity program, one year from the date of approval of the preceding program by the Federal Highway Administrator, over the signature of the head of the State highway agency, to the Federal Highway Administrator through the FHWA Division Administrator. The program shall consist of the following elements:

(1) The collection and analysis of internal employment data for its entire work force in the manner prescribed in part II, paragraph III of appendix A; and

(2) The equal employment opportunity program, including the internal affirmative action plan, in the format and manner set forth in appendix A.

(b) In preparation of the program required by § 230.311(a), the State highway agency shall consider and respond to written comments from FHWA regarding the preceding program.

§ 230.313 Approval procedure.

After reviewing the State highway agency equal employment opportunity program and the summary analysis and recommendations from the FHWA regional office, the

Washington Headquarters Office of Civil Rights staff will recommend approval or disapproval of the program to the Federal Highway Administrator. The State highway agency will be advised of the Administrator's decision. Each program approval is effective for a period of one year from date of approval.

APPENDIX A TO SUBPART C OF PART 230—STATE
HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY
PROGRAMS

Each State highway agency's (SHA) equal employment opportunity (EEO) program shall be in the format set forth herein and shall address Contractor Compliance (part I) and SHA Internal Employment (part II), including the reorganizational structure of the SHA total EEO Program (internal and external).

PART I—CONTRACTOR COMPLIANCE

I. *Organization and structure.* A. *State highway agency EEO Coordinator (External) and staff support.* 1. Describe the organizational location and responsibilities of the State highway agency EEO Coordinator. (Provided organization charts of the State highway agency and of the EEO staff.)

2. Indicate whether full or part-time; if part-time, indicate percentage of time devoted to EEO.

3. Indicate length of time in position, civil rights experience and training, and supervision.

4. Indicate whether compliance program is centralized or decentralized.

5. Identify EEO Coordinator's staff support (full- and part-time) by job title and indicate areas of their responsibilities.

6. Identify any other individuals in the central office having a responsibility for the implementation of this program and describe their respective roles and training received in program area.

B. *District or division personnel.* 1. Describe the responsibilities and duties of any district EEO personnel. Identify to whom they report.

2. Explain whether district EEO personnel are full-time or have other responsibilities such as labor compliance or engineering.

3. Describe training provided for personnel having EEO compliance responsibility.

C. *Project personnel.* Describe the EEO role of project personnel.

II. *Compliance procedures.* A. *Applicable directives.* 1. FHWA Contract Compliance Procedures.

2. EEO Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap.4, sec. 1, subsec. 2, Attachment 1) 1

3. Training Special Provisions (FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 2, Attachment 2) 1

4. FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 6 (Contract Procedures), and subsec. 8 (Minority Business Enterprise). 1

B. *Implementation.* 1. Describe process (methods) of incorporating the above FHWA directives into the SHA compliance program.

2. Describe the methods used by the State to familiarize State compliance personnel with all FHWA contract compliance directives. Indicate frequency of work shops, training sessions, etc.

3. Describe the procedure for advising the contractor of the EEO contract requirements at any pre-construction conference held in connection with a Federal-aid contract.

III. *Accomplishments.* Describe accomplishments in the construction EEO compliance program during the past fiscal year.

A. *Regular project compliance review program.* This number should include at least all of the following items:

1. Number of compliance reviews conducted.
2. Number of contractors reviewed.
3. Number of contractors found in compliance.
4. Number of contractors found in noncompliance.
5. Number of show cause notices issued.
6. Number of show cause notices rescinded.

7. Number of show cause actions still under conciliation and unresolved. 8. Number of followup reviews conducted. (NOTE: In addition to information requested in items 4–8 above, include a brief summary of total show cause and followup activities—findings and achievements.)

B. *Consolidated compliance reviews.* 1. Identify the target areas that have been reviewed since the inception of the consolidated compliance program. Briefly summarize total findings. 2. Identify any significant impact or effect of this program on contractor compliance.

C. *Home office reviews.* If the State conducts home office reviews, describe briefly the procedures followed by State.

D. *Major problems encountered.* Describe major problems encountered in connection with any review activities during the past fiscal year.

E. *Major breakthroughs.* Comment briefly on any major breakthrough or other accomplishment significant to the compliance review program.

IV. *Areawide plans/Hometown and Imposed (if applicable).* A. Provide overall analysis of the effectiveness of each areawide plan in the State.

B. Indicate by job titles the number of State personnel involved in the collection, consolidation, preparation, copying, reviewing, analysis, and transmittal of area plan reports (Contracting Activity and Post Contract Implementation). Estimate the amount of time (number of hours) spent collectively on this activity each month. How does the State use the plan report data?

C. Identify Office of Federal Contract Compliance Programs (OFCCP) area plan audits or compliance checks in which State personnel participated during the last fiscal year. On the average, how many hours have been spent on these audits and/or checks during the past fiscal year?

D. Describe the working relationship of State EEO compliance personnel with representatives of plan administrative committee(s).

