

§ 230.415

23 CFR Ch. I (4–1–03 Edition)

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 areawide 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 an imposed plan areas, on an areawide 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 multicounty 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 non-exempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish areawide 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 data² for completion

²The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 4 to volume 2, chapter 2, 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 work-force 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 areawide 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 OF PART 230—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 semiskilled and skilled categories of employees.

The Department of Labor regulations (41 CFR 60) 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 opportunity 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 non-compliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at (Address) at (Time) on (Address) (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 implementa-

tion 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 TO SUBPART D OF PART 230—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

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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 TO SUBPART D OF PART 230—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.

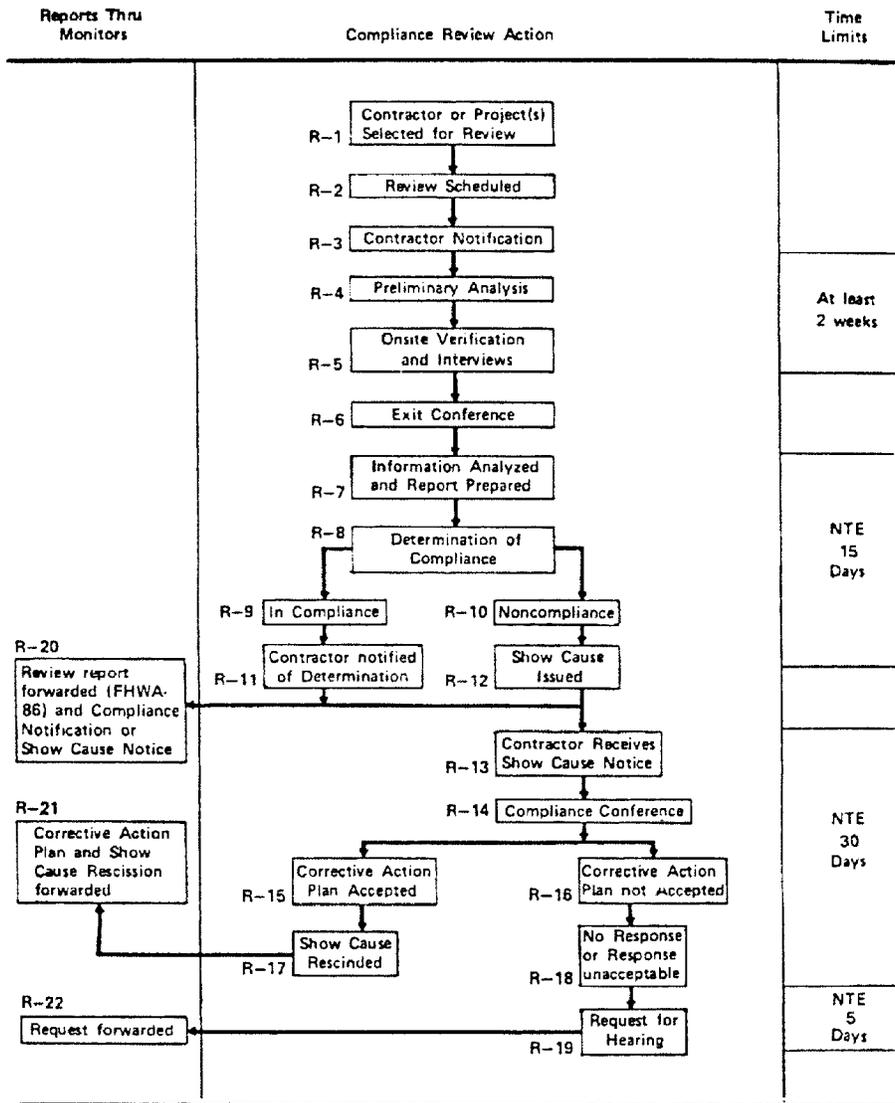
Your corrective action plan, discussed and submitted at the compliance conference held on _____(Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered in compliance 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,

APPENDIX D TO SUBPART D OF PART 230—EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART 46



[41 FR 34245, Aug. 13, 1976]