

CIVIL RIGHTS/EQUAL EMPLOYMENT OPPORTUNITY

1. PURPOSE

This Directive:

- a. Provides the Grain Inspection, Packers and Stockyards Administration (GIPSA) policy on civil rights covering all employees in GIPSA; and
- b. Provides employees with guidelines for ensuring equal opportunity in employment on the basis of merit and fitness and for prohibiting discrimination in employment on the basis of irrelevant factors.

2. REPLACEMENT HIGHLIGHTS

This Directive replaces GIPSA Directive 4713.1, dated September 15, 2000.

3. AUTHORITIES

- a. Title 29, Code of Federal Regulations (CFR), Part 1614, Federal Sector Equal Employment Opportunity (EEO). Title 29 relates to Agency programs to promote EEO.
- b. Title VI of the Civil Rights Act of 1964, as amended. Title VI states that no person in the United States shall, on the "grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." If Federal departments and/or agencies determine that any program or activity does not comply with established requirements for nondiscrimination in program delivery, termination of or refusal to grant or to continue Federal assistance under such program or activity may result.
- c. Title VII of the Civil Rights Act of 1964, as amended. Title VII prohibits discrimination based on race, color, religion, gender (sex), national origin, and reprisal in all terms, conditions, privileges, and compensations of employment. The Civil Rights Act of 1991 extended coverage to all Federal employees, including coverage of the House of Representatives and the agencies of the legislative branch, to deter unlawful harassment and intentional discrimination in the workplace.

- d. The Age Discrimination in Employment Act of 1967 (Public Law (P.L.) 93-259), as amended. This Act protects applicants and employees in the Federal government who are 40 years of age or older in such matters as hiring, discharge, compensation, and other terms, conditions, and privileges of employment. Agencies are required to ensure that all personnel actions are free from age discrimination.
- e. Executive Order 11478, August 8, 1969. This Order amends Executive Orders 11246 (established the basis of race, creed, color, or national origin) and 11375 (added gender/sex as a basis) providing for strengthening EEO programs in the Federal government by expressly prohibiting discrimination on the basis of race, color, religion, gender, or national origin and to promote the full realization of EEO through establishing and maintaining a continuing affirmative program in each executive department and agency. This EEO policy applies to and must be an integral part of every aspect of personnel policy, practice, and systems in the employment, development, advancement, and treatment of civilian employees of the Federal government.
- f. EEO Act (P. L. 92-261). As a result of the enactment of the EEO Act on March 24, 1972, the Civil Rights Act of 1964 was amended to extend Title VII, Nondiscrimination in Employment, to Federal employees. Accordingly, agency heads within the Federal Service were obligated by statute to comply with civil rights laws, orders, instructions, and regulations.
- g. Rehabilitation Act of 1973, as amended, Section 501 (P. L. 93-112). This Act ensures that all Federal agencies give full consideration to the hiring, placement, and advancement of qualified persons with a mental or physical disability. It also ensures that reasonable accommodations to the known physical and mental disabilities of individuals are made, and restricts the use of pre-employment or employment criteria that would screen out persons with disabilities.
- h. Rehabilitation Act of 1973, as amended, Section 504 (P.L. 93-112). This Act ensures that no otherwise qualified handicapped individual in the United States, solely by reason of his/her handicap (disability), is excluded from the participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance.
- i. Civil Service Reform Act of 1978 (P.L. 95-454). This Act requires that the Office of Personnel Management implement, by regulations applicable to all executive departments and agencies, a minority recruitment program, and that all agencies conduct continuing programs for the recruitment of minorities to eliminate underrepresentation in Federal employment, establish Federal Employment Opportunity Recruitment Plan (FEORP) Systems, and review and evaluate the

effectiveness of such programs. FEORP plans must be a part of each agency's Affirmative Employment Program Plan.