E. Provide recommendations for improving the areawide plan program and the reporting system.

V. *Contract sanctions.* A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.

B. Indicate the State or Federal laws which are applicable.

C. Does the State withhold a contractor's progress payments for failure to comply with EEO requirements? If so, identify contractors involved in such actions during the past fiscal year. If not, identify other actions taken.

VI. *Complaints.* A. Describe the State's procedures for handling discrimination complaints against contractors.

B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.

C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.

VII. *External training programs, including supportive services.* A. Describe the State's process for reviewing the work classifications of trainees to determine that there is a proper and reasonable distribution among appropriate craft.

B. Describe the State's procedures for identifying the number of minorities and women who have completed training programs.

C. Describe the extent of participation by women in construction training programs.

D. Describe the efforts made by the State to locate and use the services of qualified minority and female supportive service consultants. Indicate if the State's supportive service contractor is a minority or female owned enterprise.

E. Describe the extent to which reports from the supportive service contractors provide sufficient data to evaluate the status of training programs, with particular reference to minorities and women.

VIII. *Minority business enterprise program.*

FHPM 6-4-1-8 sets forth the FHWA policy regarding the minority business enterprise program. The implementation of this program should be explained by responding to the following: A. Describe the method used for listing of minority contractors capable of, or interested in, highway

construction contracting or subcontracting. Describe the process used to circulate names of appropriate minority firms and associations to contractors obtaining contract proposals.

B. Describe the State's procedure for insuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors.

C. Describe the State's procedure for insuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.

D. Describe the action the State has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year, and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.

E. Outline the State's procedure for evaluating its prequalification/licensing requirements.

F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than \$100,000.

G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.

IX. *Liaison*. Describe the liaison established by the State between public (State, county, and municipal) agencies and private organizations involved in EEO programs. How is the liaison maintained on a continuing basis?

X. *Innovative programs*. Identify any innovative EEO programs or management procedures initiated by the State and not previously covered.

PART II—STATE HIGHWAY AGENCY EMPLOYMENT

I. *General*. The State highway agency's (SHA) internal program is an integral part of the agency's total activities. It should include the involvement, commitment and support of executives, managers, supervisors and all other employees. For effective administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an EEO program and an AAP must be comprehensive, covering all elements of the agency's personnel management policies and practices. The major part of an AAP must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked, screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups.

Set forth are general guidelines designed to assist the State highway agencies in implementing internal programs, including the development and implementation of AAP's to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.

II. *Administration and implementation*. The head of each State highway agency is responsible for the overall administration of the internal EEO program, including the total integration of equal opportunity into all facets of personnel management. However, specific program responsibilities should be assigned for carrying out the program at all management levels.

To ensure effectiveness in the implementation of the internal EEO program, a specific and realistic AAP should be developed. It should include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency's individual need to overcome existing problems.

A. *State Highway Agency Affirmative Action Officer (internal)*. 1. *Appointment of Affirmative Action Officer*. The head of the SHA should appoint a qualified Affirmative

Action (AA) Officer (Internal EEO Officer) with responsibility and authority to implement the internal EEO program. In making the selection, the following factors should be considered:

a. The person appointed should have proven ability to accomplish major program goals.

b. Managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job.

c. Appointing qualified minority and/or female employees to head or staff the program may offer good role models for present and potential employees and add credibility to the programs involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the agency to achieve them.

2. *Responsibilities of the Affirmative Action Officer*. The responsibilities of the AA Officer should include, but not necessarily be limited to:

a. Developing the written AAP.

b. Publicizing its content internally and externally.

c. Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.

d. Handling and processing formal discrimination complaints.

e. Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed.

f. Reporting, at least quarterly, to the head of the SHA on progress and deficiencies of each unit in relation to agency goals.

g. In addition, consider the creation of:

(1) An EEO Advisory Committee, whose membership would include top management officials,

(2) An EEO Employee Committee, whose membership would include rank and file employees, with minority and female representatives from various job levels and departments to meet regularly with the AA officer, and

(3) An EEO Counseling Program to attempt informal resolution of discrimination complaints.

B. *Contents of an affirmative action plan*. The Affirmative Action Plan (AAP) is an integral part of the SHA's EEO program. Although the style and format of AAP's may vary from one SHA to another, the basic substance will generally be the same. The essence of the AAP should include, but not necessarily be limited to:

1. Inclusion of a strong agency policy statement of commitment to EEO.

2. Assignment of responsibility and authority for program to a qualified individual.

3. A survey of the labor market area in terms of population makeup, skills, and availability for employment.

4. Analyzing the present work force to identify jobs, departments and units where minorities and females are underutilized.

5. Setting specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.

6. Making every manager and supervisor responsible and accountable for meeting these goals.

7. Reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.

8. Finding minorities and females who are qualified or qualifiable to fill jobs.

9. Getting minorities and females into upward mobility and relevant training programs where they have not had previous access.

10. Developing systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, determine the reasons and make necessary changes.

11. Developing a procedure whereby employees and

applicants may process allegations of discrimination to an impartial body without fear of reprisal.

