

§ 1608.5

program is alleged to violate title VII, or is asserted as a defense to a charge of discrimination, the Commission will investigate the charge in accordance with its usual procedures and pursuant to the standards set forth in these Guidelines, whether or not the analysis and plan are in writing. However, the absence of a written self analysis and a written affirmative action plan or program may make it more difficult to provide credible evidence that the analysis was conducted, and that action was taken pursuant to a plan or program based on the analysis. Therefore, the Commission recommends that such analyses and plans be in writing.

§ 1608.5 Affirmative action compliance programs under Executive Order No. 11246, as amended.

Under title VII, affirmative action compliance programs adopted pursuant to Executive Order 11246, as amended, and its implementing regulations, including 41 CFR part 60-2 (Revised Order 4), will be considered by the Commission in light of the similar purposes of title VII and the Executive Order, and the Commission's responsibility under Executive Order 12067 to avoid potential conflict among Federal equal employment opportunity programs. Accordingly, the Commission will process title VII complaints involving such affirmative action compliance programs under this section.

(a) *Procedures for review of Affirmative Action Compliance Programs.* If adherence to an affirmative action compliance program adopted pursuant to Executive Order 11246, as amended, and its implementing regulations, is the basis of a complaint filed under title VII, or is alleged to be the justification for an action which is challenged under title VII, the Commission will investigate to determine whether the affirmative action compliance program was adopted by a person subject to the Order and pursuant to the Order, and whether adherence to the program was the basis of the complaint or the justification.

(1) *Programs previously approved.* If the Commission makes the determination described in paragraph (a) of this section and also finds that the affirmative action program has been approved

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by an appropriate official of the Department of Labor or its authorized agencies, or is part of a conciliation or settlement agreement or an order of an administrative agency, whether entered by consent or after contested proceedings brought to enforce Executive Order 11246, as amended, the Commission will issue a determination of no reasonable cause.

(2) *Program not previously approved.* If the Commission makes the determination described in paragraph (a), of this section but the program has not been approved by an appropriate official of the Department of Labor or its authorized agencies, the Commission will: (i) Follow the procedure in §1608.10(a) and review the program, or (ii) refer the plan to the Department of Labor for a determination of whether it is to be approved under Executive Order 11246, as amended, and its implementing regulations. If, the Commission finds that the program does conform to these Guidelines, or the Department of Labor approves the affirmative action compliance program, the Commission will issue a determination of no reasonable cause under §1608.10(a).

(b) *Reliance on these guidelines.* In addition, if the affirmative action compliance program has been adopted in good faith reliance on these Guidelines, the provisions of section 713(b)(1) of title VII and of §1608.10(b), of this part, may be asserted by the contractor.

§ 1608.6 Affirmative action plans which are part of Commission conciliation or settlement agreements.

(a) *Procedures for review of plans.* If adherence to a conciliation or settlement agreement executed under title VII and approved by a responsible official of the EEOC is the basis of a complaint filed under title VII, or is alleged to be the justification for an action challenged under title VII, the Commission will investigate to determine:

(1) Whether the conciliation agreement or settlement agreement was approved by a responsible official of the EEOC, and

(2) Whether adherence to the agreement was the basis for the complaint or justification.