Appendix D – Workforce Analysis Materials

APPENDIX H

Construction Trades and 2000 Civilian Labor Force (CLF) Codes

Line No.	List of Trades (From Form FHWA-1391)	2000 Census EEO File Occupational Categories
1	**Equipment Operator**	**(630)** Paving, Surfacing, and Tamping Equipment Operators, 47-2071 **(682)** Earth Drillers, Except Oil and Gas, 47-5021 (865) **Crushing, Grinding, Polishing, Mixing, and Blending Workers, 51-9020** (951) **Crane and Tower Operators, 53-7021** **(952)** Dredge, Excavating, and Loading Machine Operators, 53-7030 **(632)** Miscellaneous Construction Equipment Operators, 47-207X
2	**Truck Drivers**	(960) **Industrial Truck & Tractor Operators, 53-7051**
3	**Ironworkers**	(653) **Iron and Steel Workers, 47-2XXX**
4	**Carpenters**	(623) **Carpenters, 47-2030**
5	**Cement Mason**	(625) **Cement Masons, Concrete Finishers, and Terrazzo Workers, 47-2050**
6	**Pipefitters/ Plumbers**	(644) **Pipelayers, Plumbers, Pipefitters and Steamfitters, 47-2150**

(623) **Carpenters, 47-2030**

Census 2000 Occupational Category

2000 Standard Occupational Classification Code

For a Table of the Census 2000 Occupational Categories for the Special EEO Tabulation and its corresponding 2000 Standard Occupational Classification Code (*See* ***www.census.gov/hhes/www/eeoindex/occcategories.pdf***).

For a description of each 2000 Standard Occupational Classification Code (*See* ***stats.bls.gov/soc/soc_majo.htm***).

Analyzing a Contractor's Workforce

This document illustrates how to use the civilian labor force data obtained from the Census 2000 EEO Tabulation database to analyze a contractor's workforce for an EEO Contractor Compliance review.

Example 1

Calculating Civilian Labor Force Percentages

This example illustrates how to combined mixed race data from the Census 2000 EEO Tabulation database to get non-mixed-race EEO data.

Truck Drivers (913), Sacramento PMSA

Percentages

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Sacramento, CA PMSA Fips=6920	Industrial Truck and Tractor Operators (960) SOC 53-7051	Total	100%	44.3%	28.0%	13.9%	0.6%	8.0%	1.2%	0.2%	1.0%	0.0%	0.6%	2.3%
		Male	95.4%	40.8%	27.6%	13.3%	0.6%	8.0%	1.2%	0.2%	1.0%	0.0%	0.6%	2.2%
		Female	4.7%	3.6%	0.4%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%

Source: US Census Bureau, Census 2000 special tabulation

White: 44.3%

Black: Black, non Hispanic (13.9%) + Black & White, non-Hispanic (0.2%) = 14.1%

Hispanic: 28.0%

Asian/Pacific Islander: Asian, non-Hispanic (8.0%) + NHOPI, non-Hispanic (1.2%) + Asian & White, non-Hispanic (0.6%) = 9.8%

American Indian/Alaskan Native: AIAN, non-Hispanic (0.6%) + AIAN & White, non-Hispanic (1.0%) = 1.6%

Women: 4.7%

Example 2

Calculating Under-representation, Combining Two Areas

Sometimes more than one MSA, PMSA or county covers the contractor's recruitment area. In this case it is necessary to combine MSA, PMSA or county data to calculate the relevant CLF.

For example, if the contractor's recruitment area for cement masons is San Diego and Orange Counties, California it is necessary to combine CLF data from the San Diego MSA and Orange County PMSA as shown below.

Cement Masons (625), San Diego MSA

Number of People

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
San Diego, CA MSA Fips=7320	Cement Masons, Concrete Finishers, and Terrazzo Workers (625) SOC 47-2050	Total	1020	285	690	45	4	0	0	0	10	0	0	0
		Male	1019	285	675	45	4	0	0	0	10	0	0	0
		Female	15	0	15	0	0	0	0	0	0	0	0	0

Source: US Census Bureau, Census 2000 special tabulation

Percentages

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
San Diego, CA MSA Fips=7320	Cement Masons, Concrete Finishers, and Terrazzo Workers (625) SOC 47-2050	Total	100%	27.9%	67.6%	4.4%	0.4%	0.0%	0.0%	0.0%	1.0%	0.0%	0.0%	0.0%
		Male	99.9%	27.9%	66.2%	4.4%	0.4%	0.0%	0.0%	0.0%	1.0%	0.0%	0.0%	0.0%
		Female	1.5%	0.0%	1.5%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: US Census Bureau, Census 2000 special tabulation

Cement Masons (625), Orange County PMSA

Number of People

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Orange County, CA PMSA Fips=5945	Cement Masons, Concrete Finishers, and Terrazzo Workers (625) SOC 47-2050	Total	635	135	485	10	0	0	10	0	0	0	0	0
		Male	640	135	485	10	0	0	10	0	0	0	0	0
		Female	0	0	0	0	0	0	0	0	0	0	0	0

Source: US Census Bureau, Census 2000 special tabulation

Percentages

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Orange County, CA PMSA Fips=5945	Cement Masons, Concrete Finishers, and Terrazzo Workers (625) SOC 47-2050	Total	100%	21.3%	76.4%	1.6%	0.0%	0.0%	1.6%	0.0%	0.0%	0.0%	0.0%	0.0%
		Male	101%	21.3%	76.4%	1.6%	0.0%	0.0%	1.6%	0.0%	0.0%	0.0%	0.0%	0.0%
		Female	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: US Census Bureau, Census 2000 special tabulation

When combining CLF data from more than one area, it is necessary to weight data from each area by its proportion of the combined area. In this case, there are 1655 cement masons in the CLF of San Diego and Orange Counties -- 1020 in San Diego and 635 in Orange County. (See these numbers circled in red.) Therefore weight data from San Diego County by 0.616 (1020/1655) and weight data from Orange County by 0.384 (635/1655).