C. *Implementation of an affirmative action plan.* The written AAP is the framework and management tool to be used at all organizational levels to actively implement, measure and evaluate program progress on the specific action items which represent EEO program problems or deficiencies. The presence of a written plan alone does not constitute an EEO program, nor is it, in itself, evidence of an ongoing program. As a minimum, the following specific actions should be taken.

1. *Issue written equal employment opportunity policy statement and affirmative action commitment.* To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.

The statement should include, but not necessarily be limited to, the following elements:

a. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.

b. Personal commitment to and support of EEO by the head of the SHA.

c. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.

d. The requirement that the EEO program be a goal setting program with measurement and evaluation factors similar to other major agency programs.

e. Equal opportunity in all employment practices, including (but not limited to) recruiting, hiring, transfers, promotions, training, compensation, benefits, recognition (awards), layoffs, and other terminations.

f. Responsibility for positive affirmative action in the discharge of EEO programs, including performance evaluations of managers and supervisors in such functions, will be expected of and shared by all management personnel.

g. Accountability for action or inaction in the area of EEO by management personnel.

2. *Publicize the affirmative action plan.*

Internally: (1) Distribute written communications from the head of the SHA.

(2) Include the AAP and the EEO policy statement in agency operations manual.

(3) Hold individual meetings with managers and supervisors to discuss the program, their individual responsibilities and to review progress.

(4) Place Federal and State EEO posters on bulletin boards, near time clocks and in personnel offices.

(5) Publicize the AAP in the agency newsletters and other publications.

(6) Present and discuss the AAP as a part of employee orientation and all training programs.

(7) Invite employee organization representatives to cooperate and assist in developing and implementing the AAP.

b. *Externally:* Distribute the AAP to minority groups and women's organizations, community action groups, appropriate State agencies, professional organizations, etc.

3. *Develop and implement specific programs to eliminate discriminatory barriers and achieve goals.* a. *Job structuring and upward mobility:* The AAP should include specific provisions for:

(1) Periodic classification plan reviews to correct inaccurate position descriptions and to ensure that positions are allocated to the appropriate classification.

(2) Plans to ensure that all qualification requirements are closely job related.

(3) Efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas.

(4) Career counseling and guidance to employees.

(5) Creating career development plans for lower grade

employees who are underutilized or who demonstrate potential for advancement.

(6) Widely publicizing upward mobility programs and opportunities within each work unit and within the total organizational structure.

b. *Recruitment and placement.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Active recruitment efforts to support and supplement those of the central personnel agency or department, reaching all appropriate sources to obtain qualified employees on a nondiscriminatory basis.

(2) Maintaining contracts with organizations representing minority groups, women, professional societies, and other sources of candidates for technical, professional and management level positions.

(3) Ensuring that recruitment literature is relevant to all employees, including minority groups and women.

(4) Reviewing and monitoring recruitment and placement procedures so as to assure that no discriminatory practices exist.

(5) Cooperating with management and the central personnel agency on the review and validation of written tests and other selection devices.

(6) Analyzing the flow of applicants through the selection and appointment process, including an analytical review of reasons for rejections.

(7) Monitoring the placement of employees to ensure the assignment of work and workplace on a nondiscriminatory basis.

c. *Promotions.* The AAP should include specific provisions for, but not necessarily limited to:

1. Establishing an agency-wide merit promotion program, including a merit promotion plan, to provide equal opportunity for all persons based on merit and without regard to race, color, religion, sex or national origin.

2. Monitoring the operation of the merit promotion program, including a review of promotion actions, to assure that requirements procedures and practices support EEO program objectives and do not have a discriminatory impact in actual operation.

3. Establishing skills banks to match employee skills with available job advancement opportunities.

4. Evaluating promotion criteria (supervisory evaluations, oral interviews, written tests, qualification standards, etc.) and their use by selecting officials to identify and eliminate factors which may lead to improper "selection out" of employees or applicants, particularly minorities and women, who traditionally have not had access to better jobs. It may be appropriate to require selecting officials to submit a written justification when well qualified persons are passed over for upgrading or promotion.

5. Assuring that all job vacancies are posted conspicuously and that all employees are encouraged to bid on all jobs for which they feel they are qualified.

6. Publicizing the agency merit promotion program by highlighting breakthrough promotions, i.e. advancement of minorities and women to key jobs, new career heights, etc.

d. *Training.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Requiring managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program and the administration of the policies and procedures incorporated therein, and on Federal, State and local laws relating to EEO.

(2) Training in proper interviewing techniques of employees who conduct employment selection interviews.

(3) Training and education programs designed to provide opportunities for employees to advance in relation to the present and projected manpower needs of the agency and the employees' career goals.

(4) The review of profiles of training course participants to ensure that training opportunities are being offered to all eligible employees on an equal basis and to correct any inequities discovered.

e. *Layoffs, recalls, discharges, demotions, and disciplinary actions.* The standards for deciding when a person shall be terminated, demoted, disciplined, laid off or

recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

(1) When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.

(2) Any punitive action (i.e. harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.

