



DEPARTMENT OF AGRICULTURE

7 CFR Part 15d

RIN 0503-AA52

Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture

AGENCY: United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA or Department) is amending its regulation on nondiscrimination in programs or activities conducted by the Department. The changes clarify the roles and responsibilities of USDA's Office of the Assistant Secretary for Civil Rights (OASCR) and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department and strengthens USDA's civil rights compliance and complaint processing activities to better protect the rights of USDA customers. OASCR's compliance activities are detailed, and a requirement is included that each agency shall, for civil rights compliance purposes, collect, maintain and annually compile data on the race, ethnicity, and gender (REG) of all conducted program applicants and participants by county and State. Applicants and program participants will provide the race, ethnicity, and gender data on a voluntary basis. The amendment also provides that OASCR shall offer Alternative Dispute Resolution (ADR) services to complainants where appropriate. This amendment is intended to encourage the early resolution of customer complaints. Finally, USDA is amending its regulation to add protection from discrimination in programs or activities conducted by the Department with respect to two new protected bases, political beliefs, and gender identity. The Secretary has decided to establish gender identity as a separate protected basis for USDA's conducted programs and activities. This amendment is meant to make explicit protections against discrimination based on USDA program customers' political beliefs or

gender identity. Gender identity includes USDA program customers' gender expression, including how USDA program customers act, dress, perceive themselves, or otherwise express their gender.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Anna Stroman at 202-205-5953 or anna.stroman@ascr.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

This rule follows the USDA proposed rule published on December 27, 2013, (78 FR 78788-249). The USDA is amending its regulation on nondiscrimination in programs or activities conducted by the Department. In 1964, USDA adopted Title VI principles to its federally conducted activities by prohibiting discrimination on the basis of race, color, and national origin. (See 29 FR 16966, creating 7 CFR part 15, subpart b, referring to nondiscrimination in direct USDA programs and activities, now found at 7 CFR part 15d). Subsequently, USDA expanded the protected bases for its conducted programs to include religion, sex, age, marital status, familial status, sexual orientation, disability, and whether any portion of a person's income is derived from public assistance programs. The intention is to hold the Department to a higher standard than our recipients.

The regulation was last revised in 1999 (64 FR 66709, Nov. 30, 1999). The changes will clarify the roles and responsibilities of OASCR and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department ("conducted programs") and strengthen USDA's civil rights compliance and complaint processing activities

to better protect the rights of USDA customers. This regulation does not address those programs for which the Department provides Federal financial assistance¹ (“assisted programs”).

HIGHLIGHTS OF CHANGES TO THE REGULATION

The final regulation outlines three specific changes to current activities. First, the final regulation includes a requirement that each agency shall, for civil rights compliance purposes, collect, maintain, and annually compile data on the race, ethnicity, and gender of all applicants and participants of programs and activities conducted by USDA by county and State. Applicants and program participants of these programs will provide this data on a voluntary basis. Although USDA first established a policy for collecting data on race, ethnicity, and gender in 1969, there is currently no uniform requirement for reporting and tabulating this data across USDA’s diverse program areas. The three USDA agencies that administer the majority of USDA’s conducted programs – the Farm Services Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Forest Service (FS) and Rural Development (RD) - already collect this data from individuals. FSA, NRCS, and RD (the “field based agencies”) collect this data under the requirements of section 14006 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which requires collection of this data for each program that serves agricultural producers and landowners. This data allows USDA to track application and participation rates for socially disadvantaged and limited resources applicants and participants. Together, these four agencies capture more than 90 percent of the contacts USDA has with the public through its conducted programs. This final regulation will standardize the recordkeeping requirement across the Department to all programs conducted by USDA that deliver benefits to the public. Assisted programs are not the subject of this rule.

¹ Federally assisted programs are programs and activities receiving financial assistance through a third party such as a State or municipal government, university, or organization. Federally conducted programs, which are those programs covered in this regulation, are programs and activities for which program services, benefits or resources are delivered directly to the public by USDA.