Civilian Labor Force (CLF)

White: (White, non-Hispanic, SD x 0.616) + (White, non-Hispanic, OC x 0.384) =
(27.9% x 0.616) + (21.3% x 0.384) = 25.4%

Black: ((Black, non-Hispanic, SD + Black & White, non-Hispanic, SD) x 0.616) + ((Black, non-Hispanic, OC + Black & White, non-Hispanic, OC) x 0.384) =
((4.4% + 0.0%) x 0.616) + ((1.6% + 0.0%) x 0.384) = 3.3%

Hispanic: (Hispanic, SD x 0.616) + (Hispanic, OC x 0.384) =
(67.6% x 0.616) + (76.4% x 0.384%) = 71.0%

Asian/Pacific Islander: ((Asian, non-Hispanic, SD + NHOPI, non-Hispanic, SD + Asian & White, non-Hispanic, SD) x 0.616) + ((Asian, non-Hispanic, OC + NHOPI, non-Hispanic, OC + Asian & White, non-Hispanic, OC) x 0.384) =
((0.0% + 0.0% + 0.0%) x 0.616) + ((0.0% + 1.6% + 0.0%) x 0.384) = 0.6%

American Indian/Alaskan Native: ((AIAN, non-Hispanic, SD + AIAN & White, non-Hispanic, SD) x 0.616) + (AIAN, non-Hispanic, OC + AIAN & White, non-Hispanic, OC) x 0.384) =
((0.4% + 1.0%) x 0.616) + ((0.0% + 0.0%) x 0.384) = 0.9%

Women: (Women, SD x 0.616) + (Women, OC x 0.384) =
(1.5% x 0.616) + (0.0% x 0.384) = 0.9%

Example 3

Calculating Under-representation and Numbers Needed for Parity

Carpenters (620), Sacramento, CA PMSA

Percentages

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Sacramento, CA PMSA Fips=6920	Carpenters (623) SOC 47-2031	Total	100%	75.7%	15.2%	1.8%	1.3%	2.6%	0.4%	0.2%	1.3%	0.1%	0.4%	1.2%
		Male	97.9%	74.0%	14.9%	1.7%	1.3%	2.6%	0.4%	0.2%	1.3%	0.1%	0.4%	1.2%
		Female	2.1%	1.7%	0.3%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: US Census Bureau, Census 2000 special tabulation

Civilian Labor Force (CLF)
White: 75.7%
Black: 1.8% + 0.2% = 2.0%
Hispanic: 15.2%
Asian/Pacific Islander: 2.6% + 0.4% + 0.4% = 3.4%
American Indian/Alaskan Native: 1.3% + 1.3% = 2.6%
Women: 2.1%

Contractor's Workforce

White: 30
Black: 2
Hispanic: 4
Asian/Pacific Islander: 0
American Indian/Alaskan Native: 0
Women: 2
Total: 40

Parity (full representation)

White: 0.757 x 40 = 30
Black: 0.02 x 40 = 1
Hispanic: 0.152 x 40 = 6
Asian/Pacific Islander: 0.034 x 40 = 1

Numbers need for parity

White: none
Black: none
Hispanic: 6 – 4 = 2
Asian/Pacific Islander: 1 – 0 = 1
American Indian/Alaskan Native: 1 – 0 = 1
Women: none

Carpenters (620), Sacramento, CA PMSA

	White	Black	Hispanic	A/PI	AI/AN	Women	Total
CLF	75.7%	2.0%	15.2%	3.4%	2.6%	2.1%	
Full representation	30	1	6	1	1	1	
Contractor's Workforce	34	2	4	0	0	2	40
# Needed			**2**	**1**	**1**		

Numbers needed for parity

Using the Census 2000
Special Equal Employment Opportunity (EEO) Tabulation

The Census 2000 Special EEO Tabulation serves as the primary external benchmark for conducting comparisons between the racial, ethnic, and sex composition of each employer's workforce to its available labor market.

This paper explains how to use the on-line access to the Census 2000 Special EEO Tabulation. Also, it discusses the following major enhancements to the 2000 data that was not found in the EEO Tabulation from the 1990 Census:

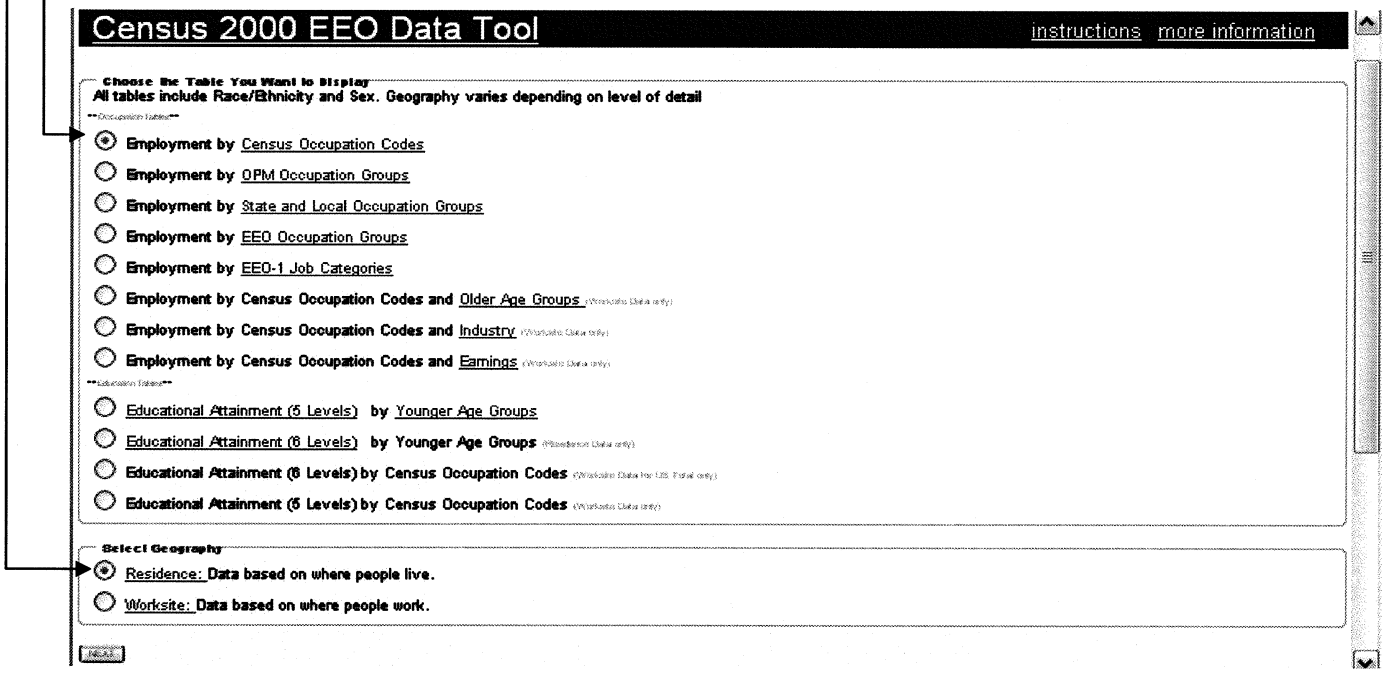
- residence and worksite datasets and
- mixed-race data.