(3) The following records should be kept to monitor this area of the internal EEO program: On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

Exit interviews should be conducted with employees who leave the employment of the SHA.

f. *Other personnel actions.* The AAP should include specific provisions for, but not necessarily limited to:

(1) Assuring that information on EEO counseling and grievance procedures is easily available to all employees.

(2) A system for processing complaints alleging discrimination because of race, color, religion, sex or national origin to an impartial body.

(3) A system for processing grievances and appeals (i.e. disciplinary actions, adverse actions, adverse action appeals, etc).

(4) Including in the performance appraisal system a factor to rate manager's and supervisors' performance in discharging the EEO program responsibilities assigned to them.

(5) Reviewing and monitoring the performance appraisal program periodically to determine its objectivity and effectiveness.

(6) Ensuring the equal availability of employee benefits to all employees.

4. *Program evaluation.* An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

a. Defining the major objectives of EEO program evaluation.

b. The evaluation should be directed toward results accomplished, not only at efforts made.

c. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.

d. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:

(1) Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.

(2) The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of any particular problems encountered and recommendations for corrective actions needed.

e. Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each

job category.

III. *Employment statistical data.* A. As a minimum, furnish the most recent data on the following:

1. The total population in the State,

2. The total labor market in State, with a breakdown by racial/ethnic identification and sex, and

3. An analysis of (1) and (2) above, in connection with the availability of personnel and jobs within SHA's .

B. State highway agencies shall use the EEO-4 Form in providing current work force data. This data shall reflect only State department of transportation/State highway department employment.

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 the Thousands 000	TOTAL (COLUMNS) B-K A	NON-HISPANIC ORIGIN		HISPANIC D	ASIAN OR PACIFIC ISLANDER E	AMERICAN INDIAN OR ALASKAN NATIVE	NON-HISPANIC ORIGIN		HISPANIC I	ASIAN OR PACIFIC ISLANDER J	AMERICAN INDIAN OR ALASKAN NATIVE K
			WHITE B	BLACK C				WHITE G	BLACK H			
SKILLED CRAFT	49 0.1-3.9											
	50 4.0-5.9											
	51 6.0-7.9											
	52 8.0-9.9											
	53 10.0-12.9											
	54 13.0-15.9											
	55 16.0-24.9											
	56 25.0 Plus											
SERVICE/MAINTENANCE	57 0.1-3.9											
	58 4.0-5.9											
	59 6.0-7.9											
65 TOTAL FUEL TIME (LINES 1-64)												

2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)

66 OFFICIALS/ADMIN.												
67 PROFESSIONALS												
68 TECHNICIANS												
69 PRITECTUVE SERV.												
70 PARA-PROFESSIONAL												
71 OFFICE/CLERICAL												
72 SKILLED DRAFT												
73 SERV / MAINT												
74 TOTAL OTHER THAN FULL TIME (LINES 64 - 73)												

**3. NEW HIRES DURING FISCAL YEAR Permanent Full time only
JULY 1 - JUNE 30**

Subpart D—Construction Contract Equal Opportunity Compliance Procedures

SOURCE: 41 FR 34239, Aug. 13, 1976, unless otherwise noted.

§ 230.401 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

§ 230.403 Applicability.

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

§ 230.405 Administrative responsibilities.

(a) *Federal Highway Administration (FHWA) responsibilities.* (1) The FHWA has the responsibility to ensure that contractors meet contractual equal opportunity requirements under E.O. 11246, as amended, and title 23 U.S.C., and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(3) Failure of the State highway agency (SHA) to discharge the responsibilities stated in § 230.405(b)(1) may result in DOT's taking any or all of the following actions (see appendix A to 23 CFR part 630, subpart C "Federal-aid project agreement"):

(i) Cancel, terminate, or suspend the Federal-aid project agreement in whole or in part;

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

(iii) Refer the case to an appropriate Federal agency for legal proceedings.

(4) Action by the DOT, with respect to noncompliant contractors, shall not relieve a SHA of its responsibilities in connection with these same matters; nor is such action by DOT a substitute for corrective action utilized by a State under applicable State laws or regulations.

b) *State responsibilities.* (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by noncompliance with equal opportunity contract requirements.

§ 230.407 Definitions.

For the purpose of this subpart, the following

definitions shall apply, unless the context requires otherwise:

(a) *Actions*, identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);

(b) *Affirmative Action Plan* means a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure equal opportunity program progress and effectiveness. (The Special Provisions [23 CFR part 230 A, appendix A] and areawide plans are Affirmative Action Plans.);

(c) *Affirmative Actions* means the efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training;

(d) *Areawide Plan* means an Affirmative Action Plan approved by the Department of Labor to increase minority and female utilization in crafts of the construction industry in a specified geographical area pursuant to E.O. 11246, as amended, and taking the form of either a "Hometown" or an "Imposed" Plan.