Second, the rule requires that OASCR offer ADR services to complainants where appropriate. This amendment is intended to encourage the early resolution of customer complaints and is in accordance with the Secretary of Agriculture's Blueprint for Stronger Service. Offering ADR will expand the use of techniques currently used in the employment context that facilitate complaint resolution and shorten resolution time. It will provide a cost-effective opportunity for early complaint resolution. USDA anticipates that this measure will reduce costs associated with complaint processing while also enhancing customer experience with the Department.

Finally, USDA is amending its regulation to add protection from discrimination in programs or activities conducted by the Department with respect to two new protected bases, political beliefs and gender identity. Discrimination by USDA employees on these grounds is already prohibited in USDA's statement on civil rights. This amendment is meant to make explicit protections against discrimination based on USDA program customers' political beliefs or gender identity, which will strengthen USDA's ability to ensure that all USDA customers receive fair and consistent treatment, and align the regulations with USDA's civil rights goals.

The inclusion of political beliefs will prohibit discrimination consistent with the Food Stamp Act of 1964, Pub. L. 88-525, 78 Stat. 703-709 (Aug. 31, 1964), the Civil Service Reform Act of 1978 (which covers political affiliation), and the Secretary of Agriculture's civil rights policy statements.

The Secretary has decided to establish gender identity as a separate protected basis for USDA's conducted programs and activities. For the purpose of this regulation, gender identity includes USDA program customers' gender expression, including how USA program customers act, dress, perceive themselves, or otherwise express their gender.

The change allows USDA customers of conducted programs who believe that they have been discriminated against on the basis of political beliefs or gender identity to take advantage of USDA's existing mechanisms to file an administrative complaint and receive a response. USDA's response might include recommending additional training for USDA employees or outreach in appropriate cases, procedures which already take place and can continue to take place within existing resources. The change applies only to USDA's internal administrative complaint mechanism and does not, in and of itself, create any new legal rights to bring suit against USDA, or expand the class of cases where USDA is authorized to pay money in connection with civil rights complaints.

Discussion of Comments and Responses

On December 27, 2013, USDA published a notice of proposed rulemaking in the *Federal Register* which resulted in 45 individuals/public interest groups/firms responding with 130 comments and recommendations. All comments received supported the proposed regulation. The comments and responses are as follows:

1. Public Disclosure of Data

Comment: We received two comments submitted on behalf of seven organizations requesting that the proposed regulation require USDA agencies to make race, ethnic and gender (REG) data collected under the proposed regulation available to the public. Commenters recommended public disclosure of the data, along with civil rights compliance reviews, to enhance the effectiveness of the regulation and to ensure agency accountability.

Response: OASCR agrees that public disclosure of the data will provide customers with additional information on the effectiveness of USDA's conducted programs as well as increase its accountability to its customers. As each Agency is required to submit to OASCR timely,

complete and accurate program application and participation reports containing the REG data on an annual basis, one option that OASCR is considering, upon completion of its analysis of this data, would be to post a summary analysis on either the USDA or OASCR website. In addition, Agencies will also have the option of posting their data on their websites. In regards to the recommendation that compliance reviews be subject to public disclosure, OASCR will take this under consideration.

2. Accurate Data Reporting

Comment: We received two comments submitted on behalf of seven organizations recommending that the regulation requires USDA to take steps to ensure the accurate reporting of data, especially for those who do not receive the assistance requested.

