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CFR Code of Federal Regulations Pertaining to ESA

L, Title 41 Public Contracts and Property Management

L, Chapter 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor

L, Part 60-1 Obligations of Contractors and Subcontractors

L, Subpart A Preliminary Matters; Equal Opportunity Clause; Compliance Reports

41 CFR 60-1.12 - Record retention.

Section Number: 60-1.12

Section Name: Record retention.

(a) General requirements. Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least \$150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, and interview notes. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of not less than two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of not less than one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or enforcement action until final disposition of the complaint, compliance evaluation or enforcement action. The term "personnel records relevant to the complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers submitted by unsuccessful applicants and by all other candidates for the same position as that for which the complainant unsuccessfully applied. Where a compliance evaluation has been initiated, all personnel and employment records described above are relevant until OFCCP makes a final disposition of the evaluation.

(b) Affirmative action programs. A contractor establishment required under Sec. 60-1.40 to develop and maintain a written affirmative action program (AAP) must maintain its current AAP and documentation of good faith effort, and must preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, unless it was not then covered by the AAP requirement.

(c) Contractor identification of record. (1) For any record the contractor maintains pursuant to this section, the contractor must be able to identify:

- (i) The gender, race, and ethnicity of each employee; and
- (ii) where possible, the gender, race, and ethnicity of each applicant.


(2) The contractor must supply this information to the Office of Federal Contract Compliance Programs upon request.

(d) Failure to preserve records. Failure to preserve complete and accurate records as required by paragraphs (a) through (c) of this section constitutes noncompliance with the contractor's obligations under the Executive Order and this part. Where the contractor has

destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: Provided, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from the circumstances that are outside of the contractor's control.

(e) Applicability. The requirements of this section shall apply only to records made or kept on or after December 22, 1997.
[65 FR 68042, Nov. 13, 2000]



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