(1) *Hometown Plan* means a voluntary areawide agreement usually developed by representatives of labor unions, minority organizations, and contractors, and approved by the OFCCP for the purpose of implementing the equal employment opportunity requirements pursuant to E.O. 11246, as amended;

(2) *Imposed Plan* means mandatory affirmative action requirements for a specified geographical area issued by OFCCP and, in some areas, by the courts;

(e) *Compliance Specialist* means a Federal or State employee regularly employed and experienced in civil rights policies, practices, procedures, and equal opportunity compliance review and evaluation functions;

(f) *Consolidated Compliance Review* means a review and evaluation of all significant construction employment in a specific geographical (target) area;

(g) *Construction* shall have the meanings set forth in 41 CFR 60-1.3(e) and 23 U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a SHA;

(h) *Corrective Action Plan* means a contractor's unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment.);

(i) *Contractor* means, any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier;

(j) *Days* shall mean calendar days;

(k) *Discrimination* means a distinction in treatment based on race, color, religion, sex, or national origin;

(l) *Equal Employment Opportunity* means the absence of partiality or distinction in employment treatment, so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained;

(m) *Equal Opportunity Compliance Review* means an evaluation and determination of a nonexempt direct Federal or Federal-aid contractor's or subcontractor's compliance with equal opportunity requirements based on:

(1) Project work force—employees at the physical location of the construction activity;

(2) Area work force—employees at all Federal-aid, Federal, and non-Federal projects in a specific geographical area as determined under § 230.409 (b)(9); or

(3) Home office work force—employees at the physical location of the corporate, company, or other ownership headquarters or regional managerial, offices,

including “white collar” personnel (managers, professionals, technicians, and clericals) and any maintenance or service personnel connected thereto;

(n) *Equal Opportunity Requirements* is a general term used throughout this document to mean all contract provisions relative to equal employment opportunity (EEO), subcontracting, and training;

(o) *Good Faith Effort* means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan;

(p) *Show Cause Notice* means a written notification to a contractor based on the determination of the reviewer (or in appropriate cases by higher level authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed;

(q) *State highway agency* (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State highway agency*. With regard to direct Federal contracts, references herein to SHA’s shall be considered to refer to FHWA regional offices, as appropriate.

§ 230.409 Contract compliance review procedures.

(a) *General*. A compliance review consists of the following elements:

- (1) Review Scheduling (Actions R-1 and R-2).
- (2) Contractor Notification (Action R-3).
- (3) Preliminary Analysis (Phase I) (Action R-4).
- (4) Onsite Verification and Interviews (Phase II) (Action R-5).
- (5) Exit Conference (Action R-6).
- (6) Compliance Determination and Formal Notification (Actions R-8, R-9, R-10, R-11, R-12).

The compliance review procedure, as described herein and in appendix D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

(b) *Review scheduling*. (Actions R-1 and R-2). Because construction work forces are not constant, particular attention should be paid to the proper scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor’s work forces:

- (1) Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);
- (2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;
- (3) Working on projects that include special training provisions; and
- (4) Where compliance with equal opportunity requirements is questionable. (Based on previous PR-1391’s (23 CFR part 230, subpart A, appendix C) Review Reports and Hometown Plan Reports). In addition, the following considerations shall apply:
 - (5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;
 - (6) Compliance Reviews in geographical areas covered by areawide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in § 230.415.
 - (7) Reviews shall be conducted prior to or during peak employment periods.
 - (8) No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and
 - (9) For compliance reviews based on an area work

force (outside of areawide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:

- (i) Union geographical boundaries;
- (ii) The geographical area from which the contractor recruits employees, i.e. reasonable recruitment area;
- (iii) Standard Metropolitan Statistical Area (SMSA) or census tracts; and
- (iv) The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

(c) *Contractor notification (Action R-3)*. (1) The Compliance Specialist should usually provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required.

(2) The contractor shall be requested to provide a meeting place on the day of the visit either at the local office of the contractor or at the jobsite.

(3) The contractor shall be requested to supply all of the following information to the Compliance Specialist prior to the onsite verification and interviews.

- (i) Current Form PR-1391 developed from the most recent payroll;
- (ii) Copies of all current bargaining agreements;
- (iii) Copies of purchase orders and subcontracts containing the EEO clause;
- (iv) A list of recruitment sources available and utilized;
- (v) A statement of the status of any action pertaining to employment practices taken by the Equal Employment Opportunity Commission (EEOC) or other Federal, State, or local agency regarding the contractor or any source of employees;
- (vi) A list of promotions made during the past 6 months, to include race, national origin, and sex of employee, previous job held, job promoted into; and corresponding wage rates;
- (vii) An annotated payroll to show job classification, race, national origin and sex;
- (viii) A list of minority- or female owned companies contacted as possible subcontractors, vendors, material suppliers, etc.; and
- (ix) Any other necessary documents or statements requested by the Compliance Specialist for review prior to the actual onsite visit.

(4) For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractors are present at the meeting and have supplied the documentation listed in § 230.409(c)(3).

