UNITED STATES
DEPARTMENT OF AGRICULTURE

TITLE 9

EQUAL OPPORTUNITY

ADMINISTRATIVE REGULATIONS

UNITED STATES DEPARTMENT OF AGRICULTURE

WASHINGTON

ADMINISTRATIVE REGULATIONS

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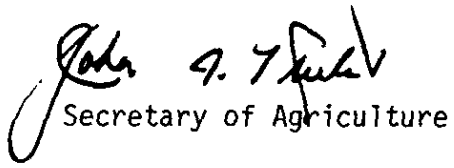
SUBJECT: New Title 9 - Equal Opportunity

CHAPTER 1 - AUTHORITIES, RESPONSIBILITIES AND ORGANIZATION

CHAPTER 2 - CIVIL RIGHTS POLICY IN USDA PROGRAMS AND ACTIVITIES

CHAPTER 3 - USDA POLICY ON ASSISTANCE TO MINORITY BUSINESS ENTERPRISE

These regulations provide a functional statement and operational procedures for the Office of Equal Opportunity. They are a general statement of function and procedure previously contained in various Secretary's Memoranda going back to 1966.



Secretary of Agriculture

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TITLE 9 - OFFICE OF EQUAL OPPORTUNITY

CHAPTER 1 - AUTHORITIES, RESPONSIBILITIES AND ORGANIZATION

SECTION 1 - AUTHORITIES AND RESPONSIBILITIES

1. ESTABLISHMENT. The Office of Equal Opportunity was established by Secretary's Memorandum 1756 (November 16, 1971).

2. AUTHORITY. The Office of Equal Opportunity is a staff arm of the Secretary reporting to the Assistant Secretary for Administration. Authority delegated to the Director, Office of Equal Opportunity, is contained in 7 CFR 2.80. The Director, Office of Equal Opportunity, has authority to develop and administer on behalf of the Assistant Secretary for Administration a comprehensive program to assure equal opportunity for all persons in all aspects of USDA programs without regard to race, color, national origin, sex or religion to the full extent of the law except those functions involving Federal equal employment opportunity for Department employees which are delegated to the Director, Office of Personnel.

3. RESPONSIBILITY. The Director, Office of Equal Opportunity:

A. Is designated as the Department's (1) Deputy Contract Compliance Officer; (2) Indian Desk Coordinator; and (3) Equal Housing Opportunity Officer.

B. Administers, in the name of the Assistant Secretary for Administration, who is the Department's Contract Compliance Officer, the Department's contract compliance program. This includes the formulation, in consultation with the Office of Operations, for issuance by the Assistant Secretary for Administration, of Department contract compliance policy, standards, rules and regulations pursuant to Executive Order 11246, Executive Order 11375, and Department of Labor rules and regulations.

C. Convenes informal hearings pursuant to 41 CFR 60-1.26(a) for the purpose of inquiring into the status of compliance of Federal contractors or subcontractors for which contract compliance review responsibility has been assigned to the Department of Agriculture by the Department of Labor under Executive Order 11246.

D. Arranges for the appointment of administrative law judges to preside at informal hearings pursuant to 41 CFR 60-1.26(a)(3).

E. Convenes formal hearings pursuant to 41 CFR 60-1.26(b).

F. Arranges for the appointment of administrative law judges to preside at formal hearings pursuant to 41 CFR 60-1.26(b).

G. Issues notice of proposed cancellation or termination of contracts or subcontracts, in whole or in part, pursuant to 41 CFR 60-1.26(b)(2)(i).

H. Issues notice of proposed ineligibility for further contracts or subcontracts pursuant to 41 CFR 60-1.26(b)(2)(ii).

I. Issues orders of suspension during pendency of hearing pursuant to 41 CFR 60-1.26(b)(2)(iv).

J. Imposes sanctions without a hearing pursuant to 41 CFR 60-1.26(b)(2)(v) and makes the Department's decision pursuant to 41 CFR 60-1.26(b)(2)(vi).

