

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

DIRECTIVE

4300.5

4/6/04

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. PURPOSE

This Directive establishes policy, procedures and responsibilities for the United States Department of Agriculture's (USDA or Department) Agricultural Marketing Service (AMS) and Civil Rights Program (CRP) in implementing the Equal Employment Opportunity (EEO) Program. CRP has the responsibility of maintaining a discrimination complaints system for processing claims of prohibited employment discrimination pursuant to 29 CFR Part 1614 and Departmental Regulation 4300-7. These provisions apply to all AMS employees and applicants for employment.

II. AUTHORITIES

- A. 29 CFR 1614, dated November 9, 1999.
- B. EEOC Management Directive 110, dated November 9, 1999.
- C. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.
- D. Executive Order 13145, 65 Fed. Reg. 6877 (2000)
- E. Sections 501 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq.
- F. Civil Service Reform Act of 1978, dated October 13, 1978.
- G. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq.
- H. The Equal Pay Act of 1973, 29 U.S.C. § 206(d).
- I. Departmental Regulations 4300-6, Civil Rights Policy for the Department of Agriculture, and 4300-7, Processing EEO Complaints of Discrimination.

Distribution: AMS

Originating Office: OA/CR

III. DEFINITIONS

A. Affirmative actions are result-oriented actions taken to increase employment opportunities for qualified women, minorities and persons with disabilities, at all grade levels and in all job categories where they are underrepresented.

B. Affirmative Employment Program Plan(s) (AEPP) are formal plans tailored to remedy the underrepresentation of identified groups (e.g., Hispanics, Blacks, and Women) within a specific organization. Such plans have a 5-year life span and contain analyses of barriers which prevent full representation of particular groups and corresponding objectives and actions that are expected to eliminate those barriers.

C. Appeal is to resort to a superior administrative body or court to review the decision of an administrative agency or lower court.

D. Applicant is a person who files a formal application for employment, promotion, transfer, detail, etc.

E. Claim is an assertion made by a party in a legal/administrative proceeding, which s/he attempts to prove. EEOC changed from the word "allegation" to the word "claim" in November 1999 with the issuance of the revised 29 CFR 1614.

F. Class means a group of employees, former employees, and/or applicants for employment on whose behalf it is alleged they have been, are being, or may be, discriminated against on the basis of their race, color, religion, sex, national origin, age, disability, marital or family status, political beliefs, parental status, sexual orientation, or protected genetic information.

G. Complainant is one who applies for legal redress by filing a complaint.

H. Complaint is the formal filing of a claim that an action, decision, policy, or practice has adversely affected an employee (applicant) on a prohibited discriminatory basis.

I. Disabled individual is any person who: (1) has a physical or mental impairment that substantially limits one or more of his or her major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

J. Disabled veteran is a person entitled to compensation for disability under laws administered by the Veterans Administration, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

K. Discrimination is illegal treatment of a person or group based on race, color, sex, national origin, age, mental/physical disability, religion, reprisal, political beliefs, parental status, sexual orientation or protected genetic information.

L. EEO counselor is an employee designated to play a key role in the pre-complaint processing stage in an effort to bring about an informal resolution of EEO allegations.

M. EEO investigator is an individual given authority to gather and report all pertinent facts related to a complaint of discrimination.

N. EEOC is the Equal Employment Opportunity Commission. This agency is charged with enforcing equal employment opportunity laws and regulations.

O. Employee as used in this Directive, means anyone employed by AMS or an applicant for employment.

P. Grievance process is an administrative mechanism for resolving and addressing certain disputes and complaints of unfair treatment and prohibited personnel practices.

Q. Mixed case complaint is a case in which one alleges discrimination in connection with a matter which is also appealable to the Merit Systems Protection Board (MSPB).

R. Protected genetic information is an employee's family medical history. Protected genetic information includes information about an individual's genetic tests, the occurrences of a disease, medical condition, or disorder in the family members of the individual.

S. Remedy is a mechanism by which a right is enforced or the violation of a right is prevented, redressed, or compensated.

T. Representative is an individual designated by a complainant to act as an official agent for the person.

IV. POLICY

It is the policy of AMS to provide equal opportunity in employment for all persons, and prohibit discrimination in employment because of race, color, religion, national origin, sex, age, and mental or physical disability, political beliefs, parental status, marital or familial status, sexual orientation, or protected genetic information. Complaints arising from political beliefs, parental status, marital or familial status, sexual orientation, or protected genetic information are only processed within USDA. They are not appealable to the EEOC or any other non-USDA agency or department. It is also the policy of AMS to establish, maintain and carry out a continuing Affirmative Action Program (AAP) designed to eliminate underrepresentation of minorities, women and disabled individuals. AMS will provide a work environment free of sexual harassment or reprisal, and provide and maintain systems for prompt processing of claims and complaints of discrimination.