(d) *Preliminary analysis (Phase I) (Action R-4)*. Before the onsite verification and interviews, the Compliance Specialist shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

- (1) The contractor’s current workforce;
- (2) The contractor’s relationship with referral sources, e.g., unions, employment agencies, community action agencies, minority and female organizations, etc.;
- (3) The minority and female representation of sources;
- (4) The availability of minorities and females with requisite skills in a reasonable recruitment area;
- (5) Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and
- (6) The related projects (and/or contractor) files of FHWA regional or division and State Coordinator’s offices to obtain current information relating to the status of the contractor’s project(s), value, scheduled duration, written corrective action plans, PR-1391 or Manpower Utilization Reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.

(e) *Onsite verification and interviews (Phase II) (Action R-5)*. (1) Phase II of the review consists of the construction or home office site visit(s). During the initial meeting with the contractor, the following topics shall be discussed:

- (i) Objectives of the visit;

(ii) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and

(iii) Arrangements for the site tour(s) and employee interviews.

(2) The Compliance Specialist shall make a physical tour of the employment site(s) to determine that:

(i) EEO posters are displayed in conspicuous places in a legible fashion;

(ii) Facilities are provided on a non-segregated basis (e.g. work areas, washroom, timeclocks, locker rooms, storage areas, parking lots, and drinking fountains);

(iii) Supervisory personnel have been oriented to the contractor's EEO commitments;

(iv) The employee referral source system is being implemented;

(v) Reported employment data is accurate;

(vi) Meetings have been held with employees to discuss EEO policy, particularly new employees; and

(vii) Employees are aware of their right to file complaints of discrimination.

(3) The Compliance Specialist should interview at least one minority, one non-minority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

(4) The Compliance Specialist shall, on a sample basis, determine the union membership status of union employees on the site (e.g. whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C]).

(5) The Compliance Specialist shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(6) The Compliance Specialist shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures of an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

(f) *Exit conference (Action R-6)*. (1) During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(2) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the Compliance Specialist shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, and issue a 30-day show cause notice. The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. (Action R-7) A voluntary corrective action plan should be accepted with the understanding that it only

address those problems uncovered prior to the exit conference.

(g) *Compliance determinations (Action R-8)*. (1) The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

(2) Compliance determinations on contractors working in a Hometown Plan Area shall reflect the status of those crafts covered by part II of the plan bid conditions. Findings regarding part I crafts shall be transmitted through channels to the Washington Headquarters, Office of Civil Rights.

(3) The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

(i) The contractor's equal employment opportunity (EEO) policy;

(ii) Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;

(iii) The authority and responsibilities of the EEO officer;

(iv) The contractor's recruitment activities, especially establishing minority and female recruitment and referral procedures;

(v) The extent of participation and minority and female utilization in FHWA training programs;

(vi) The contractor's review of personnel actions to ensure equal opportunities;

(vii) The contractor's participation in apprenticeship or other training;

(viii) The contractor's relationship (if any) with unions and minority and female union membership;

(ix) Effective measures to assure non-segregated facilities, as required by contract provisions;

(x) The contractor's procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and

(xi) The adequacy of the contractor's records and reports.

(4) A contractor shall be considered to be in compliance (Action R-9) when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

(5) A contractor shall be considered to be in noncompliance (Action R-10) when:

(i) The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or

(ii) The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

(h) *Show cause procedures—(1) General*. Once the onsite verification and exit conference (Action R-5) have been completed and a compliance determination made, (Action R-8), the contractor shall be notified in writing of the compliance determination. (Action R-11 or R-12) This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification and exit conference. If a contractor is found in noncompliance (Action R-10), action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (Action R-12). The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

(2) *When a show cause notice is required*. A show cause notice shall be issued when a determination of noncompliance is made based upon:

(i) The findings of a compliance review;

(ii) The results of an investigation which verifies the existence of discrimination; or

(iii) Area-wide plan reports that show an underutilization of minorities (based on criteria of U.S.

Department of Labor's Optional Form 66 "Manpower Utilization Report") throughout the contractor's work force covered by part II of the plan bid conditions.

(3) *Responsibility for issuance.* (i) Show cause notices will normally be issued by SHA's to federally assisted contractors when the State has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice.

(ii) When circumstances warrant, the Regional Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

(iii) The Regional Federal Highway Administrators in Regions 8, 10, and the Regional Engineer in Region 15, shall issue show cause notices to direct Federal contractors found in noncompliance.

(4) *Content of show cause notice.* The show cause notice must: (See sample—appendix A of this subpart) (i) Notify the contractor of the determination of noncompliance;

(ii) Provide the basis for the determination of noncompliance;

(iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;

(iv) Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;

(v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and

(vi) Advise the contractor of the availability and willingness of the Compliance Specialist to conciliate within the time limits of the show cause notice.

(5) *Preparing and processing the show cause notice.* (i) The State or FHWA official who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the head of the SHA or the Regional Federal Highway Administrator, as appropriate.

(ii) The recommendation, background data, and final draft notice shall be reviewed by appropriate State or FHWA legal counsel.

(iii) Show cause notices issued by the SHA shall be issued by the head of that agency or a designee.

(iv) The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.

(v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period. (Action R-13).