K. Orders proceedings and hearings in the Department of Agriculture pursuant to 7 CFR 15.9(e) and 15.68 consolidated for hearing with proceedings of other Federal departments and agencies.

L. Makes determinations required by 7 CFR 15.8(d) that compliance cannot be secured by voluntary means.

M. Issues orders to give a notice of hearing or opportunity to request a hearing pursuant to 7 CFR 15; arranges for the designation of an administrative law judge to preside over any such hearing; and determines whether the administrative law judge so designeated will make an initial decision or certify the record to the Secretary of Agriculture with his recommended findings and proposed decision.

N. Authorizes the taking of action pursuant to 7 CFR 15.8(a) relating to compliance by "other means authorized by law."

O. Takes action pursuant to 7 CFR 5.8(d) relating to compliance by "other means authorized by law."

P. Sets standards for agency compliance review procedures, including approval of proposed procedures and review guidelines.

Q. Sets standards for agency public notification and outreach procedures and methods as these pertain to equal opportunity.

R. Sets procedures for handling complaints alleging discrimination in USDA programs and activities, except Federal employment, and approves corrective action.

S. Coordinates Department activities involving assistance to American Indians.

T. Establishes standards for agency statistical reporting and evaluation activities measuring minority program participation.

U. Establishes standards for agency performance targets regarding minority program participation.

V. Administers the Department's minority business assistance program pursuant to Executive Order 11625, regulations issued by the General Services Administration and Departmental regulations.

W. Sets procedures for convening the Secretary's Citizens Advisory Committee on Civil Rights. This includes establishing rules and procedures for Committee activities, and the preparation of final reports.

CHAPTER 1 - AUTHORITIES, RESPONSIBILITIES AND ORGANIZATION

SECTION 2 - ORGANIZATION

10. PURPOSE. This section sets forth the organization of the Office of Equal Opportunity (OEO) and the functions of its staff units.

11. ORGANIZATION. The central and only office of OEO is located at Washington, D.C., and consists of the following staff units:

A. OFFICE OF THE DIRECTOR. Provides leadership and coordination for the Department's program of equal opportunity, contract compliance, civil rights, minority business assistance, and the Indian Desk.

1. COMPLIANCE AND ENFORCEMENT DIVISION. Coordinates civil rights compliance activities for USDA programs. Evaluates agency compliance operations to determine if the applicable laws, policies, rules and regulations of the Federal Government and the Department are being fully implemented. Conducts civil rights compliance reviews. Assists agencies to develop and implement compliance procedures. Processes complaints alleging program discrimination.

2. CONTRACT COMPLIANCE DIVISION. Conducts contract compliance activity at establishments within the Standard Industrial Classifications designated by the Office of Federal Contract Compliance Programs, U.S. Department of Labor, and assigned to USDA, to ensure that Federal contractors afford equal employment opportunities to their employees and applicants for employment. Also conducts contract compliance activity for USDA-financed or assisted construction projects and for REA-financed or assisted electric and telephone borrowers.

3. PROGRAM PLANNING AND EVALUATION DIVISION. Coordinates and evaluates statistical reporting systems in the Department that measure the extent to which USDA program services are being delivered on an equal basis. Coordinates Department efforts to establish performance targets for minority program participation. Conducts research on ways to eliminate discriminatory treatment in the operation of USDA programs. Develops and recommends basic policies and program approaches for implementing the Department's responsibilities in equal opportunity.

4. MINORITY BUSINESS AND INDIAN AFFAIRS DIVISION. Performs a liaison and advocate role for all Departmental activities involving procurement, minority-owned bank deposits, and grant and loan assistance to minority business enterprises. Develops policy, coordinates and reviews these activities to insure that the participation of minority business is increased to the maximum extent possible. Accomplishes the functions of the Indian Desk to coordinate all aspects of Department activities involving assistance to American Indians.