Response: We agree that USDA should take steps to ensure the accurate reporting of data. Data on programs must be analyzed in a consistent manner with respect to the protected categories. The regulation provides for the standard, voluntary collection of REG data for all USDA conducted programs. Standard demographic program data will help USDA better determine if programs and services are reaching the needs of all conducted program applicants and participants by county and State. USDA anticipates that this expanded data collection will provide additional data regarding customers who are and are not receiving USDA benefits, improve the design of USDA programs, and ultimately reduce the number of complaints of discrimination filed against USDA. The uniform collection of REG data will allow USDA to administer programs from a proactive rather than a reactive position and enables the Department to assess the accomplishment of program delivery mandates and objectives. Moreover, when allegations of disparate treatment or service arise, accurate REG data provides USDA the ability to determine the validity of discrimination complaints and resolve conflicts and issues in an expeditious manner. USDA's use of standardized voluntary methods of data collection will

ensure the accuracy of data reporting for all protected categories of program applicants and participants, which will include those who apply for, but do not receive the requested assistance.

Comment: We received one comment opposing the collection of REG data from the Business and Industry Guaranteed Loan (B&I) Program of USDA's Rural Development (RD) Mission Area on the grounds that B&I works with private lenders and has only paperwork interaction with borrower applicants. B&I cannot identify borrower applicants by race, religion, gender, etc. and the collection of REG data would create an additional step in the loan process and therefore be unduly difficult and burdensome. Further, the commenter stated that B&I is already prohibited by law from discriminating against applicants on the grounds identified in the proposed regulation.

Response: The regulation applies only to USDA "conducted" programs and only those agencies administering USDA conducted programs that serve individuals are required to collect the data. B&I is a loan guarantee program, guaranteeing loans provided by private lenders. B&I is not an RD conducted program and therefore the proposed regulation is not applicable to B&I.

3. Collection of Ethnicity Data

Comment: We received one comment submitted on behalf of six organizations requesting that the rule require agencies to collect additional information on ethnicity and language of communication. The commenter expressed concern that the use of Form AD-2106 to collect data is limiting in that it identifies only two categories under Ethnicity: (1) Hispanic or Latino, or (2) Not Hispanic or Latino.

Response: Although USDA first established a policy for collecting data on REG in 1969, there is currently no uniform requirement for reporting and tabulating this data across USDA's diverse program areas. The rule requires that each USDA agency collect, maintain, and

annually compile data on REG of all program applicants and participants of conducted programs by county and State. This will create a standard collection of data on REG from applicants and beneficiaries of USDA conducted programs. However, USDA agencies are not required to collect data on the language preferences of customers.

Although collecting data on the languages spoken by customers is outside the scope of this regulation, USDA has established its Departmental Regulation on the prohibition of national origin discrimination against persons with Limited English Proficiency (LEP) in conducted programs. In addition, USDA is in the process of finalizing its guidance on the prohibition of national origin discrimination against persons with LEP in its federally assisted programs. USDA conducted programs will not be required to collect data on language preference but will perform an assessment of the number or proportion of LEP persons eligible to be served or encountered and the frequency of encounters.

With regard to the collection of ethnicity data, the rule requires USDA agencies with conducted programs to develop strategies for collecting REG data for their respective federally conducted programs. These strategies will be reviewed and approved by OASCR and will be established per the Office of Management and Budget's (OMB) requirements for data collection on race and ethnicity, Standards for the Classification of Federal Data on Race and Ethnicity. While we agree that expanding the ethnicity categories beyond Hispanic or Latino would provide valuable information regarding the customers participating in and receiving benefits from programs conducted by the Department, USDA is working within the parameters of the approved OMB form. In the future, we will be looking into revising our data collection options to capture all ethnic groups by allowing customers to self-identify ethnic categories.

4. Monitoring of Data Reporting for Compliance

Comment: We received two comments on behalf of seven organizations recommending that USDA take steps to monitor compliance with data reporting requirements by the agencies.

Response: We agree that USDA should closely monitor compliance with the regulation's data collection and reporting requirements. OASCR's compliance responsibilities include ensuring that each agency collects, maintains, and annually compiles data on the REG of all program applicants and participants by county and State. OASCR will be closely monitoring and reviewing agencies data reporting for compliance on an annual basis.

