



Maine Oil Dealers Association

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Affirmative Action Policies for
Federal Contractors

There are occasions when petroleum marketers bid on federal supply contracts, and commensurate with those bids have to certify that they have affirmative action plans in their businesses. This bulletin is designed to provide an overview of the basic required contents of such affirmative action plans.

Federal contractors have obligations under both Executive Order 11246 and the Rehabilitation Act of 1973. Executive Order 11246 was issued by President Johnson in 1965 to prohibit race discrimination by federal contractors, and to require them to undertake "affirmative action" to employ and promote minorities. The Order was amended in 1967 to encompass women as well as minorities. General guidelines for implementing the order are set forth in OFCCP's regulations at 41 C.F.R. 60-1.

A. What Is Required?

Section 202(1) of the Executive Order provides that, during the performance of a covered federal contract:

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. (emphasis added).

B. Who Is Covered?

1. Basic Coverage Threshold

Federal contractors and subcontractors having a contract or contracts with an executive branch agency or department exceeding \$10,000 in any twelve month period are subject to Executive Order 11246. Contracts of \$10,000 or less may be covered if a series of such contracts, each under \$10,000, aggregate to more than \$10,000 in any twelve month period. 41 C.F.R. 60-1.5(a).

2. Affirmative Action Plan Threshold

Supply and service (but not construction) contractors and subcontractors with 50 or more employees and at least one covered contract for \$50,000 or more (without aggregation) also must prepare written AAP's for each of their establishments. For contractors with multiple establishments, the existence of a single covered contract at one location makes all establishments--

including those which perform no federal work and those which employ fewer than 50 individuals--subject to the Executive Order. See 41 C.F.R. 60-1.4(a).

3. Exemptions

Although this is probably not applicable, upon request, the OFCCP Director may exempt any contract or contracts from the requirements of the Executive Order when to do so would be in the national interest, or would be essential to national security. In addition, exemptions may be granted for any facility which is "in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract." See 41 C.F.R. S 60-1.5(b). However, as a practical matter, formal exemptions are rare, although at times compliance reviews have been dropped when jurisdiction has been questioned.

C. Elements of Compliance

All employers reaching at least the basic coverage threshold must include the Equal Opportunity Clause in every contract and subcontract.

In addition, contractors with contracts of \$50,000 and who have 50 employees must prepare and implement an annual written AAP at each establishment. The regulations define an AAP as:

A set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort . . . to achieve prompt and full utilization of minorities and women, at all levels and all segments of his workforce where deficiencies exist. 41 C.F.R. S 60-2.10.

D. AAP Components

A typical Executive Order AAP consists of two main parts.

1. Statistical Components

The statistical components of an AAP array the contractor's workforce by department, organizational unit or job group; determine the gender and race/ethnic composition of the workforce from which the contractor selects employees; and sets program and placement goals in areas where the contractor is deemed to be underutilized in minorities and/or women. There are three main components in the statistical portion of an AAP. They are:

a. Workforce Analysis

A listing of each job title in the facility ranked from the lowest paid to the highest paid (or highest paid to lowest paid) for each department or other organizational unit including department or unit supervision. The total number of incumbents for each job title by race and sex, along with their rates of compensation, must be given.

b. Utilization Analysis

A three-step process consisting of (1) combining the job titles into sub-units known as "job groups," (2) computing for each job group the employer's current representation of women and minorities and calculating the theoretical "availability" of women and minorities in the labor market who are qualified to work in each job group -- different in Maine than D.C. -- and (3) if

representation is less than "would reasonably be expected by their availability" declaring the job group to be underutilized.

c. Affirmative Action Goals

Percentage placement rate goals for all job groups underutilized by at least one full person designed to eliminate the underutilization. Contractors also may establish nonstatistical program goals concerning the development of programs and policies to stimulate minority/female employment.

2. Narrative Components

The narrative statements in an AAP are a series of written statements describing in considerable detail such things as the contractor's nondiscrimination and affirmative action policies; methods for implementing and disseminating the policies; identification of problem areas along with recommended solutions; and a description of recruitment and community outreach programs.