B. DEPUTY DIRECTOR. The Deputy Director is delegated authority to perform all duties and exercise all functions and powers vested in the Director. The Deputy Director is authorized to act for the Director whenever the Director is absent or temporarily unavailable.

CHAPTER 2 - CIVIL RIGHTS POLICY IN USDA PROGRAMS AND ACTIVITIES

SECTION 1 - AGENCY RESPONSIBILITIES

20. GENERAL. The policy of the Department of Agriculture is to insure equal opportunity in all aspects of its programs and services without regard to race, color, national origin, sex or religion to the full extent of the law. In the day-to-day carrying out of this policy, the Director, Office of Equal Opportunity, operating under the general supervision of the Assistant Secretary for Administration, is assigned staff responsibility for the development, implementation and coordination of all aspects of the Department's civil rights program, except those functions involving Federal equal employment opportunity for Department employees which are delegated to the Director, Office of Personnel.

Each program Assistant Secretary and Director, together with his respective line administrators, is assigned line responsibility for implementing a comprehensive civil rights program to insure that the intent of the law and that the Department's rules and regulations are effectively carried out in all programs and activities.

21. EVALUATION. Each Agency administering benefit programs subject to the USDA nondiscrimination policy in 7 CFR 15 is responsible for collecting and evaluating program participation data and for setting targets for the delivery of program benefits to minorities.

A. PROGRAM PARTICIPATION DATA. Each Agency that administers programs subject to 7 CFR 15, Subparts A or B, will develop a system for establishing base data that identifies eligible populations and measures delivery of program benefits in order that the quantity and quality of benefits and services delivered to minority individuals can be documented and compared to benefits delivered to nonminority individuals. In developing these systems each Agency should consult in advance with the Program Planning and Evaluation Division, Office of Equal Opportunity, in order to insure the highest possible degree of adequacy, consistency and uniformity in the data developed.

Minority group participation data should be evaluated within each Agency by program managers to assess Agency progress toward civil rights objectives.

1. PROCEDURE. Under the direction of the Assistant Secretaries and Directors, and with the counsel of the Program Planning and Evaluation Division, Office of Equal Opportunity, agencies will:

a. Establish measures of the numbers of minority groups in the population eligible to participate in each program, using the best available data. These measures may be derived from standard statistical sources such as the Censuses of Agriculture, Population and Housing, and Agency records.

b. Establish and maintain a system for collecting and reporting data on minority participation in USDA programs. The system should obtain racial data on all significant aspects of program participation including participation on local committees of persons intended to ultimately benefit from USDA-assisted programs and services. Data should be based on reviewable records. The system should provide for identification of White, Negro or Black, American Indian, Spanish surname, Oriental or Other. Data should be maintained under safeguards that will prevent any misuse for discriminatory purposes. Such safeguards include restricting access to records to authorized personnel, coding racial identification of office records, and using only aggregated data in reports to the public. The system should be designed to obtain data for all counties in which the program operates, though county data may be retained in the Federal agency office for reference as needed.

c. Review each program within the reporting year to evaluate minority group participation and the extent of conformance to equal opportunity objectives and measurable targets (see B. below). It is recognized that the programs of some agencies are less susceptible than others to statistical measurement of minority program participation. All agencies are expected to exercise ingenuity in developing effective statistical measures of minority participation in agency programs.

d. Submit annually to the Program Planning and Evaluation Division, Office of Equal Opportunity, data reflecting participation in programs compared to those eligible to participate along with the agency's evaluation.

The report should include explanations of apparent inequities in the delivery of benefits and information on specific actions taken to insure that the opportunity to participate in Department programs is made available to all members of minority groups who are eligible to participate. The report should be submitted at the end of each fiscal year or calendar year depending on each Agency's reporting year.

B. PROGRAM TARGET SETTING. In addition to data measuring past delivery of program benefits, a system is needed whereby parity of participation is defined and participation targets are established in advance of the program year.