Using On-Line Access to EEO Special Tabulation

For on-line access to the data from the EEO Special Tabulation see http://www.census.gov/eeo2000/index.html.

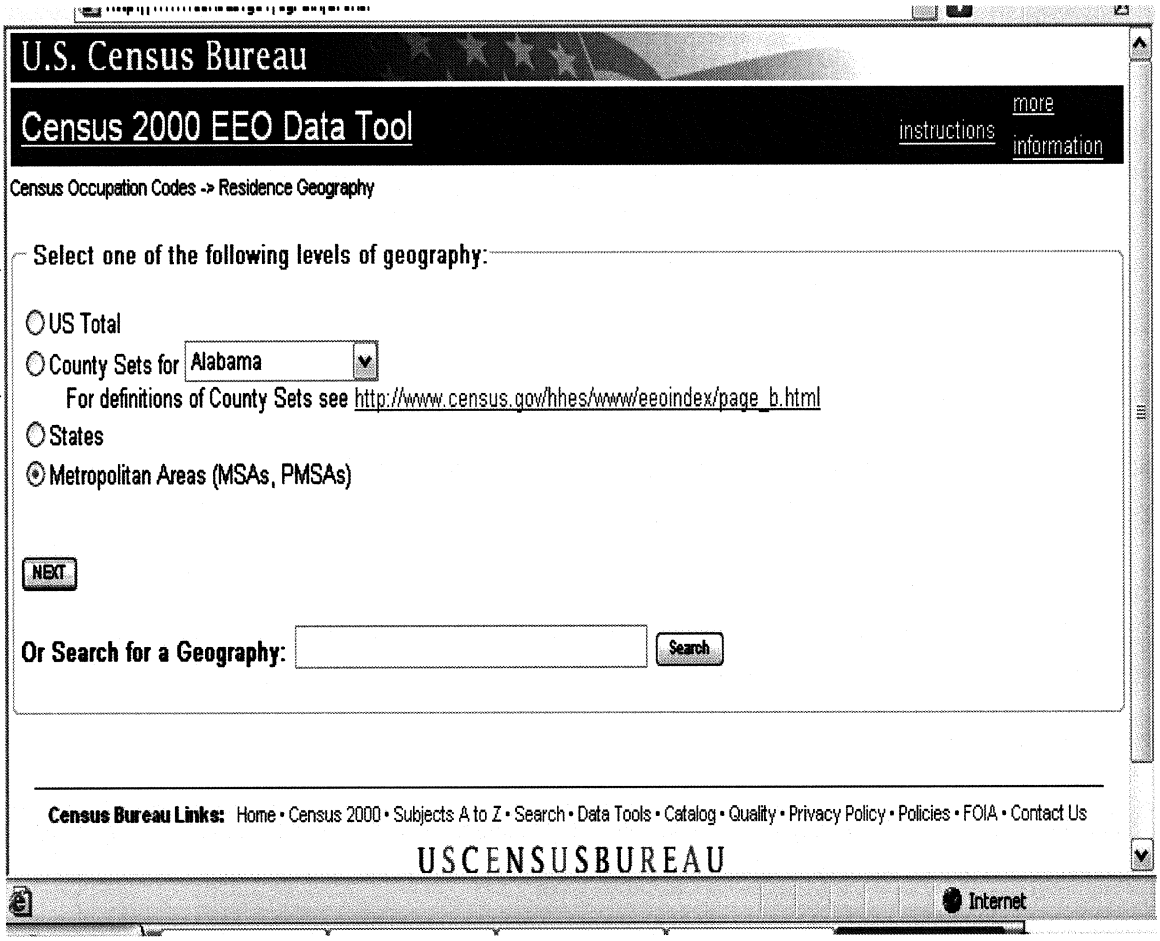
I. On the first screen:
   1. Select the Occupational Category, "Employment by Census Occupation Codes."
   2. Select the Geography category, "Residence".

Press the "Next" button.



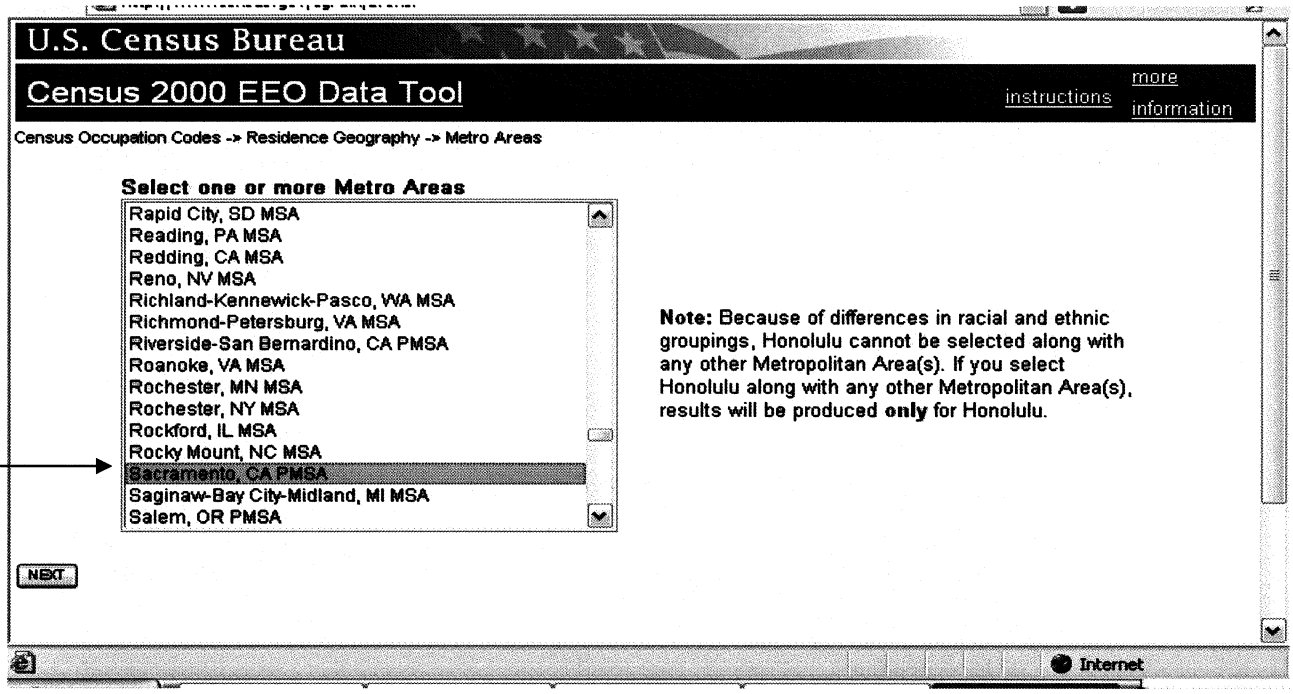
II. On the next screen, select "County Set for *name of state*" <u>or</u> "Metropolitan Areas (MSAs, PMSAs)."