(vi) The 30-day show cause notice shall be issued directly to the noncompliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

(6) *Conciliation efforts during show cause period.* (i) The Compliance Specialist is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the State, FHWA division, or FHWA regional office's case files, as appropriate, indicating actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on verbal communication and written correspondence, requests for assistance or interpretations, and other relevant matters.

(ii) In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be rescinded and the contractor formally notified (Action R-17). The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

(7) *Corrective action plans.* (i) When a contractor is

required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted. (See Sample Corrective Action Plan—appendix B of this subpart)

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports. (Action R-15 and R-17).

(iii) When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels by the compliance specialist immediately upon expiration of the 30-day show cause period. (Action R-16, R-18, R-19)

(iv) When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstating a show cause notice.

(v) When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be recommended immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (i.e. plan entered into prior to the issuance of a show cause) must be issued a 30-day show cause notice in the situations referred to in paragraphs (h) (7) (iv) and (v) of this section, i.e., failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(i) *Followup reviews.* (1) A followup review is an extension of the initial review process to verify the contractors performance of corrective action and to validate progress report information. Therefore, followup reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) *Hearing process.* (1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R-19). The Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

(i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;

(ii) Copies of any contractor or subcontractor certifications;

(iii) Copy of show cause notice;

(iv) Copies of any corrective action plans; and

(v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) SHA's through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for the Department of Transportation.

(k) *Responsibility determinations.*

(1) In instances where requests for formal hearings are

pending OFCCP approval, the contractor may be declared a nonresponsible contractor for inability to comply with the equal opportunity requirements.

(2) SHA's shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended, with a contractor who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to E.O. 11246, as amended.

§ 230.411 Guidance for conducting reviews.

(a) *Extensions of time.* Reasonable extensions of time limits set forth in these instructions may be authorized by the SHA's or the FHWA regional office, as appropriate. However, all extensions are subject to Washington Headquarters approval and should only be granted with this understanding. The Federal Highway Administrator shall be notified of all time extensions granted and the justification therefore. In sensitive or special interest cases, simultaneous transmittal of reports and other pertinent documents is authorized.

(b) *Contract completion.* Completion of a contract or seasonal shutdown shall not preclude completion of the administrative procedures outlined herein or the possible imposition of sanctions or debarment.

(c) *Home office reviews outside regions.* When contractor's home offices are located outside the FHWA region in which the particular contract is being performed, and it is determined that the contractors' home offices should be reviewed, requests for such reviews with accompanying justification shall be forwarded through appropriate channels to the Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D. channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) 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 or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be informed of the criteria outlined in § 230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the

discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

§ 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(3) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information. (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, i.e. area work force, project work force, home office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

(xi) Concurrences at appropriate levels.

(5) Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

(6) Each review level is responsible for ensuring that required information is contained in the report.

(7) When a project review is conducted, the project work force shall be reported. When an area-wide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then area-wide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington Headquarters, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

(i) The compliance review report required by § 230.413(a)(4).

(ii) Corrective action plans.

(iii) Show cause notices or compliance notifications.

(iv) Show cause recessions.

While other data and information should be kept by regional offices (including progress reports, correspondence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, OCR.

(b) *Administrative requirements—*(1) *State conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the State Compliance Specialist will:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the contractor of the compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and

(D) Forward three copies of the compliance review report, and the compliance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, the FHWA division EEO Specialist shall:

(A) Analyze the State's report, ensure that it is complete and accurate;

(B) Resolve non-concurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, the FHWA Regional Civil Rights Director shall:

(A) Analyze the report, ensure that it is complete and accurate;

(B) Resolve non-concurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) *FHWA division conducted reviews.*

(i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

(A) Prepare compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Notify the State to send the contractor the compliance determination, i.e. either notification of compliance or show cause notice; and

(D) Forward two copies of the compliance review report and the compliance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in § 230.413(b)(1)(iii).

(3) *FHWA region conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor's compliance status;

(C) Inform the appropriate division to notify the State to send the contractor ² The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 4 to volume 2, chapter 2, the compliance determination i.e. either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any non-concurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA's;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

§ 230.415 Consolidated compliance reviews.

(a) *General.* Consolidated compliance reviews shall be implemented to determine employment opportunities on an area-wide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA, however, consolidated reviews shall at all times

remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown or imposed plan areas, on an area-wide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) *Methodology*—(1) *Selection of a target area.* In identifying the target area of a consolidated compliance review (e.g. SMSA, hometown or imposed plan area, a multi-county area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) *Determine the review period.* After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) *Obtain background information.* EEO-3's Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) *Identify contractors.* Every nonexempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish area-wide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviewed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only reflect the status of crafts covered by part II of plan bid conditions. Employment data of crafts covered by part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by part I of the plan bid conditions.

(5) *Contractor notification.* Those contractors selected for onsite review shall be sent a notification letter as outlined in § 230.409(c) along with a request for current workforce data ² for completion section 3 of the Federal-Aid Highway Program Manual, which is available at the offices listed in 49 CFR part 7, appendix D. and submission at the onsite review. Those contractors in the target area not selected for onsite review shall also be requested to supply current workforce data as of the onsite review period, and shall return the data within 15 days following the onsite review period.