V. RESPONSIBILITIES

A. The Administrator.

1. The Administrator exercises positive, personal leadership and holds all executives, managers and supervisors accountable for carrying out all Federal EEO regulations, policies and directives. This includes the establishment and implementation of all Affirmative Employment Program Plan objectives designed to ensure a culturally diverse workforce. The Administrator exhibits a commitment to fostering an environment that is designed to promote equal opportunity in every aspect of AMS personnel policies and practices and to treat each employee with respect.

2. The Administrator shall appoint a Director of Equal Employment Opportunity (EEO Director) who shall be under the immediate supervision of the agency head pursuant to 29 CFR 1614. The agency head must not permit any intrusion on the investigations and deliberations of EEO complaints by agency representatives and offices responsible for defending the agency against EEO complaints. Maintaining distance between the fact-finding and defensive functions of the agency enhances the credibility of the EEO office and the integrity of the EEO complaint process. A functional unit that is separate and apart from the unit which handles agency representation in EEO complaints must handle legal sufficiency reviews of EEO matters. The EEOC requires this separation because impartiality and the appearance of impartiality are important to the credibility of the equal employment program.

B. The Associate Administrator is responsible for providing leadership and a personal commitment to support and enforce the Federal EEO laws, regulations, policies and directives. This includes assuring that all managers and supervisors are provided guidance and training concerning their roles and responsibilities to the Civil Rights Program. Senior management officials should be evaluated based on their performance in implementing the EEO performance standard. The Associate Administrator may recommend management officials for EEO Awards for outstanding accomplishments in implementing affirmative employment goals. The Associate Administrator may review and approve proposed settlements to resolve EEO complaints at both the counseling and the formal complaint stages.

C. The Deputy Administrators are responsible for exercising individual leadership and a personal commitment to the Federal EEO laws, regulations, policies and directives. They are to actively provide equal employment opportunity in every aspect of employment. This includes the prevention of discriminatory practices within their organizational units. Deputy Administrators must cooperate with and assist EEO Counselor(s) in constructing equitable resolutions of EEO charges, cooperate in the investigation of EEO complaints, and ensure that required EEO information is prominently posted on bulletin boards in offices and facilities where AMS employees work. Deputy Administrators must ensure that Equal Opportunity and Civil Rights goals are incorporated into the performance standards of all AMS supervisory and non-supervisory employees.

D. Managers and supervisors are responsible for exercising individual leadership and a personal commitment to comply with Federal EEO laws, regulations, policies and directives. They are to actively provide equal employment opportunity and affirmative employment programs (AEP) for minorities, women, and persons with disabilities within their programs. This includes assisting in the elimination of barriers and discriminatory practices, cooperating with and assisting EEO Counselors in constructing equitable resolutions of EEO claims, and cooperating in the investigation of EEO complaints. Managers and supervisors are required to implement AEP objectives within their organizational units and are evaluated annually on their EEO performance.

E. The Director of the Civil Rights Program.

1. The Director exercises positive, personal leadership and holds all executives, managers and supervisors accountable for carrying out all Federal EEO laws, regulations, policies and directives. This includes the establishment and accomplishment of Affirmative Employment Program Plan objectives designed to ensure a culturally diverse work force that is representative of the public that we serve. The Director exhibits full commitment to fostering an environment that is designed to promote equal employment opportunity in every aspect of AMS personnel policy and practice in the employment, development, advancement, and treatment of employees.

2. The Director is responsible for administering the AMS Civil Rights Program, including the Federal complaint processing system, in accordance with 29 CFR Part 1614 and EEOC Management Directive 110. The Director will have independent authority to provide for the EEO counseling of individual and class complaints of discrimination processed under the regulations of USDA and Title VII of the Civil Rights Act of 1964, as amended. The Director will ensure that fact-finding is fairly and thoroughly conducted and that procedures are completed in a timely manner. This includes ensuring that all organizational entities participate in eliminating barriers to EEO impartially and informally at the lowest organizational level. The Director is responsible for advising management officials on matters pertaining to Federal EEO policy and program requirements.

F. The Deputy Director of the Civil Rights Program is responsible for ensuring that civil rights policies and procedures of the Agency are implemented. In the absence of the Director, the Deputy Director performs the duties of the Director. The Deputy Director will advise the Director and officials on matters pertaining to Federal EEO policy and program requirements.