Press the "next" button.

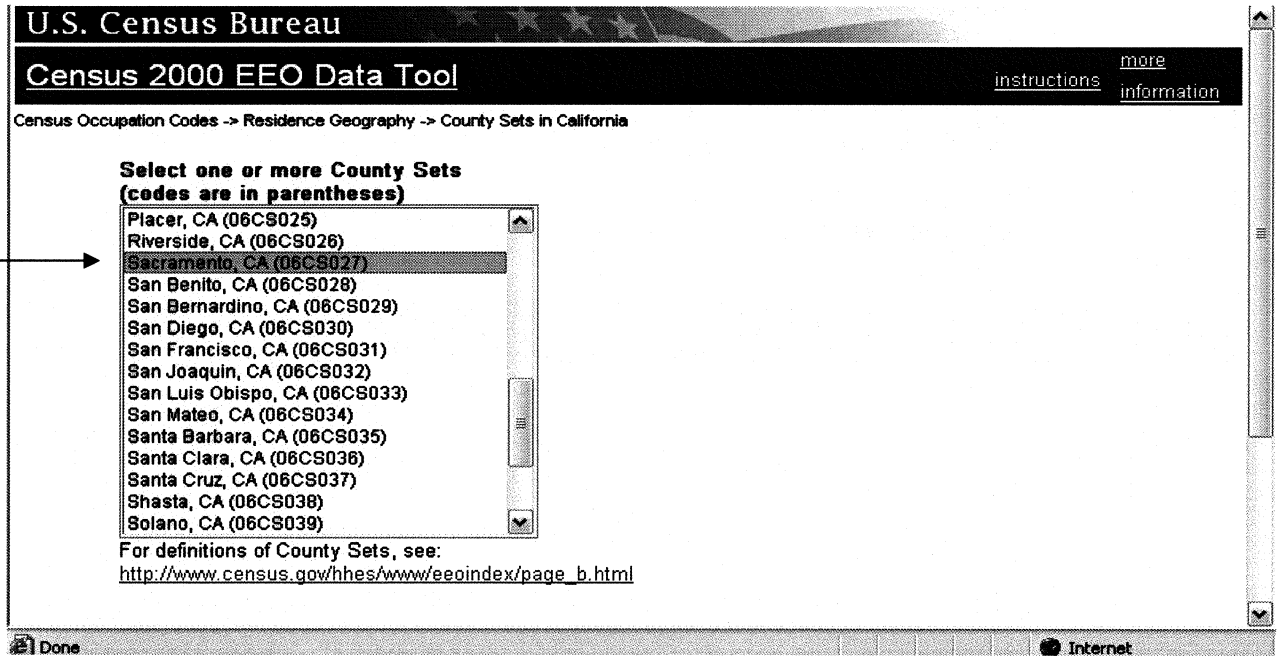


or

III. On the next screen, select the relevant county or MSA or PMSA. (The relevant county or MSA or PMSA should be the recruitment area of the contractor. Data from more than one county, MSA or PMSA may need to be combined to represent the recruitment area.) Press the "Next" button.



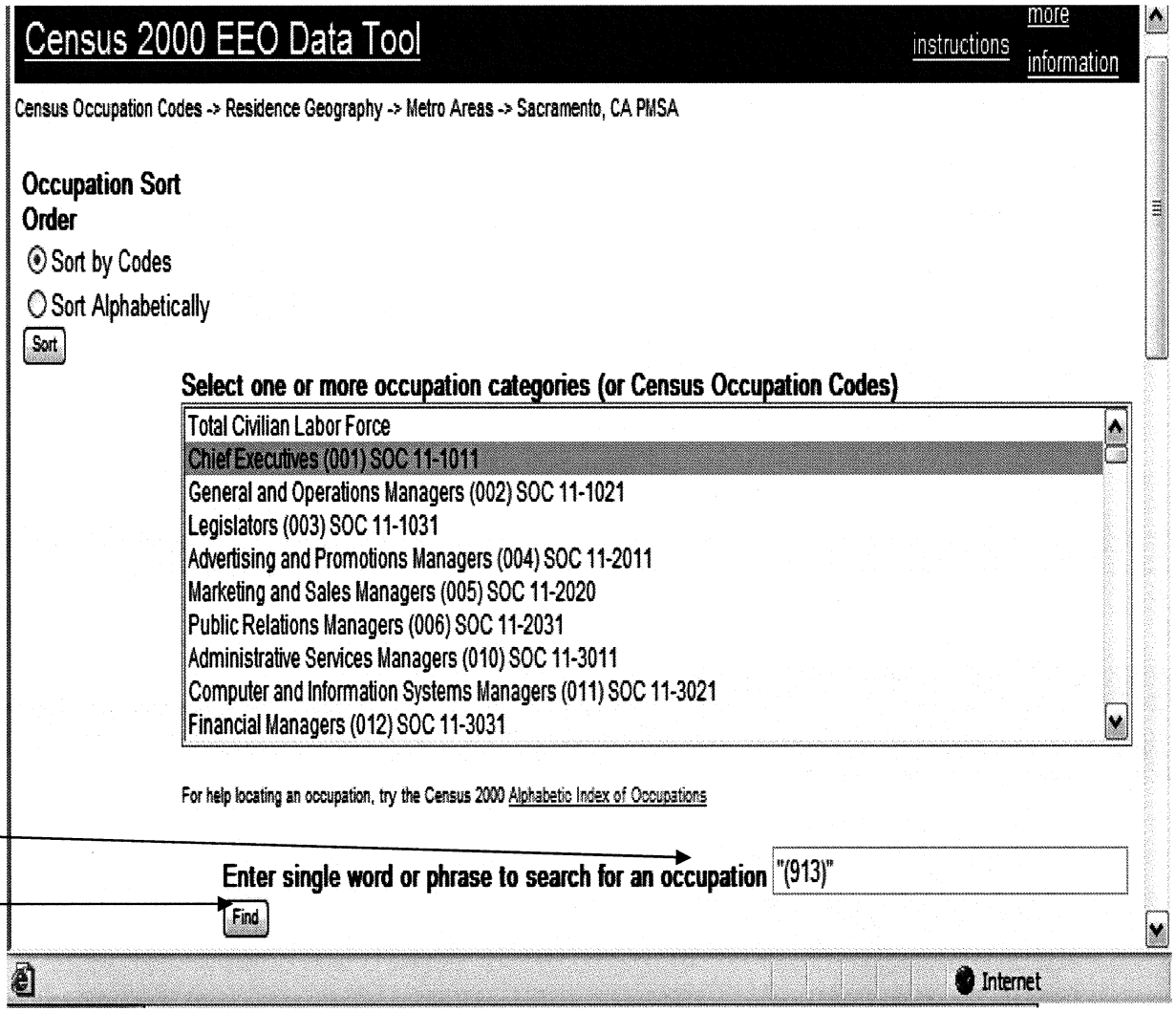
or



IV. On the next screen:

1. Select the relevant Census Occupational Code. See the attached document (Construction Trades and 2000 Civilian Labor Force (CLF) Codes) for the 2000 Census EEO File Occupational Code(s) that correspond to the trades listed in the FHWA-1391. Use to search function to locate the relevant occupational code. For example, for truck drivers enter "(913)" in the search engine.