- j. Americans with Disabilities Act of 1990, (P.L. 101-336). This Act ensures equal employment opportunities for, and nondiscrimination of, qualified individuals with disabilities in the private sector and in State and local governments.
- k. Civil Rights Act of 1991 (P.L. 102-166). This Act amends the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws by adding additional protections to deter unlawful harassment and intentional discrimination in the workplace, i.e., to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, etc.
- l. Executive Order 12898, February 11, 1994, Environmental Justice. This Order commits the Federal government to environmental justice principles. Federal agencies are directed to incorporate environmental justice as part of their overall mission's policies, programs, and activities by identifying and addressing disproportionately high and adverse human health and environmental effects of programs, policies, and activities on minority populations and low-income populations. The Order establishes the Environmental Justice Interagency Working Group to provide guidance to the agencies on identifying environmental justice problems, and to work with each agency to develop corrective strategies and strategic plans.

4. BACKGROUND

- a. In GIPSA, civil rights is an integral part of every aspect of personnel policy and practices involving the employment, development, retention, advancement, and treatment of employees. Periodically, GIPSA evaluates program efforts to monitor civil rights achievements towards goals and the extent to which they comply with Federal laws, regulations, guidelines, and policies on equal opportunity. Program changes are made where desirable or necessary. Reports are submitted periodically to the U.S. Department of Agriculture (USDA); Departments of Justice and Health and Human Services; and the Equal Employment Opportunity Commission (EEOC).
- b. The goal of GIPSA is to ensure a fully integrated, diverse workforce in all organizational units and job classification series, at all grade levels, and in all geographical locations, both at headquarters and in the field.

5. DEFINITIONS

- a. Affirmative Action. First used in Federal civil rights law when President Kennedy issued Executive Order 10925 in 1961, requiring Federal contractors to "take affirmative steps to ensure" equal employment opportunity. This Order also established a President's Committee on Fair Employment Practices, directed the Committee to study the Government's employment practices, and recommended additional affirmative steps that agencies within the Executive Branch of the Government should take to "realize more fully the national policy of nondiscrimination."
- b. MD-715. Provides policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity under Section 717 of Title VII (Part A) and effective affirmative action programs under Section 501 of the Rehabilitation Act (Part B).
- c. Section 717 of Title VII (Part A). Requires Federal agencies to take proactive steps to ensure equal employment opportunity for all their employees and applicants for employment. This means that agencies must work to proactively prevent potential discrimination before it occurs and establish systems to monitor compliance with Title VII. GIPSA must regularly evaluate its employment practices to identify barriers to equality of opportunity for all individuals. Where such barriers are identified, GIPSA must take measures to eliminate them. With these steps, GIPSA will ensure that all persons are provided opportunities to participate in the full range of employment opportunities and achieve to their fullest potential.
- d. Section 501 of the Rehabilitation Act (Part B). Requires Federal agencies to take proactive steps to provide equal opportunity to qualified individuals with disabilities in all aspects of Federal employment.
- e. Collateral-duty Assignment. An alternative to a full-time position, e.g., Special Emphasis Program Manager, Affirmative Employment Program Liaison, etc., with the following characteristics: a collateral-duty assignment is not the primary purpose for establishing or continuing the employee's official position-of-record; the assignment does not constitute a grade-controlling duty or responsibility; in GIPSA, collateral duties normally constitute up to 20 percent, but cannot exceed 50 percent of the employee's time; management of the assignment is not a critical performance element; and the assignment may be discontinued, at management's discretion, without complying with adverse action procedures.