5. Data Usage

Comment: We received one comment on behalf of six organizations recommending USDA more explicitly state how the collected data will be used to proactively inform strategies to address any identified inequities.

Response: The rule requires that each USDA agency collect, maintain, and annually compile data on the race, ethnicity, and gender of all conducted program applicants and participants by county and State.

Demographic data collected under the regulation can be used to: (1) perform analyses during the investigation of civil rights complaints to determine whether discrimination exists; (2) conduct mandated civil rights compliance reviews; (3) compare data from the Agriculture Census or decennial census on whether groups or communities are underserved by USDA's programs; (4) determine targeted areas for product development, marketing, and outreach; (5) customize communication for improved customer service; (6) measure the participation rates of traditionally underserved groups, such as racial/ethnic minorities, women, older farmers, and persons with disabilities, and make adjustments, as necessary, in product development and/or program delivery; and (7) measure performance of USDA personnel. Also USDA anticipates that this expanded data collection will include data regarding customers who are and are not

receiving USDA benefits, will help improve the design of USDA programs, and ultimately will reduce the number of complaints of discrimination filed against USDA.

6. Implementation of Regulation

Comment: We received one comment on behalf of six organizations recommending that USDA take additional steps to assure that the purposes of the proposed regulation are realized, which includes improved processing of complaints, an improved process for documenting settlement agreements, and compiled data on complaints after an investigation.

Response: OASCR is responsible for monitoring and providing oversight of the implementation of the rule and will be reviewing the data collected on an annual basis to ensure that the purposes of the rule are met. We believe that the steps provided by the rule will effectively address the concerns of the commenter. This will strengthen USDA's civil rights compliance and complaint processing activities at all stages, and the ADR requirement will improve the process of documenting settlement agreements. Further, as OASCR's monitors and oversees the implementation of the proposed regulation, assessments can be made as to whether further steps are necessary to improve the realization of its purpose.

7. Training USDA Employees

Comment: We received eighteen comments submitted on behalf of thirty organizations recommending that USDA train its employees to fully implement the proposed regulation.

Response: In order for the Department to enforce nondiscrimination in programs and activities conducted by the Department and to ensure requirements of the regulation are met by USDA agencies, OASCR and the agencies will provide training on the rule's requirements. OASCR has begun to prepare its training strategy for managers, employees, and program customers. Training is expected to begin once the rule is finalized.

8. Identification of Conducted Programs to which the Proposed Rule Applies

Comment: We received one comment submitted on behalf of seventeen organizations requesting that the Department list the programs and activities conducted by the USDA that are covered by the proposed rule.

Response: This rule covers all programs and activities conducted by the Department. It does not cover programs or activities for which the Department provides Federal financial assistance through a third party such as a State or municipal government, university, or other intermediary organization. The name, number, and nature of programs and activities conducted by USDA is subject to change as Congress mandates funding for new programs or amends current appropriated programs. Consequently, it is not possible to include a definitive list of covered programs and activities in the proposed rule.

9. Alternative Dispute Resolution Implementation

Comment: We received one comment submitted on behalf of six organizations seeking clarification regarding the implementation of alternative dispute resolution (ADR) services for program complaints. Specifically, (1) whether ADR is required; (2) how ADR will be used; and (3) what, if any, changes will the amendment make to current ADR services.

Response: The amendment provides that OASCR shall offer ADR services to complainants where appropriate. ADR for program complaints is a service that offers mediation and other current ADR techniques presently provided for Equal Employment Opportunity cases. ADR will be used to facilitate the early resolution of disputed issues and complaints through mediation, facilitation, fact finding, arbitration, use of ombudsman, or any combination thereof. Participation in ADR is not mandatory for customers of USDA's conducted programs, but rather it is an optional service available to customers at no cost. By engaging in ADR, customers do not give up their right to file a complaint.

10. Other Protected Bases – Marital Status and Sexual Orientation

Comment: We received two comments from two organizations, each recommending that USDA add another protected basis: one comment recommended the addition of “marital status,” and one comment recommended the addition of “sexual orientation.”