VI. SPECIAL EMPHASIS AND AFFIRMATIVE EMPLOYMENT PROGRAM

Special Emphasis Programs will be integrated into the overall EEO program covering, at a minimum, the six Special Emphasis Programs under Departmental Regulation 4230-2. These include: African American Employment Program, American Indian/Alaskan Native Program, Asian American/Pacific Islander Program, Disability Employment Program, Federal Women's Program, and Hispanic Employment Program.

VII. PROCESSING INDIVIDUAL COMPLAINTS OF DISCRIMINATION

EEO regulations, laws and statutes provide for the prompt, fair and impartial review of complaints of discrimination through precomplaint counseling and formal complaint processing for employees and applicants for employment with AMS (Executive Order 11478, Public Law 92-261, 29 CFR 1614). See Attachment 1 to this Directive for a complete description of the EEO complaint process.

VIII. REPRESENTATION AND OFFICIAL TIME

A. At any stage in the processing of a complaint, including the counseling stage, the complainant has the right to be accompanied, represented and advised by a representative of his/her choice.

B. EEO Counselors, EEO staff, and Human Resources officials have vital roles in the resolution of discrimination complaints. To operate effectively, they must have the confidence of both management and employees. Therefore, these officials cannot serve as representatives for management or a complainant in connection with the processing of discrimination complaints.

C. If the complainant is an employee of AMS, he/she will have a reasonable amount of official time, if on duty status, to prepare the complaint and to respond to requests for information from AMS, the Civil Rights Program, and the EEOC. "Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. When an agreement on reasonable time cannot be determined, the matter can be brought to the attention of the Civil Rights Director.

D. If the complainant is an employee of AMS and he/she designates another employee of AMS to serve as his/her representative, the representative will have a reasonable amount of official time, if on duty status, to prepare the complaint and respond to requests for information. Employees serving as representatives must obtain approval from their supervisor prior to using official time. The complainant and representative, if employed by AMS, will have official time, regardless of the tour of duty, when their presence is authorized or required during the investigation, informal resolution attempt, or hearing on the complaint.

IX. ATTORNEY FEES

A. Reasonable attorney's fees and costs may be provided to a complainant as part of a settlement or a finding in a complaint of discrimination. Attorney's fees are allowable only for the services of:

1. Members of the Bar;
2. Law clerks and paralegals; and
3. Law students under the supervision of members of the Bar.

B. AMS will not pay attorney's fees before the filing of a formal complaint and before the complainant has notified CRP (in writing) that he/she is represented by an attorney. Preparation of a formal complaint is considered part of the formal process; therefore, attorney fees may be allowable.

X. FILING AND PRESENTATION OF FORMAL COMPLAINTS

The complainant has the right to file a formal complaint of discrimination within 15 calendar days of receipt of the Notice of Right to File. The complaint must be written and signed by the complainant or that person's attorney/representative. The written complaint must describe the action or practice that forms the basis of the complaint. Formal complaints are submitted to:

USDA, Office of Civil Rights
Chief, Employment Complaints Division
Mail Stop Code 9440
1400 Independence Avenue, SW
Washington, DC 20250

XI. EEO ALTERNATIVE DISPUTE RESOLUTION PROGRAM

In accordance with the AMS Administrator's Policy Statement regarding Alternative Dispute Resolution (ADR) and 29 CFR 1614.102 (b) (2), AMS will establish and maintain an ADR program that addresses, at a minimum, EEO matters at the pre-complaint and informal complaint stages of the EEO process. This is a non-adversarial process that does not render a judgment with respect to the dispute. With the assistance of an impartial and neutral third party, ADR offers parties involved, the opportunity to reach an informal resolution of EEO matters in a mutually satisfactory fashion.

In appropriate cases, the EEO ADR process is made available to an aggrieved person during the pre-complaint and the informal complaint processing periods. Participation in the program by the aggrieved person is voluntary. However, managers and supervisors must cooperate in the ADR process once the aggrieved person has requested to participate and CRP has determined that the matter is appropriate for ADR. Participation in the EEO ADR Program at the formal complaint stage of the EEO process will be determined on a case-by-case basis by the Director of CRP and will not affect the processing of the formal complaint, including the investigation.

If ADR is elected at the pre-complaint level, the counseling period is automatically extended to 90 days and the complainant's right to remain anonymous is automatically waived. Election of ADR does not require a person to waive his or her right to an EEO investigation or a hearing, or to appeal the final agency decision to the EEOC. Participants unable to reach a settlement agreement will be informed of their rights and continue through the EEO process.

XII. QUESTIONS

If you have any questions concerning the precomplaint, informal complaint, or formal complaint process, contact the AMS Civil Rights Program.

/s/

A. J. Yates
Administrator

Attachment