- f. Complaint. There are three types of complaints as explained below:
- (1) Class Complaint. A formal, written allegation of discrimination filed on behalf of a class (group of employees, former employees, or applicants for employment) by the agent (class representative/member) of the class alleging that they have been adversely affected by an agency personnel management policy or practice which discriminates against the group on the basis of their common race, color, religion, gender, national origin, age, or disability (handicapping condition). (29 CFR 1613.601 (b))
 - (2) Individual Complaint. A formal allegation of employment discrimination and/or retaliation filed by an aggrieved employee with the appropriate person designated to receive complaints at the agency pursuant to 29 CFR, 1614.103(a). Discrimination is prohibited by Title VII of the Civil Rights Act of 1964, as amended, on the basis of race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation).
 - (3) Mixed Case Complaint. A formal allegation of employment discrimination filed by an aggrieved employee with a Federal agency based on race, color, religion, gender, national origin, age, or disability related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination, or it may contain additional allegations that the MSPB has jurisdiction to address. (29 CFR 1614.302(a))
- g. Federal Employment Opportunity Recruitment Plan (FEORP). The FEORP is an equal opportunity recruitment program. It is designed to eliminate under-representation of minorities, women, and people with disabilities in the various categories of civil service employment within the Federal Service, via the establishment of hiring objectives defined by agency management officials. Special efforts are directed at recruiting in minority communities, in educational institutions, and from other sources whereby minorities, women, and people with disabilities can be recruited. (References: 5 CFR Part 720.201, Subpart A; Civil Service Reform Act of 1978)
- h. Grievances. Requests by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) under the control of GIPSA management. (Reference: 5 CFR 771.201, et. seq., and 5 CFR 430.407(e))

- (1) Administrative Grievance. A procedure structured framework for employees to seek redress on employment issues. Issues that may be raised in the administrative grievance procedure include, but are not limited to, working conditions; improper application of or failure to follow rules or regulations; suspensions from duty without pay for 14 days or less; letters of reprimand; unfair treatment, including coercion, restraint, or reprisal (for non-EEO activities; nonselection for training; and changes in assignments, including details and reassignments). The administrative grievance covers all GIPSA employees except those in bargaining units, who are covered by a union agreement. Bargaining-unit-employees have a similar but separately negotiated grievance procedure that is described in their union's collective bargaining agreement.
 - (2) Negotiated grievance. This procedure is for resolving bargaining unit employees' grievances which fall within its coverage; the union is the exclusive representative under this procedure. Employees filing under this procedure can elect to have the union represent them or they can represent themselves. They cannot hire their own representatives unless the union states that the private representative is accepted by the union.
- i. Marketing and Regulatory Programs (MRP). Marketing and Inspection Services was reorganized and renamed Marketing and Regulatory Programs (MRP) on October 20, 1994. MRP consists of the Animal and Plant Health Inspection Service (APHIS), Agricultural Marketing Service (AMS), and Grain Inspection, Packers and Stockyards Administration (GIPSA). The MRP Management Services Team, chaired by the MRP Deputy Under Secretary, oversees cross-servicing arrangements within MRP to ensure quality, consistency, and service to all agencies.
 - j. Most Populous Occupational Series. A personnel classification series which has 50+ employees in a designated organizational unit or group.
 - k. People with Disabilities. People who: a) have a physical and/or mental impairment that substantially limits one or more of life's major activities; b) have a record of such an impairment; or c) are regarded as having such an impairment. Major life activities include caring for oneself, performing manual tasks, walking, standing, hearing, speaking, breathing, learning, seeing, working, etc.
 - l. Prohibited Discrimination. Prejudiced or prejudicial outlook, action, or treatment of individuals or groups on a basis other than individual merit. Discrimination is prohibited by section 717 of the Civil Rights Act of 1964, as amended; section 501 of the Rehabilitation Act of 1973, as amended; and sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended.