Response: The Secretary’s Civil Rights Policy Statement, dated July 24, 2013, 7 CFR 15d.3, includes “marital status” and “sexual orientation,” as bases for protection from discrimination. The rule adds two additional bases, namely “gender identity” and “political beliefs” as protected categories for its conducted programs.

11. Expansion of Nondiscrimination on the Basis of Gender Identity and/or Political

Beliefs to Assisted Programs:

Comment: We received eighteen comments on behalf of thirty-seven organizations recommending that USDA expand nondiscrimination protection on the basis of “gender identity” and “political beliefs” to USDA assisted programs, in particular nutrition programs. One commenter also recommended that nondiscrimination protection be extended to housing assistance programs.

Response: OASCR is currently researching its nondiscrimination regulation for its federally assisted programs. However, the current rule only addresses nondiscrimination protection for USDA “conducted” programs and activities.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB was not required to review this final rule.

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

7 CFR part 15d clarifies the roles and responsibilities of USDA’s OASCR and USDA agencies in enforcing nondiscrimination in programs or activities conducted by the Department. The final regulation was last revised in 1999 (64 FR 66709, Nov. 30, 1999). The changes also strengthen USDA’s civil rights compliance and complaint processing activities to better protect the rights of USDA customers. As stated previously, the proposed data collection is in line with the requirements of section 14006 of the 2008 Farm Bill. The inclusion of political beliefs as a protected basis will prohibit discrimination in accordance with current civil rights laws, the Food Stamp Act of 1964, Pub. L. 88-525, 78 Stat. 703-709 (Aug. 31, 1964) and the Civil Service Reform Act of 1978 (which covers political affiliation) and the Secretary of Agriculture's civil rights policy statements.

The final rule may affect entities such as grocery and related product merchant wholesalers, establishments that export their goods on their own account that fall into category 4244 of the North American Industry Classification System (NAICS). Merchant wholesale

establishments typically maintain their own warehouse, where they receive and handle goods for their customers. Goods are generally sold without transformation but may include integral functions, such as sorting, packaging, labeling, and other marketing services.

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, the potentially affected entities are classified within the following industries: General Line Grocery Merchant Wholesalers (NAICS 424410), Packaged Frozen Food Merchant Wholesalers (NAICS 424420), Dairy Product (except Dried or Canned) Merchant Wholesalers (NAICS 424430), Poultry and Poultry Product Merchant Wholesalers (NAICS 424440), Confectionery Merchant Wholesalers (NAICS 424450), Fish and Seafood Merchant Wholesalers (NAICS 424460), Meat and Meat Product Merchant Wholesalers (NAICS 424470), Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480), Other Grocery and Related Products Merchant Wholesalers (NAICS 424490).

Establishments in the categories listed above are considered small by SBA standards if their employee base is less than 100 employees. According to the U.S. Census data, there are 46,272 grocery and related product merchant wholesalers that are considered small.

Based on USDA program data, it is expected that the proposed data collection requirements on those who apply for, participate in, or receive benefits from various conducted programs may affect 90 participants which fall in the above cited categories.

The offer of ADR to program customers is not expected to have an adverse impact on small businesses. ADR will reduce the number of complaints filed, thereby reducing costs to the agency.

The inclusion of political beliefs and gender identity as protected bases is also not expected to have any adverse effect on small businesses. The Secretary has decided to establish gender identity as a separate protected basis for USDA's conducted programs and activities.

Instead, it will ensure that USDA is operating in accordance with the requirements of current civil rights laws and regulations and should not add additional costs to small businesses that are not participating in discriminatory activities or practices.

USDA considered the alternative of allowing civil rights regulations to remain the same, which will not clarify, update or add civil rights requirements. Without this rule, no additional assurances of civil rights protections will be realized.