Each Agency will incorporate targets for the delivery of program benefits to minority groups into their advance program planning procedures. The systematic inclusion of minority considerations in formal planning efforts serves two purposes: (1) to promote parity of participation by minorities and women in the benefits of USDA programs and (2) to provide approved targets against which performance can be measured. The Office of Equal Opportunity is responsible for developing and issuing procedural instructions for accomplishing this program. The following steps will be followed:

1. Under the direction of the Assistant Secretaries and Directors, and with the counsel of the Program Planning and Evaluation Division, Office of Equal Opportunity, each Agency will define parity of participation for minority groups in each of their programs, develop specific participation targets for each program and submit them to their Assistant Secretary or Director for approval in advance of the program year.

2. The Program Planning and Evaluation Division, Office of Equal Opportunity, will review all agency proposals and make recommendations to each Assistant Secretary or Director.

3. Agencies will adjust their reporting systems to the extent necessary so as to provide status reports or performance and progress measured against approved targets. Note: Agencies are expected to comply with the reporting requirements of 9 AR 21(a) as well.

4. The Office of Equal Opportunity will provide evaluation reports to the Secretary, Assistant Secretaries and Directors, on Agency performance.

22. COMPLIANCE. All employees of this Department are responsible for conducting official business in such a manner that the Department does not directly or by implication:

Support, encourage, or condone the practice of segregation or other forms of discrimination.

Conduct programs in ways that permit economic barriers or social inhibitions to limit participation; or

Permit discrimination in services for reason of race, color, sex,

religion, or national origin.

A. PROCEDURE. Each Agency administering benefit or service programs to the public, with the counsel and assistance of the Compliance and Enforcement Division, Office of Equal Opportunity, is responsible for:

1. Correcting programs which bar full participation by minority and women beneficiaries or which lead to participation on a segregated basis. This includes meetings, office space and use of related facilities.

2. Correcting programs which permit economic barriers or social inhibitions to limit participation by minority and women beneficiaries.

3. Correcting programs wherein benefits or services to minority or female beneficiaries are unequal because employees of agriculture programs fail to work across lines based on race or sex.

4. Assigning sufficient full time staff resources for the development and implementation of a comprehensive civil rights compliance program within the agency.

5. Developing a comprehensive compliance review program to be approved by the Director, Office of Equal Opportunity (the training of reviewers, frequency of reviews, and reporting forms should be specified in the review program). Compliance reviews should:

a. Examine employment practices of recipients to determine whether such practices are resulting in discriminatory provision of services or benefits.

b. Examine each recipient's program to determine whether the recipients should take affirmative action to overcome the effects of past discrimination.

All agency review reports should be maintained at the Regional or National Office, as appropriate, for a minimum of one year, and will be made available, on request, to Office of Equal Opportunity reviewers for analysis and evaluation.

6. Establishing time limits and the extent of efforts to be expended in seeking voluntary compliance by recipients of Federal assistance under Title VI of the Civil Rights Act of 1964. Procedures for attempting to achieve voluntary

compliance must be documented so that evidence to support administrative termination proceedings or other means authorized by law to achieve compliance will be available failing such efforts.

7. Notifying recipients when the Agency has exhausted all means of achieving voluntary compliance. The recipient will be notified in writing and adivsed that the case is being referred to OEO for further enforcement action. The agency will then send OEO a complete file including:

a. Copies of all correspondence with the recipient relevant to compliance.

b. Copies of compliance reviews.

c. List of available witnesses, their addresses and their official titles, with a brief statement of the matters about which they can testify.

d. Eight copies each of relevant contracts and agreements with USDA and, where appropriate, between the State and Agency and the recipient. These should include current and past agreements, eight copies of recipients civil rights assurances are required.

e. List of names, titles, mailing addresses and telephone numbers of parties involved, including the chief official in charge of the recipient and the State administrative official responsible for the program.

f. A report of the specific amount of assistance provided and the programs under which the assistance is extended, citing such program authority and fiscal year.

g. Documentation that the Agency has met the requirements of 7 CFR 15.8(c), by advising the recipient that he has failed to comply, that compliance cannot be secured by voluntary means and that the case has been referred to OEO for enforcement action.

h. Relevant agency regulations.

i. A brief statement of the affirmative allegations of discrimination which can be factually supported by the record.

j. A statement of all actions taken to achieve voluntary compliance.

k. A statement of the defenses the institution may be expected to raise.