(6) *Onsite reviews.* Compliance reviews shall then be conducted in accordance with the requirements set forth in §230.409. Reviewers may use Form FHWA-86, Compliance Data Report, if appropriate. It is of particular importance during the onsite reviews that the review team provide for adequate coordination of activities at every stage of the review process.

(7) *Compliance determinations.* Upon completion of the consolidated reviews, compliance determinations shall be made on each review by the reviewer. Individual show cause notices or compliance notifications shall be sent (as appropriate) to each reviewed contractor.

The compliance determination shall be based on the contractor's target area work force (Federal, Federal-aid and non-Federal), except when the target area is coincidental with hometown plan area, compliance determinations must not be based on that part of a contractor's work force covered by part I of the plan bid conditions, as previously set forth in this regulation. For example: ABC Contracting, Inc. employs carpenters, operating engineers, and cement masons. Carpenters and operating engineers are covered by

part II of the plan bid conditions, however, cement masons are covered by part I of the plan bid conditions. The compliance determination must be based only on the contractor's utilization of carpenters and operating engineers.

(d) *Reporting*—(1) *Composite report.* A final composite report shall be submitted as a complete package to the Washington Headquarters, OCR, within 45 days after the review period and shall consist of the following:

(i) Compliance review report, for each contractor and subcontractor with accompanying show cause notice or compliance notification.

(ii) Work force data to show the aggregate employment of all contractors in the target area.

(iii) A narrative summary of findings and recommendations to include the following:

(A) A summary of highway construction employment in the target area by craft, race, and sex. This summary should explore possible patterns of discrimination or underutilization and possible causes, and should compare the utilization of minorities and females on contractor's work forces to the civilian labor force percent for minorities and females in the target area.

(B) If the target area is a plan area, a narrative summary of the plan's effectiveness with an identification of part I and part II crafts. This summary shall discuss possible differences in minority and female utilization between part I and part II crafts, documenting any inferences drawn from such comparisons.

(C) If applicable, discuss local labor unions' membership and/or referral practices that impact on the utilization of minorities and females in the target area. Complete and current copies of all collective bargaining agreements and copies of EEO-3, Local Union Reports, for all appropriate unions shall accompany the composite report.

(D) Any other appropriate data, analyses, or information deemed necessary for a complete picture of the area-wide employment.

(E) Considering the information compiled from the summaries listed above, make concrete recommendations on possible avenues for correcting problems uncovered by the analyses.

(2) *Annual planning report.* The proper execution of consolidated compliance reviews necessitates scheduling, along with other fiscal program planning. The Washington Headquarters, OCR, shall be notified of all planned consolidated reviews by August 10 of each year and of any changes in the target area or review periods, as they become known. The annual consolidated planning report shall indicate:

- (i) Selected target areas;
- (ii) The basis for selection of each area; and
- (iii) The anticipated review period (dates) for each target area.

APPENDIX A TO SUBPART D

APPENDIX A — SAMPLE SHOW CAUSE NOTICE

Certified Mail, Return Receipt Requested

Date

Contractor's Name

Address

City, State, and Zip Code.

DEAR CONTRACTOR: As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas: List of Deficiencies

- 1.
- 2.
- 3

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semi-skilled and skilled categories of employees.

The Department of Labor regulations (41CFR60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form PR-1273, Clause II). Section 60-1.20(b) of these regulations provides that when equal employment deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct each deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of noncompliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at _____ (Address) at _____ (Time) on _____

_____ (Date) for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed. We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to (Name, Address, and Phone).

Sincerely yours,
[41 FR 34245, Aug. 13, 1976]

APPENDIX B—SAMPLE CORRECTIVE ACTION PLAN

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 20 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will submit an updated listing of recruitment sources and evidence of contact by _____

_____(Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by _____(Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by _____(Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority representation. This meeting will be held on _____(Date) and we will summarize the discussions and current posture of each subcontractor for your review by _____(Date). Additionally, as requested, we will submit a PR-1391 on _____(Date), _____(Date), _____(Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented all the provisions of these commitments by _____(Date).

[41 FR 34245, Aug. 13, 1976]

APPENDIX C —SAMPLE SHOW CAUSE RESCISSION

Certified Mail, Return Receipt Requested

Date

Contractor

Address

City, State, and Zip Code

DEAR CONTRACTOR: On _____, (Date) you received a 30-day show cause notice from this office for failing to implement the required contract requirements pertaining to equal employment opportunity.

Your corrective action plan, discussed and submitted at the compliance conference held on _____(Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered in compliance with Executive Order 11246, as amended. If it should later be determined that your corrective action plan is not sufficient to achieve compliance, this Rescission shall not preclude a subsequent finding of noncompliance. In view of the above, this letter is to inform you that the 30-day show cause notice of _____(Date) is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of your corrective action plan, formal sanction proceedings will be instituted immediately. Sincerely,