Based on the above discussion, the Assistant Secretary for Civil Rights certifies that this rule will not have a significant economic impact on a substantial number of small entities. USDA invited comments from members of the public who believe there will be a significant impact, and requested information to better inform the analysis of benefits and costs. No comments were received from the public indicating concern that the rule would economically impact small entities.

The 2008 Farm Bill, Section 14006 requires the collection of application and participation rate data regarding socially disadvantaged farmers or ranchers. OMB has approved a form for this data collection, and the field based agencies have already implemented it. This existing data collection already meets the requirements proposed in this rule, and therefore, the final rule imposes no new data collection requirements on the three field based agencies and will not cause duplication or conflict with the 2008 Farm Bill requirements. USDA is unaware of any other Federal rules that duplicate, overlap, or conflict with the final rule.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial

assistance and direct Federal development. This rule neither provides Federal financial assistance nor direct Federal development. It does not provide either grants or cooperative agreements. Therefore, this program is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The review reveals that this rule will not have substantial and direct effects on Tribal Governments and will not have significant Tribal implications. OASCR consulted with the USDA Office of Tribal Relations (OTR) in development of the proposed rule and believes that it will not impact or have direct effects on Tribal governments and will not have significant Tribal implications. OASCR continues to consult with USDA’s OTR to collaborate meaningfully to develop and strengthen departmental regulations.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA)(Pub. L. 104-4) requires Federal Agencies to assess the effects of their regulatory actions on State, local, or Tribal Governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any one year for State, local, or Tribal

Governments, in the aggregate, or to the private sector. The UMRA generally requires agencies to consider alternatives and adopt the more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandate as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been submitted for approval to OMB.

E-Government Act Compliance

OASCR is committed to complying with the E-Government Act, which requires Government Agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 15d

Civil rights.

For the reasons set forth in the preamble, USDA proposes to amend 7 CFR part 15d as follows:

PART 15d--NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY

THE UNITED STATES DEPARTMENT OF AGRICULTURE

1. The authority citation for part 15d continues to read as follows:

Authority: 5 U.S.C. 301.

§§ 15d.2, 15d.3, and 15d.4 [Redesignated as §§ 15d.3, 15d.4, 15d.5]

2. Redesignate §§ 15d.2, 15d.3, and 15d.4 as §§ 15d.3, 15d.4, 15d.5, respectively.
3. Add § 15d.2 to read as follows:

§ 15d.2 Definitions.

For the purpose of this part, the following definitions apply:

Agency means a major organizational unit of the Department with delegated authority to deliver programs, activities, benefits, and services. Heads of Agencies receive their delegated authority as prescribed in 7 CFR part 2.

Agency Head Assessment means the annual Agency Civil Rights Performance Plan and Accomplishment Report conducted by the Office of the Assistant Secretary for Civil Rights (OASCR). It is an evaluation tool used by OASCR to assess USDA Agency Heads and Staff Office Directors on their civil rights activities and accomplishments to ensure accountability throughout the Department on these issues.

Alternative Dispute Resolution or *ADR* means any number of conflict resolution procedures in which parties agree to use a third-party neutral to resolve complaints or issues in controversy. ADR methods include, but are not limited to, mediation, facilitation, fact finding, arbitration, use of ombuds, or any combination thereof.

Assistant Secretary for Civil Rights or *ASCR* means the civil rights officer for USDA responsible for the performance and oversight of all civil rights functions within USDA, and who retains the authority to delegate civil rights functions to heads of USDA agencies and offices. The ASCR is also responsible for evaluating agency heads on their performance of civil rights functions.

Complaint means a written statement that contains the complainant's name and address and describes an agency's alleged discriminatory action in sufficient detail to inform the ASCR of the nature and date of an alleged civil rights violation. The statement must be signed by the complainant(s) or someone authorized to sign on behalf of the complainant(s). To accommodate the needs of people with disabilities, special needs, or who have Limited English Proficiency, a complaint may be in an alternative format.