- m. Qualified Individual with a Disability. An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the position and who, with or without reasonable accommodation, can perform safely and adequately the essential functions of the position.
- n. Reasonable Accommodation. Modifications or adjustments to a job or an application process that enable a qualified applicant with a disability to be considered for the position; or modifications or adjustments to the work environment or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to safely and adequately perform the essential functions of that position; or modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other employees without disabilities. (Reference 29 CFR, Part 1630.2, Definitions)
- o. Responsible Officials. Executives, managers, supervisory officials, and personnel and EEO staff members, whose responsibilities include implementing employment/recruitment policies and practices.
- p. Special Emphasis Programs (SEPs). SEPs are an integral part of the overall USDA civil rights (EEO) programs. SEPs enhance opportunities for women, minorities, and persons with disabilities in all employment areas and program delivery activities. SEPs authorized within the Department are the Federal Women's Program, Hispanic Employment Program, Disability Compliance Program and Employment Programs, African American Program, Asian/Pacific American Program, Native American Program, and Small and Limited Resource Farmer's Initiative.
- q. Underrepresentation. This exists when the percent of representation of minority group members and women in an agency is less than the percent of representation of the same group in the U.S. civilian labor force. The two types of underrepresentation are: conspicuous absence and manifest imbalance. Conspicuous absence refers to a particular group of women or minorities that is nearly or totally nonexistent from a particular occupational series or grade level in the workforce. Manifest imbalance refers to a situation where an EEO group is substantially below the representation in the civilian labor force.
- r. Under-utilized. This term refers to not utilizing employees to their full potential based on their skills, knowledge, and abilities in support of the mission and goals of the organization/agency.

6. POLICY

It is GIPSA policy to establish a continuing, active civil rights program designed to promote equal opportunity for all persons and to prohibit discrimination on the basis of race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation) and promote the full realization of equal opportunity through a continuing affirmative employment program.

7. RESPONSIBILITIES

GIPSA officials will ensure that managers and supervisors promote equal opportunity for all persons in the following categories (see Attachment 1).

a. Career Enhancement.

- (1) Utilize, to the fullest extent practical, the present skills of all GIPSA employees.
- (2) Identify under-utilized GIPSA employees, especially at the lower levels, and provide them with work opportunities commensurate with their abilities, training, and education.
- (3) Provide developmental opportunities for GIPSA employees to enhance their skills, e.g., through on-the-job training, work-study programs, and other training measures, so they may perform at their highest potential and advance in accordance with their abilities.
- (4) Apply all of the principles of equal opportunity when selecting personnel for training and/or career development programs.

b. Communication.

- (1) Inform GIPSA employees and recognized employee organizations of the affirmative employment program and other civil rights programs and enlist their cooperation and support.
- (2) Inform GIPSA employees of methods for contacting civil rights officials and groups, such as:
 - (a) USDA Civil Rights Officials;
 - (b) Civil Rights (EEO) Advisory Committees;

- 1 SEP Managers;
- 2 Employee Organizations;
- 3 Civil Rights (EEO) Counselors/Mediators; and
- 4 Human Resources Employee Relations Specialist.

- (3) Make copies of civil rights policies and regulations and Affirmative Employment Program Plans available to employees in GIPSA.

c. Community Outreach.

- (1) Participate at the community level with other employers, schools and universities, and other public and private groups in cooperative action to improve employment opportunities in GIPSA and community conditions that affect employability.
- (2) Implement employment/recruitment efforts, policies, and practices for GIPSA.

d. Complaints of Employment Discrimination.

- (1) Provide for the prompt, fair, and impartial consideration and disposition of GIPSA complaints involving issues of discrimination on the basis of race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation).
- (2) Ensure that GIPSA employees are free from any and all restraint, interference, coercion, or reprisal on the part of their colleagues, management, and/or supervisors in:
 - (a) Initiating any complaint or appeal;
 - (b) Serving as representatives for a complainant;
 - (c) Appearing as witnesses; or
 - (d) Seeking information.

The aforementioned principles apply with equal force after a complaint is resolved or settled.