B. AUDITS. The performance of compliance reviews by agencies and the Office of Equal Opportunity in no way lessens the authority and responsibility of the Office of Audit for including in its audits of agency programs, measures of civil rights performance and effectiveness.

C. REPORTING REQUIREMENTS. No periodic compliance reports will be required from the agencies; however, OEO may request information from time to time to determine the agencies' compliance posture.

23. EMPLOYMENT. Title VI of the Civil Rights Act of 1964 and the USDA Nondiscrimination Regulations, 7 CFR 15.3(c), recognize that employment discrimination may effect or be related to discrimination in benefits and services. To the extent that employment practices of recipients relate to the assurance of equal opportunity in program benefits and services, such practices are an appropriate area of concern to the Office of Equal Opportunity.

24. PUBLIC NOTIFICATION. Each Agency Head is responsible for making sure that all eligible persons, particularly minorities and women, are adequately informed of and encouraged to participate fully in USDA programs, the USDA policy of nondiscrimination and the procedure for filing a complaint.

A. PROCEDURE. Each Agency Head is responsible for developing a public notification program which will assure the following:

1. Each USDA office and recipient which distributes program benefits will take specific action to advise minorities of program availability and the requirement for nondiscrimination.

2. Each USDA and cooperating office serving the public will prominently display the nondiscrimination poster, "And Justice for All." A notice of nondiscrimination will also be posted at all public outdoor recreation areas administered or otherwise assisted by USDA.

3. Each Agency will inform minorities of new programs and program changes by mailing information to "grass roots" organization.

4. Each Agency will promptly notify the Office of Communication of any new programs or program changes. The Office of Communication will maintain master lists of minority group media and will disseminate to them the information provided by the agencies.

5. Each Agency will submit civil rights "success stories" to the Office of Communication for dissemination to the media.

6. All informational materials released to the public will, as appropriate, contain a statement that the program or activity will be conducted on a nondiscriminatory basis. Where appropriate, photos and other graphics will be used to convey the message of equal opportunity. This requirement will apply to materials published and distributed by either the Agency or its non-Federal cooperators.

B. REPORTING REQUIREMENT. No periodic reports will be required by the agencies; however, OEO may request information from time to time to determine the agencies compliance posture.

CHAPTER 2 - CIVIL RIGHTS POLICY IN USDA PROGRAMS AND ACTIVITIES

SECTION 2 - COMPLAINTS

50. FEDERAL EMPLOYMENT COMPLAINTS will be handled by the Office of Personnel in accordance with procedures in the Federal Personnel Manual 713 and USDA Departmental Personnel Manual 713.

51. TITLE VI COMPLAINTS will be handled in accordance with 7 CFR 15.6. Within five days of receipt, agencies receiving complaints must send copies to the Office of Investigation (OI) for a determination as to whether the complaint will be investigated and, if so, the manner in which it is to be investigated. A copy of both the agency's request and the complaint letter will be sent simultaneously to OEO. OEO will prepare and acknowledgement letter to the complainant informing the complainant that the complaint has been referred to OI for a determination as to the need for an OI investigation.

In certain cases, OI may, upon receipt of a complaint, request the Agency to conduct a preliminary inquiry into the matter. In such cases, within 30 days of the request, the Agency will submit a report to OI, with a copy to OEO. OI will determine whether an OI investigation is warranted based on the preliminary inquiry.