2. **Press the "Find" button.**

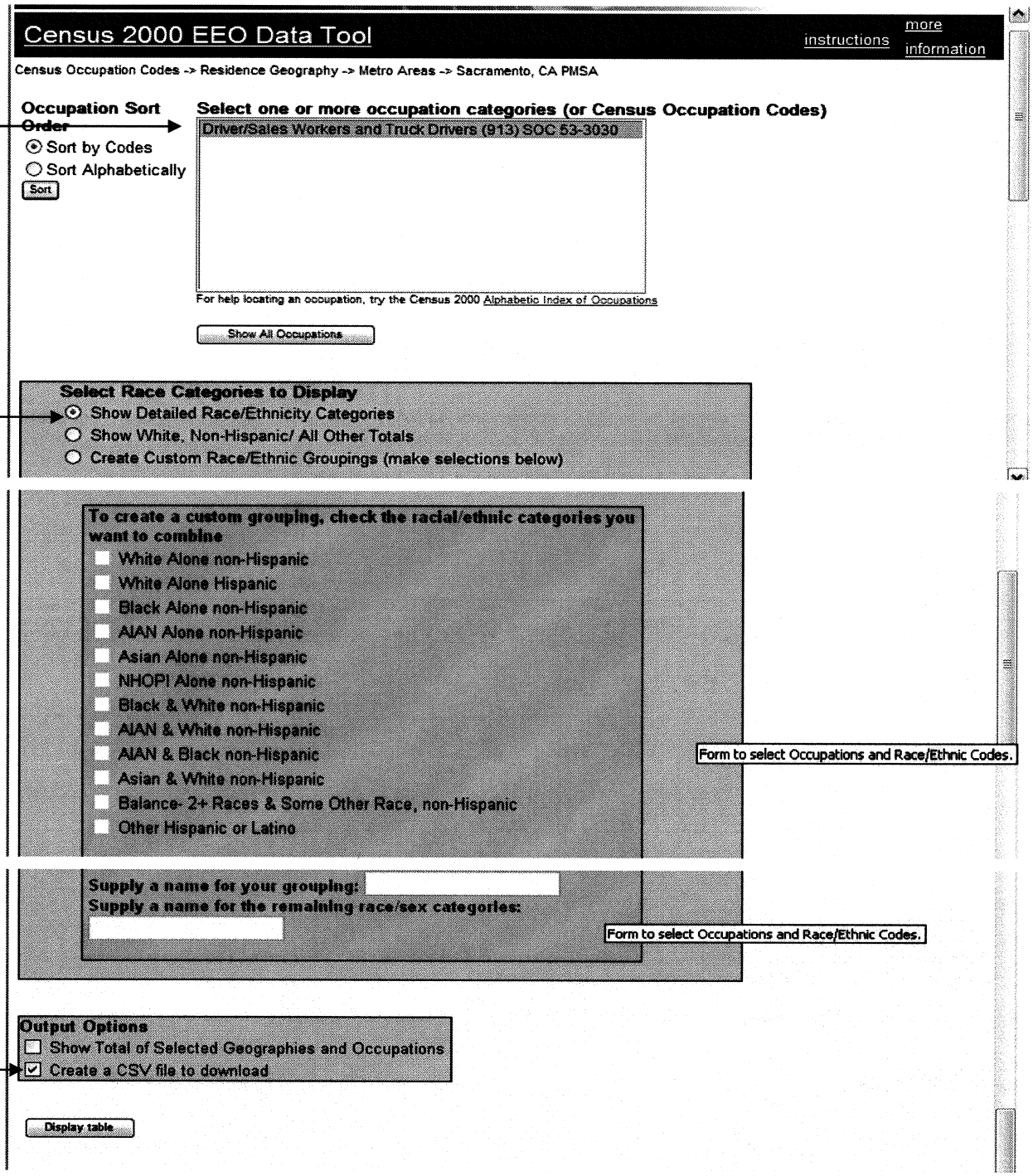


V. On the next screen:

1. Select the relevant occupation code, in this example select "Driver/Sales Workers and Truck Divers (913) SOC 53-3030"

2. Select the Race Category, "Show Detailed Race/Ethnicity Categories."

3. Select the Output Option, "Create a CSV file for download."
   Press the "Display Table" button.



VI. The data requested will be downloaded in an Excel spreadsheet. This data can be copied, edited, etc. for conducting comparisons between the racial, ethnic, and sex composition of an employer's workforce to its available labor market.

Census 2000 EEO Data Tool

EEO Residence Data Results for Sacramento, CA PMSA

Number of People

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Sacramento, CA PMSA Fips=6920	Driver/Sales Workers and Truck Drivers (913) SOC 53-3030	Total	15995	11075	2225	1135	120	630	140	15	260	15	30	360
		Male	14915	10325	2105	1050	110	585	120	15	230	15	30	330
		Female	1090	750	120	85	10	45	20	0	30	0	0	30

Source: US Census Bureau, Census 2000 special tabulation

NOTE: Estimates may not add to the total due to rounding. For information on confidentiality protection, sampling error, nonsampling error, and accuracy of the data, see http://www.census.gov/prod/cen2000/doc/sf3chap8.pdf

NOTE: Estimates may not add to the total due to rounding. For information on confidentiality protection, sampling error, nonsampling error, and accuracy of the data, see http://www.census.gov/prod/cen2000/doc/sf3chap8.pdf

More Information: FedStats provides more data estimates for counties and places in California.