- (3) Inform GIPSA employees and applicants that equal opportunity counseling and mediation services are provided by the Civil Rights Staff.
 - (4) Inform all employees within GIPSA that the Civil Rights Staff assists the USDA Office of Civil Rights, in administering the system for processing formal complaints of employment discrimination filed by GIPSA employees or applicants who allege discrimination.
- e. Discrimination.
- (1) Conduct a continuing campaign in GIPSA to eliminate from personnel policies/practices and working conditions all forms of prejudice, retaliation, and discrimination.
 - (2) Take appropriate disciplinary action against GIPSA employees who engage in discriminatory practices.
 - (3) Inform employees that all public information materials must include the standard USDA statements regarding non-discrimination as follows:

"The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation). (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at 202-720-2600 (voice and TDD).
 "To file a complaint, write the Secretary of Agriculture, USDA, Washington, DC 20250, or call 202-720-5964 (voice and TDD). USDA is an equal employment opportunity employer."
- f. Employee Organizations. Ensure that membership in all GIPSA employee organizations is "inclusive" or open to all employees, and that membership is not based on race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation).
- g. Employee Recognition of Civil Rights Accomplishments.
- (1) Provide recognition to GIPSA employees, supervisors, managers, and units demonstrating outstanding accomplishment(s) in civil rights.

- (2) Ensure that recognition for outstanding accomplishments in civil rights is an integral part of the GIPSA incentive awards programs.
 - (3) Incorporate the recognition process within planned civil rights efforts to complement the GIPSA civil rights program.
- h. Non-Federal Facilities. Inform all GIPSA employees that non-Federal facilities may not be used for official functions or sponsored activities unless full access is available to all personnel, including persons with disabilities, on a nondiscriminatory basis.
 - i. Reasonable Accommodation. Make reasonable accommodations for GIPSA employees and applicants for employment with physical or mental disabilities, unless the accommodation would impose an undue hardship on the operation of the Agency's program(s).
 - j. Recruitment. Communicate civil rights program and employment needs to all sources of GIPSA job candidates without regard to race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation) and solicit their recruitment assistance on a continuing basis.
 - k. Religious Needs. Make reasonable accommodations, when requested, for religious needs of applicants and employees when those accommodations can be made without undue hardship on the business of GIPSA. Accommodations can be made by using another employee, granting leave, or other means.

8. CIVIL RIGHTS (EEO) RESPONSIBILITIES

- a. Department. The Office of the Assistant Secretary for Civil Rights (ASCR) is the USDA Civil Rights Officer. The ASCR provides leadership, direction, and coordination for USDA's civil rights program, including program compliance, EEO, special emphasis programs, civil rights counseling and mediation, and complaints adjudication and oversight for diversity and outreach.
- b. GIPSA. Responsibility for the operation of the Civil Rights Program in GIPSA is as follows:
 - (1) The Administrator will:
 - (a) Exercise personal leadership and provide sufficient resources to administer and maintain an effective Civil Rights Program for GIPSA.

- (b) Ensure the implementation of regulations, policies, and guidelines from the EEOC within GIPSA, including the development of Agency-specific EEO guidelines and policies.
 - (c) Provide for a system within GIPSA for periodically evaluating the effectiveness with which the policy of Executive Order 11478, Equal Opportunity Employment, is implemented.
 - (d) Ensure accountability of GIPSA management and supervisory officials through the Performance Management System. Managerial and supervisory performance will be reviewed, evaluated, and controlled, in such a manner as to ensure a continuing affirmative application and vigorous enforcement of, and compliance with, EEO policies.
 - (e) Ensure the implementation of a GIPSA system for processing program-delivery complaints and a GIPSA system for complaints of discrimination in employment on the basis of race, color, religion, age, national origin, political affiliation, marital or family status, disability, and gender (including sexual harassment and sexual orientation) that provide for impartial consideration of the complaints within the agency and appeal procedures.
- (2) The Director, Civil Rights Staff, will:
- (a) Administer, monitor, and evaluate the GIPSA Civil Rights (EEO) Program.
 - (b) Ensure compliance with Federal and USDA civil rights (EEO) regulations and policies by evaluating program status and establishing internal monitoring systems and onsite compliance assistance and reviews for GIPSA.
 - (c) Ensure equal opportunity in all aspects of employment and in the delivery of GIPSA programs and services to the public.
 - (d) Assist in the review of civil rights performance accomplishments for GIPSA employees in the Senior Executive Service.
 - (e) Provide oversight of SEP managers' issues on councils or organizations for GIPSA.