Copies of OI investigation reports will be distributed to the Head of the Agency concerned and to OEO. Final determination as to whether the OI report established a proper basis for a finding of discrimination rests with the Director, OEO. Agency heads will advise OEO within 30 days of their recommendations and proposed actions. In cases where corrective action cannot be completed within 30 days, the agency will submit a timetable of planned actions and a progress report every 30 days to OEO. The adequacy of corrective action in cases where discrimination is established will be determined by the Director, OEO. When there is a difference between the Director, OEO, and agency administrators as to the adequacy of corrective action, the matter will be referred to the Assistant Secretary for Administration for resolution. To close out any Title VI complaint, the Agency must obtain the formal concurrence of OEO. This concurrence will be shown on the closing memorandum sent to OI.

Copies of all correspondence and materials on Title VI complaints will be sent to the Agency concerned and OEO. Copies of those prepared after OI has scheduled an investigation will also be sent to OI.

52. DIRECT PROGRAM COMPLAINTS will be handled in accordance with 7 CFR 15.52. Complaints should be sent within five days of receipt to the Director, OEO. The Director, OEO, will prepare and send the letter of acknowledgement to the complainant and will determine how the complaint is to be handled. If there appears to be a need for investigation, OEO will refer the complaint to OI for a determination as to whether OI will investigate and for any necessary investigation. A final letter to the complainant will also be sent by OEO. Copies of all material prepared in OEO will be sent to the agency concerned. OI will be furnished copies of all correspondence and material prepared after OI has scheduled an investigation.

53. EXCEPTION: Where there exists a formalized (required by law or regulation) procedure for handling general complaints or appeals, discrimination complaints will be handled by the Agency in accordance with such procedure. However, such a procedure must first be evaluated by OEO to assure that the procedure affords the complainant the same rights and protections afforded in 7 CFR 15.52 and paragraph 52 above.

CHAPTER 3 - USDA POLICY ON ASSISTANCE TO MINORITY BUSINESS ENTERPRISE

SECTION 1 - AGRICULTURE AGENCY RESPONSIBILITIES

70. GENERAL. The policy of the Department of Agriculture is to insure that its procurement, grant and loan activities are being utilized to the fullest extent to assist minority businessmen. This also includes deposits in minority-owned banks.

Responsibility for carrying out policies for delivery of program assistance to minority businessmen is assigned to the Assistant Secretary for Administration, working with the Director of Equal Opportunity.

Each program Assistant Secretary and Director, together with his respective line administrator, is assigned line responsibility for support of activities that may have an effect on minority enterprises.

71. PROGRAM DELIVERY. Each Agency will be responsible for evaluating procurement, minority-owned bank deposits, and grant and loan activities to assess the potential benefits to minorities. The Minority Business Assistance Division, OEO, will be consulted concerning those programs which agencies determine have potential for deposit of funds in minority -owned banks.

Agencies should make these assessments in compliance with Departmental regulations and directives, 41 CFR 1-1.713, 41 CFR Subpart 1-1.13, 41 CFR 1-3.601, and 4 AR 465 and 476.

A. GOAL SETTING. Each Agency having procurement responsibility shall establish Section 8(a) goals. Prior to the beginning of each fiscal year agencies shall assess total procurement needs and determine those requirements that have potential for the 8(a) program. These goals shall reflect a representative share of the total procurement of products and services, including construction and commodities.

B. PROGRAM PARTICIPATION DATA. Each Agency is to be responsible for analyzing its procurement and grant and loan programs to assess their potential for impact on minority businesses and business development. A system for establishing base data to identify eligible populations and measure delivery of program benefits will be developed.

The development of these systems is the responsibility of the program Assistant Secretaries and Agency Heads. In the development or modification of systems to measure delivery of assistance to

minorities through contracts, minority-owned bank deposits, and grants and loans, each Agency Head should consult in advance with the Minority Business Assistance Division, Office of Equal Opportunity.