Percentages

Geography	Occupation Census/SOC Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Sacramento, CA PMSA Fips=6920	Driver/Sales Workers and Truck Drivers (913) SOC 53-3030	Total	100%	69.2%	13.9%	7.1%	0.8%	3.9%	0.9%	0.1%	1.6%	0.1%	0.2%	2.3%
		Male	93.2%	64.6%	13.2%	6.6%	0.7%	3.7%	0.8%	0.1%	1.4%	0.1%	0.2%	2.1%
		Female	6.8%	4.7%	0.8%	0.5%	0.1%	0.3%	0.1%	0.0%	0.2%	0.0%	0.0%	0.2%

Source: US Census Bureau, Census 2000 special tabulation

NOTE: Percentages may not add to total due to rounding. For information on confidentiality protection, sampling error, nonsampling error, and accuracy of the data, see http://www.census.gov/prod/cen2000/doc/sf3chap8.pdf.

More Information: FedStats provides more data estimates for counties and places in California.

Download as CSV file

Relevant CLF
The relevant Civilian Labor Force (CLF) is from the county, MSA or PMSA that matches the contractor's recruitment area. It may be necessary to combine more than one county, MSA or PSA. For definitions of MSAs and PMSAs see http://www.bls.gov/oes/current/msa_def.htm#6920.

There are several census occupational categories in the "equipment operator" occupation. Therefore, it may be necessary to combine more than one census occupational category to calculate the relevant CLF for equipment operators.

Census Occupational Codes
See Attachment 1, "Construction Trades and 2000 Civilian Labor Force (CLF) Codes," for the 2000 Census EEO File Occupational Code(s) that correspond to the trades listed in the FHWA-1391.

Sometimes other Census EEO File Occupational Codes may be relevant to use. For example, if a particular contractor primarily uses rebar workers and pile drivers you may use these occupational codes. For a table of the Census 2000 Occupational Categories for the Special EEO Tabulation and its corresponding 2000 Standard Occupational Classification Code see http://www.census.gov/hhes/www/eeoindex/occcategories.pdf. Use the "Search" function to search for the term "rebar." The 2000 Census EEO File Occupational Code for Rebar Workers is 653. If you conduct a similar search for the term "pile" and you'll find that Pile-Driver Operators are in the Census EEO File Occupational Code 632.

If you are not sure that the occupational Title is the occupation you are looking for you can view the description of each occupational Title at http://stats.bls.gov/soc/soc_majo.htm. This site describes each 2000 Standard Occupational Classification (SOC) Code. The 2000 SOC Code is in the right column in document described in the previous paragraph. For example, Pile-Driver Operators are in 2000 SOC Code 47-2072. Navigate the document at the above web site to find SOC Code 47-2072 and you'll find a description for Pile-Driver Operator. See Attachment 2, "Finding the Correct Census Occupational Category," for a step-by-step guide to navigating these websites.

Residence vs. Worksite Datasets
The Residence datasets must be used to obtain Civilian Labor Force (CLF) data to conduct comparisons between the racial, ethnic, and sex composition of each employer's workforce to its available labor market. Do not use the Worksite datasets.

The Census 2000 Special EEO Tabulation can provide the number of people by occupation, sex and race and ethnicity according to *where people worked* at the time of Census 2000. This data is produced when one selects the Geography category, "Worksite." The Census 2000 Special EEO Tabulation will present data according to *where they lived* at the time of Census 2000, regardless of where they worked, when one selects the Geography category, "Residence."

CLF data is obtained from the Residence dataset, not the Worksite dataset. The CLF is the sum of: (1) the employed, at work during the enumeration week; (2) the employed, not at work during the enumeration week; and (3) the unemployed, including both experienced and new-entrant jobless who were seeking work. The Residence datasets contain all the required data from each of the three components of the CLF specified above. The Worksite datasets do not include individuals in categories two and three above, as these individuals were either employed but not at work during the enumeration week with no opportunity to report to a worksite on the Census form or these individuals were unemployed and, thus, without a worksite.

Mixed-Race Data

How does one use the mixed-race and national origin groupings in the 2000 Census? The Equal Employment Opportunity Commission (EEOC) has issued guidance on bridging to the previous racial/ethnic categories from the Special EEO File. See http://www.eeoc.gov/stats/census/race_ethnic_data.html. This guidance is summarized below.

To bridge to the previous racial/ethnic categories, other than Hawaii, the following rules should be used to maximize compatibility among employment files.

- **White, not of Hispanic origin**: use White, non-Hispanic.

- **Black, not of Hispanic origin**: combine
  - Black, non-Hispanic *with*
  - Black and White, non-Hispanic

- **Hispanic**: use Hispanic.

- **Asian or Pacific Islander**: combine
  - Asian, non-Hispanic *with*
  - Asian and White, non-Hispanic, *plus*
  - Native Hawaiian or Other Pacific Islander (NHOPI), non-Hispanic.

- **American Indian or Alaskan Native**: combine
  - American Indian or Alaskan Native (AIAN), non-Hispanic *with*
  - AIAN and White, non-Hispanic.

- **Other**: combine
  - AIAN and Black, non-Hispanic, *with*
  - Balance 2+ races, non-Hispanic.