- (f) Provide direction, orientation, and advice to GIPSA management officials on day-to-day civil rights matters, achievement of affirmative employment objectives, and how to implement civil rights-related programs and activities.
 - (g) Recommend initiatives to improve program effectiveness and conduct activities to enhance GIPSA program support and awareness.
 - (h) Establish technical guidelines and procedures for GIPSA employees who perform civil rights duties on a collateral-duty basis.
 - (i) Ensure that an aggrieved GIPSA employee or potential complainant is able to access a Civil Rights (EEO) counselor/mediator, so that resolution, on an informal basis, may be achieved.
 - (j) Recommend a decision for resolution and/or settlement on formal complaints of discrimination.
- (3) Deputy Administrators/Directors will:
- (a) Assist the Administrator in providing leadership and resources to administer and maintain an effective Civil Rights Program in GIPSA.
 - (b) Assist in ensuring accountability of management and supervisory officials through the Performance Management System in GIPSA.
 - (c) Ensure that special efforts are directed toward recruitment based on the most populous occupational series and grade levels in which women and minorities are under-represented in GIPSA.
- (4) Regional, Division, and Staff Directors will:
- (a) Provide leadership and resources to maintain an effective Civil Rights Program within respective organizational units of GIPSA.
 - (b) Ensure that the GIPSA civil rights policies and procedures are implemented and supported by the managers and supervisors within their respective organizational units.

- (c) Implement and monitor civil rights program commitments established by GIPSA in their annual civil rights plans.
 - (d) Authorize civil rights training for supervisors and employees who perform civil rights duties on a collateral-duty basis within GIPSA.
 - (e) Ensure that civil rights performance is appropriately addressed in the performance appraisals of supervisory personnel and other GIPSA employees with assigned civil rights responsibilities.
 - (f) Take appropriate action to identify civil rights-related barriers and resolve civil rights issues within GIPSA.
- (5) Managers and Supervisors will:
- (a) Ensure a continuing affirmative application and vigorous enforcement of and compliance with GIPSA civil rights policies and regulations.
 - (b) Administer the GIPSA Civil Rights Program goals within their respective units in a positive and effective manner.
 - (c) Demonstrate accountability for exercising GIPSA civil rights principles in all employment/personnel decisions, e.g., staffing, promotions, training, reassignments, details, and awards.
 - (d) Take positive action to ensure that women, minorities, and persons with disabilities are provided with opportunities equal to other employees in the GIPSA workforce to acquire work experience and specialized training needed to apply for and advance in jobs, and receive career development training to ensure full utilization of their skills and abilities.
 - (e) Support GIPSA employees assigned to perform civil rights duties on a collateral-duty basis.
- (6) Civil Rights Collateral-Duty Employees and Civil Rights (EEO) Advisory Committees will:
- (a) Provide support and assistance to the staff of GIPSA regional offices and field offices, Division Directors, Deputy Administrators, and other managers on civil rights matters.

- (b) Coordinate the development and submission of civil rights reports, annual work plans, and accomplishments within GIPSA.
- (c) Participate in and/or coordinate GIPSA community outreach activities.
- (d) Maintain liaison with the APHIS and AMS civil rights specialists.

9. INQUIRIES

- a. Specific roles and responsibilities for GIPSA employees are located in the "Guidelines for Special Emphasis Program Managers, Civil Rights (Affirmative Employment Program) Liaisons, and Civil Rights (EEO) Advisory Committee Chairs," available from the GIPSA, Civil Rights Staff. Call 202-720-0216 in Washington, DC; or 1-800-639-5167 for copies. For additional information, contact GIPSA, Civil Rights Staff, at either of the above numbers.
- b. This Directive is available on the Internet at http://www.aphis.usda.gov/library/gipsa/pdf/GIPSA4713_1.pdf

/s/
James E. Link
Administrator

Attachment