

**Animal and Plant Health Inspection Service
Civil Rights Enforcement and Compliance
Internal Policy Issuance #: 1**

**Civil Rights Enforcement and Compliance
Operating Guidelines
Alternative Dispute Resolution**

I. INTRODUCTION

This issuance outlines the policies and procedures used by the APHIS Alternative Dispute Resolution (ADR) Center to provide counseling and mediation (informal and formal), in complaints of employment discrimination raised by employees, former employees or applicants for employment.

II. REFERENCES

29 Code of Federal Regulations (CFR) 1614
The Equal Employment Opportunity Commission (EEOC)
Management Directive 110

III. COVERAGE

These procedures apply to complaints raised by current employees, former employees and applicants for employment with the Animal and Plant Health Inspection Service.

IV. POLICY

EEOC regulations require an agency to offer ADR. It must advise the aggrieved individual of the right to choose between ADR and traditional EEO counseling. If an employee chooses to participate in ADR, the pre complaint processing time automatically extends the period at the informal stage to 90 days. After 90 days, if the case has not been resolved, the agency must issue the notice of Right to file (NRF). This notice must be in writing and must inform the employee of the right to file a formal complaint, location for filing and the time limit for doing so.

The EEO Intake Specialist, generally, will be the first point of contact when an individual makes contact with the APHIS ADR Center, and expresses an interest in filing a complaint of employment discrimination. The Intake Specialist obtains information necessary to process the complaint by asking questions that will solicit in detail (1) what happened, (2) when it happened, (3) who was responsible, and (4) why the individual believes he or she was discriminated against. The case will then be assigned to a Counselor or a Mediator.

During the informal complaint process, at the counseling stage, the complainant has a right to anonymity, up until the Agency decides to offer a serious proposal to resolve the issues presented.

EEOC has established six clear defined duties that must be performed for each completed counseling session: (1) advise the complainant of the EEO Complainant process under 29 CFR 1614; (2) assist in determining the issues (s) and basis(es) of the potential complaint; (3) conduct a limited inquiry for the purpose of furnishing information for settlement/resolution efforts and determining jurisdictional questions if a formal complaint is filed; (4) seek resolution at the lowest possible level; (5) document the resolution or advise the complainant of their right to file formal complaint if resolution fails; and (6) prepare a report sufficient to determine that the required counseling actions have been taken and resolve any jurisdictional questions that may arise.

If mediation is elected during the informal process, the Intake specialist will assign a mediator. However, during the formal process the Civil Rights Employment and Compliance (CREC) Specialist, for a designated program area of responsibility, sends out a request to complainants who have filed a formal complaint, inquiring whether the complainant would be interested in participating in a mediation session to have their issues addressed at mediation.

All mediations are normally scheduled for a full day. During the mediation session, the mediator set forth the ground rules that would govern the mediation session, the mediator facilitates separate and joint meetings. If necessary, a separate caucus may be convened with one or both parties to clarify issues, explore possible remedies, discuss interests, assess potential outcomes, and help create realistic expectations. A caucus may also be called if the parties come to an impasse. All conversations in the caucus are confidential, unless either party gives permission to have what is said in a caucus used in the open discussions. At anytime during the mediation session, settlement offers can be presented by the Complainant, Responding Management Official, or the Resolving Official.

When a settlement is not reached, the Mediator is required to provide a brief written summary of the mediation session indicating the outcome of the mediation session, in the event a formal complaint is filed. If a proposed settlement is reached, the Center Manager is alerted, and the draft agreement is forwarded to the Employment Complaints Manager and Director for review and approval. After the settlement agreement has been approved, it is then forwarded back to the mediator to obtain final signatures from the parties that participated in the mediation session, complainant, responsible management official and resolving official.

If there is no agreement at either the conclusion of the informal traditional counseling process or the ADR process, the counselor/mediator is required to furnish the employee with a notice of final interview (NRF). There is an opportunity for the complainant to voluntarily withdraw their complaint before a NRF is issued. However, the notice of final interview informs the complainant of his or her right to file a formal complaint of discrimination with the agency. This notice officially notifies the complainant of the end of the pre complaint (informal) stage.