Compliance report means a written review of an agency's compliance with civil rights requirements, to be prepared by OASCR and to identify each finding of non-compliance or other civil rights related issue. The review is conducted at the discretion of OASCR or if there has been a formal finding of non-compliance.

Conducted Programs and Activities means the program services, benefits or resources delivered directly to the public by USDA.

Days mean calendar days, not business days.

Department (used interchangeably with USDA) means the Department of Agriculture and includes each of its operating agencies and other organizational units.

Discrimination means unlawful treatment or denial of benefits, services, rights or privileges to a person or persons because of their race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, sexual orientation, familial status, parental status, income derived from a public assistance program, political beliefs, or gender identity.

Secretary means the Secretary of Agriculture or any officer or employee of the Department whom the Secretary has heretofore delegated, or whom the Secretary may hereafter delegate, the authority to act in his or her stead under the regulations in this part.

4. Revise newly redesignated § 15d.3 to read as follows:

§ 15d.3 Discrimination prohibited.

(a) No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or gender identity, exclude from participation in, deny the benefits of, or subject to

discrimination any person in the United States under any program or activity conducted by the USDA.

- (b) No person shall be subjected to reprisal for opposing any practice(s) prohibited by this part, for filing a complaint, or for participating in any other manner in a proceeding under this part.

5. Revise newly redesignated § 15d.4 to read as follows:

§ 15d.4 Compliance.

- (a) *Compliance program.* OASCR shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.
 - (1) OASCR shall oversee the compliance reviews and evaluations, and issue compliance reports that monitor compliance efforts to ensure that there is equitable and fair treatment in conducted programs.
 - (2) OASCR shall monitor all settlement agreements pertaining to program complaints for compliance to ensure full implementation and enforcement.
 - (3) OASCR shall oversee Agency Head Assessments to ensure that Agency Heads are in compliance with civil rights laws and regulations.
 - (4) OASCR shall monitor all findings of non-compliance to ensure that compliance is achieved.
 - (5) OASCR shall require agencies to collect the race, ethnicity and gender of applicants and program participants, who choose to provide such information on a voluntary basis, in USDA-conducted programs, for purposes of civil rights compliance oversight, and evaluation.
- (b) *Agency data collection and compliance reports.* (1) Each Agency shall, for civil rights compliance, collect, maintain and annually compile data on all program applicants and

participants in conducted programs by county and State, including but not limited to, application and participation rate data regarding socially disadvantaged and limited resources applicants and participants. At a minimum, the data should include:

- (i) Numbers of applicants and participants by race, ethnicity, and gender, subject to appropriate privacy protections, as determined by the Secretary and in accordance with law; and
 - (ii) The application and participation rate, by race, ethnicity, and gender, as a percentage of the total participation rate.
- (2) Each Agency shall submit to the OASCR timely, complete and accurate program application and participation reports containing the information described in §15d.4(b)(1), on an annual basis, and upon the request of the OASCR independently of the annual requirement.
- (c) *Complaint reporting compliance.* OASCR shall ensure compliance with mandated complaint reporting requirements, such as those required by section 14006 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246).
6. Revise newly redesignated § 15d.5 to read as follows:

§ 15d.5 Complaints.

- (a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file (or file through an authorized representative) a written complaint alleging such discrimination. The written complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the ASCR or designee. Any person who complains of discrimination

under this part in any fashion shall be advised of the right to file a complaint as herein provided.

- (b) All complaints under this part should be filed with the Office of the Assistant Secretary for Civil Rights, 1400 Independence Ave SW, U.S. Department of Agriculture, Washington, D.C. 20250, who will investigate the complaints. The ASCR will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complaints. The complainant will be notified of the final determination on the complaint.
- (c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.
- (d) For complaints OASCR deems appropriate for ADR, OASCR shall offer ADR services to complainants.

Dated: July 7, 2014.

Joe Leonard, Jr.,
Assistant Secretary for Civil Rights.

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