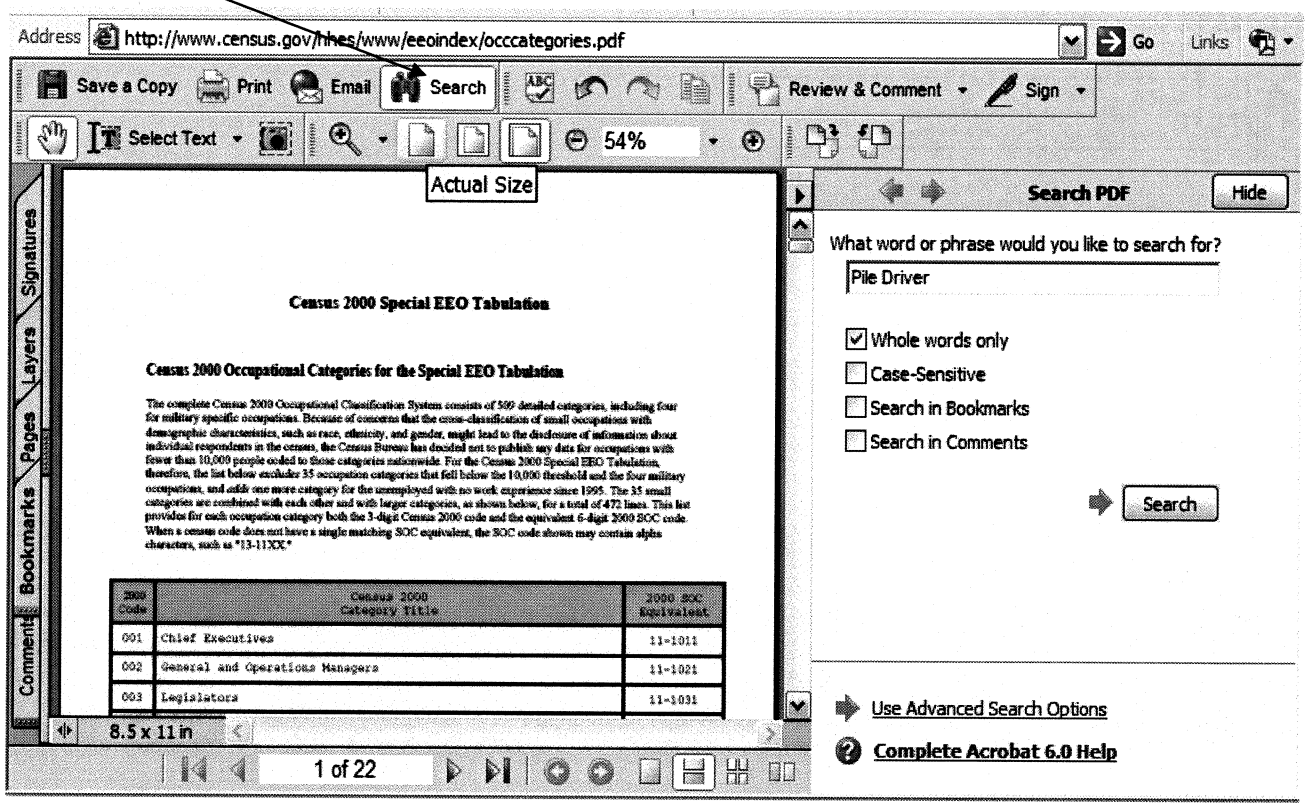
[1] See the above linked document for the detailed guidance that applies to Hawaii.

Attachment 2
Finding the Correct Census Occupational Category

This paper explains how to find the correct Census Occupational Category for use with the EEO Tabulation Database to analyze a contractor's workforce. See *Using the Census 2000 Special Equal Employment Opportunity (EEO) Tabulation. These documents explain how to get relevant civilian labor force data needed* to conduct an EEO Contractor Compliance review.

For a table of the Census 2000 Occupational Categories for the Special EEO Tabulation and its corresponding 2000 Standard Occupational Classification Code see http://www.census.gov/hhes/www/eeoindex/occcategories.pdf.

To illustrate the use of this web site we'll look for the Census Occupational Category for pile driver. Search for the term "Pile Driver."



Address http://www.census.gov/hhes/www/eeoindex/occcategories.pdf

622	Brickmasons, Blockmasons, and Stonemasons	47-2020
623	Carpenters	47-2031
624	Carpet, Floor, and Tile Installers and Finishers	47-2040
625	Cement Masons, Concrete Finishers, and Terrazzo Workers	47-2050
626	Construction Laborers	47-2061
630	Paving, Surfacing, and Tamping Equipment Operators	47-2071
632	Miscellaneous Construction Equipment Operators Combines: 631 - [redacted] Operators 632 - [redacted]ngineers and Other Construction Equipment Operators	47-207X Combines: 47-2072 47-2073
633	Drywall Installers, Ceiling Tile Installers, and Tapers	47-2080
635	Electricians	47-2111
636	Glaziers	47-2121
640	Insulation Workers	47-2130
642	Painters, Construction and Maintenance	47-2141

Finished searching for:

pile driver

Total instances found:

1

Results:

Pile Driver Operators 632 - Operating

Pile Driver Operators is in Census Occupational Category "632" and Standard Occupational Code (SOC) Code "47-2072." You may want to check the occupation's description to confirm that it is the correct one to use. For a description of each 2000 Standard Occupational Classification Code see http://stats.bls.gov/soc/soc_majo.htm.

Address http://stats.bls.gov/soc/soc_majo.htm

U.S. Department of Labor
Bureau of Labor Statistics
Standard Occupational Classification

www.bls.gov

Search | A-Z Index

BLS Home | Programs & Surveys | Get Detailed Statistics | Glossary | What's New | Find It! In DOL

SOC Major Groups

Each occupation in the SOC is placed within one of these 23 major groups:

11-0000 Management Occupations

13-0000 Business and Financial Operations Occupations

15-0000 Computer and Mathematical Occupations

17-0000 Architecture and Engineering Occupations

19-0000 Life, Physical, and Social Science Occupations

You'll find SOC 47-2072 under "47-0000 Construction and Extraction Operations"

Address http://stats.bls.gov/soc/soc_majo.htm Go Links

41-0000 Sales and Related Occupations

43-0000 Office and Administrative Support Occupations

45-0000 Farming, Fishing, and Forestry Occupations

47-0000 Construction and Extraction Occupations

49-0000 Installation, Maintenance, and Repair Occupations

51-0000 Production Occupations

53-0000 Transportation and Material Moving Occupations

55-0000 Military Specific Occupations

SOC User Guide

Last Modified Date: October 16, 2001

http://stats.bls.gov/soc/soc_s0a0.htm Internet

After clicking "47-0000 Construction and Extraction Operations," look for SOC 47-2072.

Address http://stats.bls.gov/soc/soc_s0a0.htm Go Links

47-2044 Tile and Marble Setters

47-2050 Cement Masons, Concrete Finishers, and Terrazzo Workers

47-2051 Cement Masons and Concrete Finishers

47-2053 Terrazzo Workers and Finishers

47-2060 Construction Laborers

47-2061 Construction Laborers

47-2070 Construction Equipment Operators

47-2071 Paving, Surfacing, and Tamping Equipment Operators

47-2072 Pile-Driver Operators

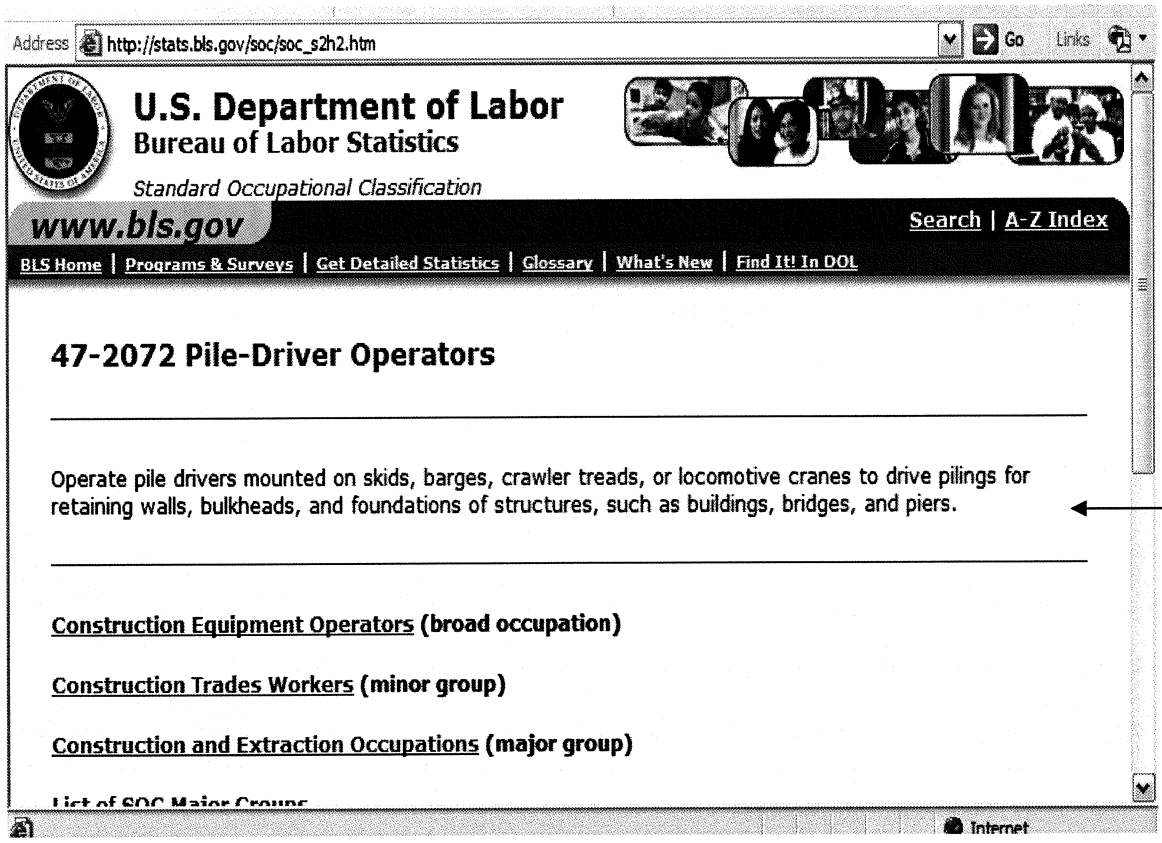
47-2073 Operating Engineers and Other Construction Equipment Operators

47-2080 Drywall Installers, Ceiling Tile Installers, and Tapers

47-2081 Drywall and Ceiling Tile Installers

Internet

Click "47-2072 Pile-Driver Operators." See the definition for Pile Driver Operators.



The definition confirms that this is the correct occupation. Therefore, use the corresponding Census Occupational Category for Pile Driver, which is "632." (See the first web page on page 2.)

Appendix E – Selected Authorities

Title 23: 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, preapprenticeship, 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 qualifiable 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 nonminority 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]

Title 23: 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 provided 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.

Title 23: Appendix A to Subpart A § 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 work force;

(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 nonsegregated 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 nonminority, 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 nonsegregated 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 acheive 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) Areawide 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 recinded 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 reinstituting 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 therefor. 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 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.

Executive Order 11246 - Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I - Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, l978 Comp., p. 230]

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

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

(1) 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; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advancements 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.

(3) 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 agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with afl provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) 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 No. 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 203. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 204 (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this **Order** in any specific contract, subcontract, or purchase **order**.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this **Order** shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this **Order**.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this **Order**: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this **Order**.''

[Sec. 204 amended by EO 13279 of Dec. 16, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 77141 - 77144]

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 206. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 208. The Secretary of Labor, or any agency, officer, or employee in the executive

branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p 230]

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 302."Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon

prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, l978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p, 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the

rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

U.S. Department
of Transportation
**Federal Highway
Administration**

Order

Subject
CLARIFICATION OF FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND STATE RESPONSIBILITIES UNDER EXECUTIVE ORDER 11246 AND DEPARTMENT OF LABOR (DOL) REGULATIONS IN 41 CFR CHAPTER 60

Classification Code
4710.8

Date
February 1, 1999

Par. 1. Purpose
2. Background
3. Applicability
4. Authority and Responsibilities
5. Cancellation

1. **PURPOSE**. To define FHWA's authority and responsibility concerning Executive Order (EO) 11246, as amended, and DOL regulations, set forth in 41 CFR Chapter 60.

2. **BACKGROUND**. Under EO 11246, "Equal Employment Opportunity," the FHWA is required to include certain nondiscrimination and equal employment opportunity provisions in direct Federal contracts and federally assisted construction contracts. The provisions have been established by the DOL, Office of Federal Contract Compliance Programs (OFCCP) and are set forth in 41 CFR Part 60-1, "Obligations of Contractors and Subcontractors," and 41 CFR Part 60-4, "Construction Contractors Affirmative Action Requirements."

3. **APPLICABILITY.**
This Order applies to all direct Federal contracts and federally assisted construction contracts and subcontracts.

4. **AUTHORITY AND RESPONSIBILITIES**

   a. Department of Labor: Under Section 303 of EO 11246, only the DOL has the authority to determine compliance with EO 11246 and its implementing regulations. The FHWA and the State highway agency do not have independent authority to determine compliance with EO 11246, 41 CFR Chapter 60, or the minority and female participation goals established by OFCCP, pursuant to 41 CFR Chapter 60.

   b. State highway agencies and FHWA:

   (1) The State highway agency and FHWA have responsibility to ensure that recipients of Federal-aid funds include the required contractual language relating to equal employment opportunity, as set forth in 41 CFR Parts 60-1 and 60-4, either explicitly or by reference.

   (2) The State highway agency and the 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. Pursuant to this authority, the State highway agency and the FHWA may conduct compliance reviews of contractors on federally funded highway projects to determine compliance with these laws and related regulations. State highway agencies shall prepare complete, written reports of findings of the compliance reviews. These reports, and the evidence on which they are based, shall be available for FHWA analysis.

(3) If the State highway agency or the FHWA becomes aware of any possible violations of EO 11246 or 41 CFR Chapter 60, each has the authority and the responsibility to notify the OFCCP.

(4) The FHWA and the State highway agency shall not make any determinations regarding compliance with EO 11246 or 41 CFR Chapter 60.

5. **CANCELLATION**. The FHWA Form 86, Compliance Data Report, is hereby canceled.

Original signed by:
Kenneth R. Wykle
Federal Highway Administrator

Related Sites:

Leadership Conference on Civil Rights -
The Executive Order on Affirmative Action (E.O. 11246): One of Our Nation's Most Successful Civil Rights Programs

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